



**BERGISCHE  
UNIVERSITÄT  
WUPPERTAL**

# **Legal and institutional framework and developments in Germany with focus on flexible forms of work**

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# Safety science

- Safety science and engineering deals with the risks to which humans and their environment are exposed. There is a particular focus on the development of concepts and methods for dealing with such risks, associated with the use of technology, including the “human factor”.
- The “Safety science and engineering” department was founded 1975. The entire range of safety-related questions of the University of Wuppertal is reflected in the spectrum of its fourteen specialist areas.

# Agenda

- Background: Economics, policy, regulation
- Regulatory regime on OSH (State of the art)
- Labour relations
- Labour market and flexible forms of work

# **BACKGROUND: ECONOMICS, POLICY, REGULATION**

# Beyond OSH: Categorical imperatives

- “*To overthrow all relations in which man is a debased, enslaved, abandoned, despicable essence; because man is the highest essence for man*” (1843)
- “To set up thinking and acting in such a way that Auschwitz does not repeat itself and that nothing similar happens” (1966)

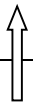
# Main influencing elements

- Basic economic structure of modern society = social production in form of commodities, value, money and capital (surplus value), and the historical process
- Labour force and labour market
- Technology
- Organisation (process and structure)
- Basic political structure = State, policy and legislation

# Longterm structuring factors for OSH in Germany: Legislation and institutions

- Dual system of OSH since 1884
- Dual system of industrial relations since 1919
- Embedding of OSH legislation and system into the national cultural context, influenced by globalisation (international agreements since 1906; ILO 1919)
- Harmonisation: Strong influence of the European policy and legislation on the national OSH legislation since 1986/87 (Single European Act; Delors Commission)

1839 Child Labour Act	1853 Obligatory fabric inspection	1884/85 Statutory Accident Insurance Associations 1900 Civil Code	1918/19 8-hours-day 1920 (1952/1972) Works Councils Act 1926 Ordinance on occupational diseases	1968 Act on Technical Equipment 1973/74 Act on OSH-experts	1994 Working Time Act 1996 OSH-Act 1996 ff. OSH-Ordinances
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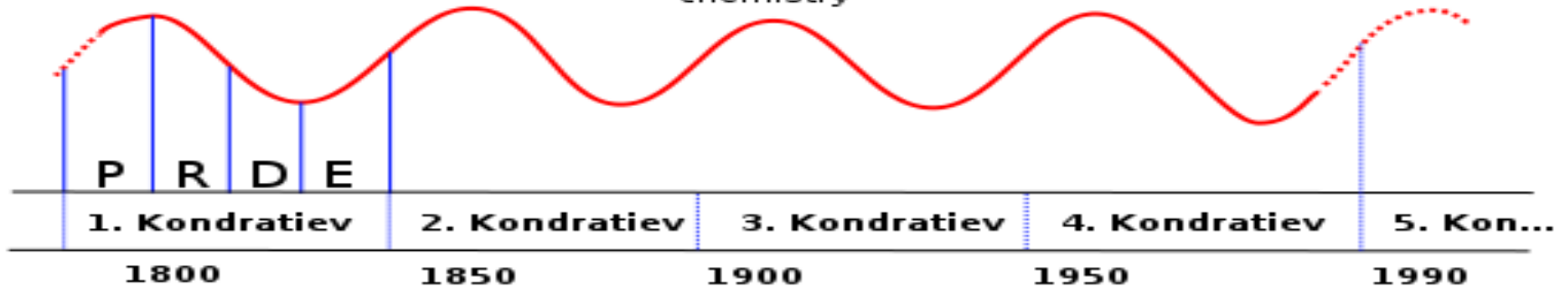
steam engine  
cotton

railway  
steel

electrical  
engineering  
chemistry

petrochemicals  
automobiles

information  
technology



P: prosperity  
R: recession  
D: depression  
E: improvement



# Changes in socially production since 1945

- „Fordism“ and „taylorism“ (1945-1990)
  - ❖ Massproduction / assembly line
  - ❖ Hierarchic organisation
  - ❖ Standard employment contracts
  - ❖ Regulation / „welfare state“
  - ❖ Focus on „decent, humanely work“, Ergonomics (in den 1970ies)
  
