Instituto de Desarrollo Económico y Social
Programa de Estudios Socio-Económicos Internacionales

Serie

Documentos para Discusión

Formalizing Independent Work
Changing Labour Regulation in Argentina
(1998-2007)

LORENA POBLETE

Nº 11/2013

LORENA POBLETE
(CONICET-Instituto de Desarrollo Económico y Social, Argentina)
lorena.poblete@conicet.gov.ar

FORMALIZACION DEL TRABAJO INDEPENDIENTE
Cambios en la regulación laboral en Argentina (1998-2007)

Resumen:

En Argentina, los trabajadores independientes siempre representaron alrededor del 26% de la población económicamente activa. Estos trabajadores conforman un grupo muy heterogéneo que incluye tanto a los dueños de empresas –cualquiera sea el tamaña-, trabajadores autónomos (profesionales y no profesionales), y miembros de cooperativas de trabajo. La mayoría de ellos desarrolla actividades no registradas. La incidencia de la informalidad en este grupo de trabajadores fue siempre muy significativa (más del 50%).

Con el objeto de facilitar la formalización de sus actividades y garantizar su participación en el sistema de seguridad social, en 1998, como parte de la reforma fiscal, fue creado el Régimen Simplificado de Pequeños Contribuyentes, también conocido como régimen de monotributo. Este régimen busca principalmente formalizar las actividades realizadas por los cuentapropistas, empleadas domésticas, vendedores ambulantes y trabajadores rurales. A través del análisis de los cambios del régimen de monotributo y las consecuencias de su aplicación, este estudio busca comprender los desafíos que implica la expansión de formas no estándares de participación en el mercado de trabajo. Esta investigación se centra en el estudio de un caso particular: el de los trabajadores contratados por el Estado, entre 1998 y 2007.

FORMALIZING INDEPENDENT WORK

Changing Labour Regulation in Argentina (1998-2007)[1]

In Argentina, independent workers represent 26% of those who work. These workers form a very heterogeneous group that includes owners of companies of all sizes, self-employed workers (professionals and non-professionals), and work cooperatives' members. Most of them work in unregistered activities. The incidence of informality in this group of workers was always very significant (over 50%). In order to facilitate the formalization of their activities and to guarantee their participation in the social security system, in 1998, as part of a comprehensive tax reform, the "Simplified Regime for Small Taxpayers," also known as the "Single Tax Regime," was created. This regime specifically sought to formalize the activities of workers such as own-account workers, domestic workers, street vendors and rural labourers, who were engaged in low productivity activities. Through an analysis of the changes in the Single Tax Regime and the consequences of its application, this study seeks to understand the challenges that the expansion of nonstandard ways of participating in the labour market held for Argentine labour regulation.

In the years following the implementation of these new regulations, we observed that many informal independent workers registered their activities. However, given that the registration did not correlate with the payment of a single tax, many of the self-employed workers registered could not enjoy social benefits. This means that the formalization of their labour condition did not decrease their vulnerability to some social risks. Also, the application of this regime had an unexpected consequence. This legal status was used as a tool of labour flexibility, even in highly regulated labour markets such as public employment.

Indeed, it was found that in the public administration, the hiring of Single Tax Regime participants spread rapidly. This resulted in a corrective regulation whose objective was to limit the use of this statute, thus seeking to protect those workers considered to be the most vulnerable. In 2002, the State attempted to reduce the hiring of independent contractors in the public administration for the first time. However, it was not until 2005 when a new piece of legislation managed to actually achieve this reduction. In order to analyse the consequences of this legislation, we consider 2007 to be the time limit for this study, which

[1] Este trabajo fue presentado en *3rd Conference of the Regulating for Decent Work Network*, organizada por la Organización International del Trabajo, en Ginebra (Suiza), del 3 al 5 de julio 2013.

takes as its focus the case of the single taxpayers who were incorporated into the public administration as independent contractors through the signing of a lease-of-service contract.

