



Work on Demand: Contracting for Work in a Changing Economy

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Regulatory Arbitrage, Labour Commodification and the Neoliberal State

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Labour markets are characterised by buyers contracting with sellers of labour-power to exchange wages for work. However, using the labour market as an analytical category risks underplaying what is distinctive about capitalist labour markets. Under capitalism, employers are constantly on the lookout for ways to extract greater surplus value from their workers at the point of production. Understanding a range of phenomena, such as the impact of labour migration on domestic labour markets, requires being attentive to the devices used by employers to further commodify labour. This paper will explore specifically the role played by ‘regulatory arbitrage’, which includes both basic regulatory evasion (e.g. misclassifying an ‘employee’ as ‘self-employed’) and steps taken by employers to exploit differences in national regulatory regimes (e.g. relocating production overseas). In more recent times, where relocating production overseas is not feasible, employers have looked to trade regimes (e.g. posted workers) and temporary labour programmes to benefit from the international patchwork of employment regulation (whilst the latter often requires workers to be treated no less favourably than locals, employers can wield the threat of deportation to obtain the same ends). What is distinctive about these recent developments is the facilitative role played by states. The re-election of the Conservative government in the UK potentially heralds a new phase in states working jointly with employers to enable regulatory arbitrage. The UK has already moved to introduce a ‘pilot’ temporary labour programme for the agricultural sector, and in 2019, Prime Minister Johnson announced plans to create a series of ‘free ports’ around the UK which would allow firms to import goods and then re-export them outside ordinary legal rules. This paper seeks to answer two questions: (1) how does regulatory arbitrage result in the greater commodification of labour; and (2) how have states actively participated in this process.