- „Post-Fordism“ and „agil“ (1990-?)
  - ❖ Flexible production and distribution
  - ❖ Flat organisation
  - ❖ Flexible employment contracts
  - ❖ Deregulation / „slim“ state
  - ❖ Focus an behaviour based prevention

# Actual general social developments and framework

- Ending of system competition 1990: End of history? (Fukuyama)
- Change of political paradigms: From Keynesianism to neo-liberalism to neo-nationalism?
- Challenge: Sustainable use of ecological resources
- Challenge: Role of the demographic factor and of health in general
- Challenge: Digitalization, flexibilization
- Challenge: Uncertainty about the results of the ongoing economic and political crisis
- Challenge: Decline of the international relations

# Regulation – Deregulation

- Background: General change in economic conditions and policy since the 1980/90ies.
- Economic deregulation and social deregulation since the early 1970ies
- Comparable developments also in OSH-law?
  - ❖ Increasing discussion in Germany since 2002
  - ❖ Political framework: „Federal Government“ and „Federal States“ – „Statutory Occupational Accident Insurance Associations“ = Dual system of OSH
  - ❖ 2004: Amendment of the Work Sites Directive („Arbeitsstättenverordnung“)
  - ❖ 2003-2008: New organisation of the dual system? Result: Joint German OSH Strategy (2008), National Prevention Strategy (2015)
  - ❖ „Financial facts“ (national budget) determine the development

# Somehow recent developments

- „Better regulation“ (UK programme since 1997 unto New Labour, now EU concept: „Smarter Regulation“)
- Increasing use of OSH-managementsystems, (e.g. SCC: 11.000 in the Netherlands, 1.500 in Germany, (BS) OHSAS 18001 / ISO 45001, concepts of the OSH institutions)
- Quality-, Environmental- and Generic Managementsystems
- Increasing importance of risk based concepts (harzardous substances, work equipment...)
- Risk based concepts for OSH inspections by the authorities?

# **REGULATORY REGIME ON OSH (STATE OF THE ART)**

# Employment Contract

## § 611a Civil Code – BGB, 2017

- The employment contract obliges the **employee** in the service of another person to perform **instruction-dependent, externally determined work in personal dependence**. The right to issue instructions can relate to the content, implementation, time and place of the activity. Those who are not essentially free to organize their work and determine their working hours are **bound by instructions**. The degree of personal dependency also depends on the nature of the respective activity. To determine whether there is an employment contract, an overall view of all circumstances must be made. If the actual execution of the contractual relationship shows that it is an employment relationship, the description in the contract is irrelevant.

# Act on the Implementation of Measures of Occupational Safety and Health to Encourage Improvements in the Safety and Health Protection of Workers at Work (§ 2) ArbSchG 1996

(2) For the purposes of this Act, **‘workers’** shall be:

1. Employees,
2. Those employed for the purpose of their vocational training,
3. Persons comparable to employees within the meaning of § 5 (1) of the Labour Courts Act (Arbeitsgerichtsgesetz, ArbGG) (= persons who, because of their economic dependence, are to be regarded as workers-like people),
4. Civil servants (“Beamte”),
5. Judges,
6. Soldiers,
7. Those employed in workshops for the disabled.

## „Dual System“

- Employer: § 2 (3) ArbSchG For the purposes of this Act, ‘employers’ shall be natural or legal persons and partnerships with legal personality employing the persons referred to in subsection (2).
- Entrepreneur: According to § 136 Abs. 3 Nr.1 SGB VII, the one to whom the company's result is directly advantageous or disadvantageous.