In light of the public administrations new regulations, we will analyse the most general implications that it had on the activity of workers which the law assimilated to the self-employed workers' statute through the single taxpayer category. The main hypothesis is that, even though the Single Tax Regime created the possibility for a large number of workers who were inserted into the labour market in different ways to register their activities and have access to the social protection system, it also allowed for the single taxpayer category to be used with the purpose of incorporating these workers as "dependent self-employed workers" (ILO, 2003; EIRO, 2002; OECD, 2000).

The category of "dependent self-employed workers" is very problematic because it results from a combination of the two main labour-related statutes: wage employed and self-employed. Workers in this category are formally self-employed; however, since they depend economically on a contractor, their working conditions are similar to those of wage employees (Supiot, 1999). These workers do not have an employment contract, but rather supply labour to their employer via a private or commercial contract. Because this hybrid category of dependent self-employment has characteristics of both wage employment and self-employment, inherent problems for workers in this category are limited job security and restricted access to the social security system.

During the last twenty years, this "new" labour status gave rise to an interesting debate. Many international organisations, such as the ILO, OECD or EU, as well as academics in various countries, have tried to define the specificity of this form of participation in the labour market (Muehlberg & Bertolini, 2008; Muehlberger, 2007; Robson, 2003; Schulze Buschoff & Schmidt, 2009; Román, Congregado & Millán, 2009). The first hurdle in this debate was to clarify the distinction between dependent self-employment and "bogus" self-employment (EIRO, 2002; ILO, 2003). The statute of self-employed has always been used as a stratagem to reduce the cost of labour and to avoid making social security contributions and severance payments (OECD, 1999). Moreover, in the search for increased numerical flexibility and competitiveness, employers have pushed this status of self-employed to the edge of illegality (Poblete, 2008a).

Disguised forms of wage employment have long existed, but the end of the twentieth century gave rise to a new phenomenon in many countries, and was particularly prevalent in Argentina: the emergence and establishment of dependent self-employment as a legalised statute. Thus, the Single Tax Regime contributed to the legalization of this conflictive figure and permitted its generalization. At the same time, the expansion of this regime made

invisible the implications that this statute had for workers, especially those of low-income categories.

This study is based on the analysis of two types of empirical material: labour regulation and statistical data. First, we study the regulatory evolution of the Single Tax Regime and the hiring regime which permitted the incorporation of single taxpayers into the public administration. Second, with the goal of analysing the consequences of the application of the Single Tax Regime, and the manner in which the participation in this regime was limited in the public administration, statistical data provided by the ONEP (National Public Employment Office) corresponding to the period between 2002 and 2007 is examined.

This article is composed of four sections. The first section analyses the genesis of the law that created the Single Tax Regime. In the second section, the evolution of this regime and the subregimes that were established in order to incorporate a larger number of workers are explored. The third section discusses the consequences of the application of the Single Tax Regime, considering both the effectiveness of the access to social benefits and protections that it provided and the extensive use of the single taxpayer category, particularly in the public administration. The fourth section examines the regulations whose objective was the reduction in the number of single taxpayers contracted as service providers by the State. The article concludes with some considerations about the challenges that the formalization of different forms of non-wage labour has for Argentine labour regulations.

1. Protecting informal workers

Argentina's informal sector has historically represented around 35% of the employed population. In 1997, the year before the creation of the Single Tax Regime, this sector reached a high of 45.7%. If domestic work was included, around 53% of the employed population was working outside of the regulations at this time (Beccaria *et.al.,* 1999: 147). The most important components of the informal sector were own-account workers and employees of small firms. The first category represented around 50% of the sector and the second 30% (Beccaria *et.al.,* 1999:144). Moreover, it is estimated that in 1997, 44.6% of all employees and 71.5% of independent workers evaded their social security obligations (Beccaria *et.al.,* 1999:127).

Because of this situation, the Single Tax Regime sought to facilitate registration and contributions to the social security system in order to guarantee access to social benefits, principally health insurance and retirement. Through this regime, self-employed workers could access a public health insurance plan for the first time, as the social security system for

independent workers, created in 1955, only included retirement and pensions. Thus, the Single Tax Regime implied an expansion of coverage and an increase in social benefits.