# Some results of the EU regulation for the OSH legislation in Germany (public law)

- OSH Act (1996) + OSH experts act (1973)
- Ordinance on health and safety protection for using personal protective equipment at work (1996)
- Ordinance on health and safety protection for working with screen display units (1996; 2016 transferred to the O. on work sites)
- Ordinance on health and safety protection for manual handling (1996)
- Ordinance on health and safety protection for the use of work equipment (1997; amended by a ordinance in 2002)
- Ordinance on work sites (1976/1996/2004/2016)
- Ordinance on construction sites (1998)
- Ordinance on hazardous substances at work (1986/2005/2010)
- Ordinance on biological agents at work (1999/2013)
- Ordinance on noise and vibration at work (2007)
- Ordinance on provisions of occupational medicine (2008/2013)
- Ordinance on artificial optical rays (2010)
- Ordinance on electromagnetic fields (2016)

## **OSH infrastructure: Legal basis**

- Act on OSH experts (1973)
- + Accident Prevention Codes
  
- Obligation of the employer to appoint OSH experts
- Defines the tasks and the qualification of OSH experts
- Defines the rules for cooperation within the company

## **Institutions (examples)**

- Federal Institute for OSH
- Institute for OSH of the DGUV
- Committee of the Federal States on OSH
- Commission for OSH and Standardisation

## **Networks and strategies (examples)**

- **New Quality of Work Initiative (INQA):  
Alliance of all interested groups**
- **German Network for Workplace Health  
Promotion DNBGF**
  
- **Joint Strategy on OSH**
- **Joint Strategy on Prevention (Health)**

## **Aid and guidance at workplace**

- Relevance-based information networks ([www.komnet.nrw.de](http://www.komnet.nrw.de))
- Useful online-instruments (e.g. calculators on noise or on the manual handling of weights)

# Health insurance

## ➤ **Workplace health promotion**

Health insurances are urged to be active in the workplace health promotion according to § 20b SGB V: Assessment of the health situation, development of proposals for improving health and support of the implementation of preventive and health promoting approaches in enterprises

# LABOUR RELATIONS

# Workplace representation

- Workers' or staff councils (“Betriebsrat” / “Personalrat”), elected by the employees in businesses (from 5 employees on). Their immediate purpose is to perform a number of general tasks. For example, they monitor operations to make sure that all legal requirements, safety regulations, collective agreements and in-house agreements designed to benefit employees are adhered to and implemented as necessary.
- The participation rights of the councils are classed according to their scope:
  - ❖ rights of information and consultation.
  - ❖ rights of codetermination
- According to OSH: hazards and risks (work related accident or illness), or when issues of health protection are involved
- In 2009, a total of 51 % of the employees in Germany were represented by employee representative bodies (2019: only 42%, much less in SME: only 5 % in SME from 5-50 empl.).