When the Single Tax Regime was presented to the Chamber of Deputies in May 1998, the legislator introduced the principal reasons that made this law necessary in the following way:

> *"Three years ago, a group of street vendors visited the Budget and Finance Commission, arguing that they wanted to be included by the law; that is, in the same system where all the other workers are. I remember them telling us: We are not second-class citizens, we want to be citizens like everyone else. The only difference that we have with the others is that our income is lower and, therefore, we want to pay according to our abilities. (…)*
>
> *At a certain point, something happened that alerted the tax system. It had to look at things differently. People stopped participating in the system since they could no longer pay the retirement contributions. The desertion from the social security regime by self-employed workers led to the desertion from the tax system. Thousands of Argentines are heading towards an unregistered economy: they work, they produce, and they strive hard, but they have no clear identity, that is, they can't be citizens like everyone else. (…)*
>
> *Moreover, since they are outside the law, they are subject to extortion and blackmail, like "I'll pay you what I want, and if not, get out of here". Obviously, this cannot occur in a democratic system where citizens, whatever their condition may be, should have the same rights".*[2]

Two elements appear clearly in this presentation of motives: the explicit demand for legal protections made by informal workers, and the need to resolve the problem of the "desertion" of independent workers from the social security system and fiscal regime. For the legislator, who interpreted this demand as a desire for fiscal equity, it was essential to recognize that not all the workers had the same abilities to contribute to State finances, given that they participated in the labour market in different ways. Many of them remained on the margins of regulation due to their low income. Informality was thus considered to be an "involuntary" condition (Salim & D'Angela, 2006a). Consequently, evasion, far from being a choice, was presented as the consequence of inappropriate legislation, and the responsibility for tax and social security fraud could not be attributed to evaders.

Within a democratic regime, the State –the legislator recalled - should guarantee the same rights to all of its citizens. In this sense, Law 24.977[3], which established the Single Tax Regime, sought to establish conditions of equality in terms of social rights. However, given that access to social rights in Argentina depended principally (although not exclusively) on contributions, the State was forced to create a system which was specially designed for those workers who had the least capacity to contribute. This implied integrating those workers excluded by the existing regular social security regimes; that is, the salaried worker regime and the social security regime for self-employed workers. The principal beneficiaries of this

[2] Lamberto, deputy from Santa Fe, President of the Budget and Finance Committee. Journal of the Chamber of Deputies of the Nation, 12nd meeting, 7th ordinary sessions, May 6 1998.

[3] Law 24.977 (Official Journal, 06/07/1998)

new regime were the employees of small firms located in less productive sectors of the economy and low-income independent workers, whether they be business owners or self-employed. Income level thus appeared as the main eligibility criterion for participation in this integrated system which unified tax payment (VAT and salary tax) and social security contributions.

The regime established eight categories of contributors according to four criteria: gross income, surface area of the establishment where the economic activity took place, energy consumption and unit price. However, gross income would be the decisive criterion for the classification of taxpayers.[4] The maximum income level established for the highest category was twelve times higher than that stipulated for the lowest. However, while the regime provided for the incorporation of workers of a wide range of incomes, most of its participants registered in the lowest categories. The vast majority of those who were incorporated by this regime were own-account workers who worked in the service sector, trades sector or retail (Salim & D'Angela, 2006a). Because of this, in practice, the Single Tax Regime was used almost exclusively for the formalization of independent workers with low incomes.

2. The Single Tax Regime

The Single Tax Regime arose in the context of a significant labour market reform whose main objective was to increase the levels of flexibility. This reform found its justification in the need to modernize legislation so that the labour market could better adapt to the new model of accumulation, the open free-market model. The proponents of orthodox economics affirmed that market liberalization required the deregulation of the labour market in order to achieve acceptable levels of international competitiveness. Being competitive in a globalized economy required the ability to raise labour productivity and adjust the volume of jobs to fluctuations in the demand. Therefore, a rigid legal framework could only provoke the growth of the unregulated segment of the labour market, thus exacerbating the structural dualism of the labour market characteristic of developing countries. [5]

The set of laws which made up the labour reform were justified by this argument, which, if one considers the legislation existing at the time, proved to be completely fallacious. First, the existing legal apparatus was already sufficiently flexible, for example in terms of layoffs. For some authors, the Argentine regime was one of "relative instability" or "free layoffs" (Meik & Zas, 1990). Moreover, arrangements between employers and employees outside of the normative framework were and had always been very common (Marshall, 1996; Ahlering &

[4] Article 17, Chapter VIII of Law 24.977 establishes certain exclusions, defined by the type of activity conducted. These exclusions cover the contributors who are expected to join the social security system for independent workers.
[5] For an analysis of these arguments, see Marshall, 1990, 1998 and Beccaria & Galín, 2002.

Deakin, 2007). Thus, the regime was characterized by a sort of *de facto* flexibility due to non-compliance with the regulations. In this context, the Single Tax Regime appeared as a normative framework that made it possible to incorporate those workers inserted in "*de facto*" flexible labour relations into the formal labour market. In this sense, it permitted the formalization of the existing flexible forms of labour relations.

For informal workers, the major attractions of this regime were the social benefits, especially health insurance. During the debate over the reform of the social security system in 1993, health insurance appeared as a fundamental element to incentivize self-employed workers to regularize their contributions to the social security system. The main argument was that social benefits offered in the present (medical insurance) were more effective than future benefits (retirement pensions) as motivators for regular participation in the social security system.[6] In the case of the Single Tax Regime, which integrated the VAT and the salary tax with social security contributions, medical insurance also served as an incentive for proper tax-paying[7].

During its first two years, the Single Tax Regime was able to incorporate to the social security system many self-employed workers who had hitherto remained outside the system of labour regulations. However, beyond these achievements, it became apparent that a large number of workers remained excluded due to the manner in which their work activities were structured. For this reason, three special regimes of single taxpayers were created with the goal of integrating those workers with particular labour relations; that is, those who were neither entirely salaried nor strictly self-employed. The first special regime sought to include domestic workers who worked hourly for different employers. The second regime concerned those workers who were engaged in activities sporadically as self-employed workers. The third regime sought to integrate those where at the very bottom of the income scale, whether it be because they worked as members of work cooperatives, or because they had been incorporated into state work promotion programs.

In 2000, a social security system for domestic workers was created, integrated with the Single Tax Regime. The novelty of this measure was that it permitted the incorporation of workers not included in the 1956 statute[8]. This statute regulated the activities of those who worked and lived in an employer's home, as well as those who worked for the same employer for at least four hours a day, four days a week. At this time, less than half of

[6] Finally, Law 24 241(Official Journal, 18/10/1993) which implements the Integrated Retirement and Pensions System (in force until 2008) does not include health insurance within the social security benefits for independent workers (cf. Poblete, 2008a).

[7] The idea of a single contribution that would integrate a salary tax and social security contributions already appeared in 1993, during the debate over Law 24. 241. Cf. Journal of the Senate of the Nation (September 22 and 23, 1993) and the Journal of the Chamber of Deputies of the Nation (May 2 and 3, 1993).

[8] Special statute for salaried domestic service workers. Presidential Decree 326, January 14, 1956 (repealed by Law 26.844, Official Journal, 12/04/2013).

domestic workers worked under the conditions established by the 1956 statute (MTSS, 2005). The Single Tax Regime thus allowed for the regularization of those who worked at least six hours weekly for the same employer[9], even if they worked for numerous employers. These domestic workers were inscribed in a labour relationship that could be characterized as one of "fragmented subordination" (Poblete, 2008a); that is, a non-exclusive subordination. The legislator, basing his position on the definition of a statute for the "domestic worker single taxpayer," sought to formalize the situation of those domestic workers who had a minimum of continuity in the exercise of their activity, even if they worked under some sort of special part-time regime.