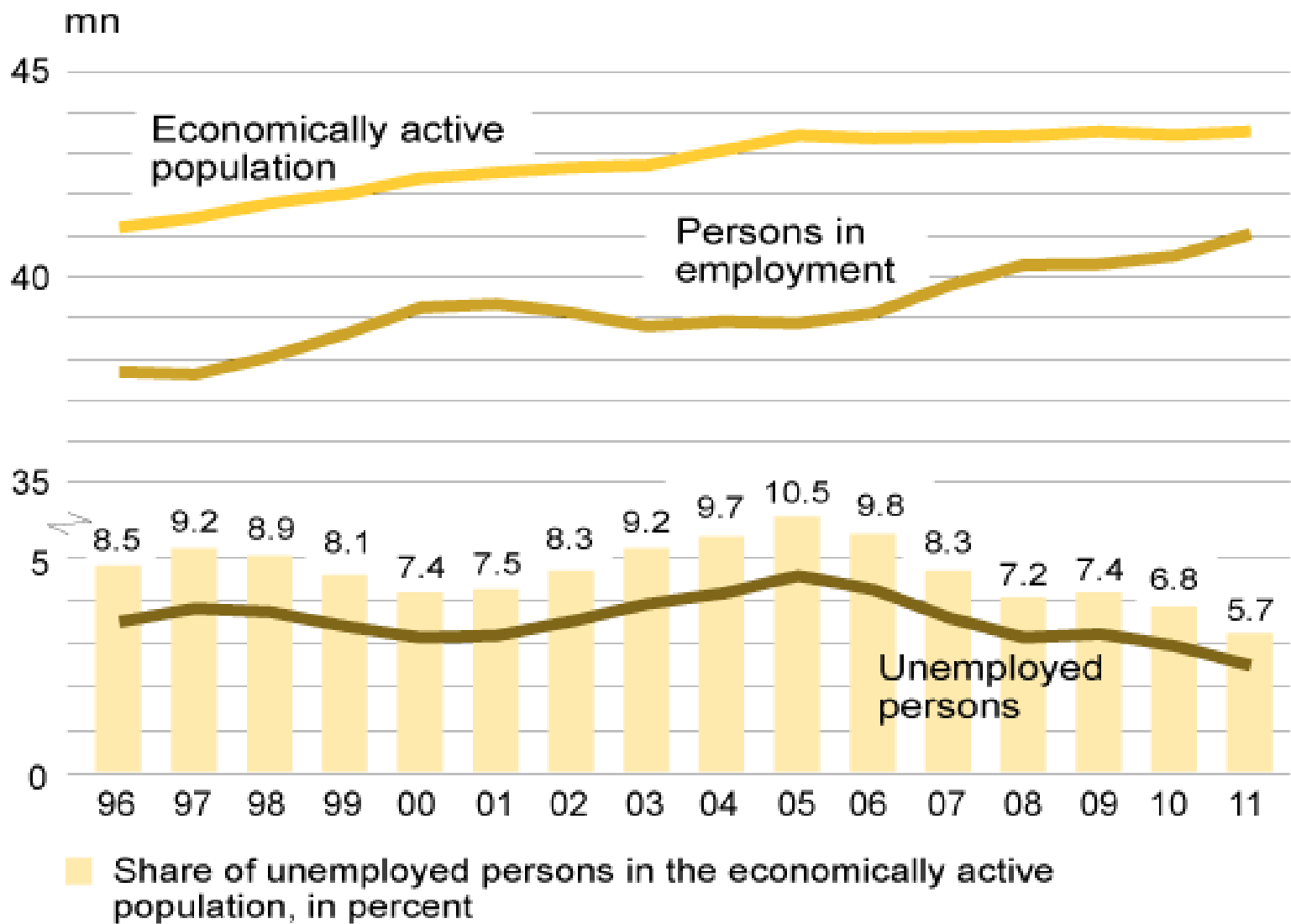


# Social dialogue

- Collective bargaining and agreements govern pay, working hours and other working conditions.
- Negotiated in companies or in economic branches.
- OSH issues in collective agreements are still of small importance

# **LABOUR MARKET AND FLEXIBLE FORMS OF WORK**

# Development of employment and unemployment



## Atypical forms of employment

- “The significance of atypical forms of employment is increasing. More than a third of all employees either work in a fixed-term employment relationship, have a part-time contract, work in ‘marginal’ part-time work or are temporary workers.”

Seifert et.al., 2008

# Self entrepreneurs and crowd work

- Internal crowdwork
- External crowdwork
  
- Indirect crowdwork
  - = Contract between plattform and crowdworker (no or nearly no contact between crowdworker and principal
  - = no right of instruction for the principal)
- Direct crowdwork
  - = Contract between crowdworker and principal (plattform as an agency)
  
- Empirical evidence?

# **SUMMARY AND CONCLUSIONS**

Let's do this together on  
Friday, collecting all  
knowledge and experiences

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Thank you for your attention!