In 2001, the Single Tax Regime also included temporary workers. Until that time, this type of labour activity had not been of particular interest to the State, given that it was considered to be complementary to some other primary activity. However, the situation changed in the late 1990s, when temporary work appeared as a way of integrating into the labour market in itself. Due to this, a new category of small contributors was created through a presidential decree[10]. The criterion established by the regulations to enter the Single Tax Regime as a temporary worker was the temporary or provisional nature of the work activity. This means that, in principle, this regime excluded those workers who carried out activities without interruption, regardless of whether they received income irregularly. But, in exceptional cases, the regime authorized the incorporation of single taxpayers with the lowest incomes - those registered in the lowest category of the Single Tax Regime. In this case, the level of income was considered equal to the discontinuity of the labour activity as a cause for lack of social protection.

The third special regime –social single taxpayer- sought to incorporate workers whose contribution capacity was low or none. The "social" adjective that characterized this form of the single taxpayers marked its proximity to the non-contributory social protection regimes. The workers registered under this special regime were exempt from the payment of their contributions during the first 24 months which followed their registration, and enjoyed a reduction of 50% on their health insurance rates.[11] Independent workers who were in highly precarious positions were eligible for this category: workers within the two lowest categories of the Single Tax Regime[12]; long-term unemployed workers who were working under state-led

[9] Special social security regime for domestic service workers, art. 1, which corresponds to Article 21 of Law 25.239, 1999 (Official Journal, 12/31/1999)
[10] Presidential Decree 1401/01, November 4, 2001. This order would be repealed by Article 3 of Law 25.865 (Official Journal, 10/01/2004) which modified the regime for temporary workers.
[11] Law 25.865 (art. 34 and 49 of the annex).
[12] Law 25.865 (art. 12 of the annex).

employment programs[13]; or cooperatives' workers.[14] This category juxtaposed different types of labour relations. In the first case, it applied to workers who received low, frequently irregular incomes, not because they were engaged in fixed-term contract or temporary work but because they were employed in the least productive sectors of the economy. In the other two cases, the labour relation was similar to that of a salaried employee. The workers in state-led employment programs were subordinated to the institution that administered the program and functioned as an employment provider, even if a true labour relation did not exist. Those who worked in cooperatives were in a similar situation, given that in many cases the cooperative appeared in the role of the principal employer.

In practice, this subcategory of single taxpayers incorporated low-income workers more than it did workers employed by the state-led employment programs. In fact, with the goal of registering temporary and fixed-term contract workers with the lowest incomes, in 2004 the law allowed for the combination of the categories, creating the category of the temporary/social single taxpayer.[15]

The Single Tax Regime thus became a tool that sought to adapt the structure of the social security system to different ways of participating in the labour market. In addition to self-employed workers, it included those workers who, due to the characteristics of their work activity, remained outside the traditional statutes, and therefore outside the existing regulations. This legal framework then allowed for workers in atypical situations in the economy's least productive sectors to access social benefits. In this sense, the Single Tax Regime appeared as a first attempt to regularize the extensive informal sector that has been one of the persistent characteristics of Latin American labour markets.

3. Some Consequences of the Single Tax Regime's application

Through the Single Tax Regime, a large number of workers were incorporated into the formal labour market in a relatively short period of time. During the first 9 years, the number of registered participants in the regular Single Tax Regime tripled.[16] In 1998, there were 642,200 single taxpayers and in 2006, 1,873,800. Registered domestic workers in the regime went from 27,758 in 2000 to 142,200 in 2006. In this year, temporary single taxpayer numbered 103,000

[13] The social Single Taxpayer category was aimed at workers registered in the "National Registry of Local Development and Social Economy Participants of the Ministry of Social Development", Presidential Decree 186/04 (art.1). For an analysis of this type of employment program, cf. Lo Vuolo,1999.
[14] Law 25.865 (art. 48 of the annex).
[15] Law 25.865 (art. 34 of the annex).
[16] From 2007 onwards, in addition to the government intervention in INDEC (the national statistics agency), there has been a drastic decrease in freely accessible public information. In regards to the Single Tax Regime, the only agency that currently publishes information (although not very systematically) is the Ministry of Social Development which is responsible for the management of the "social" Single Tax Regime.

and there were 44,000 registrants in the "social" regime (Salim & D'Angela, 2006b). These statistics (while partial) show the wide reach of the Single Tax Regime. However, given that participants – under all of the subregimes – registered their activities as self-employed workers by using the Single Tax Regime, we observed similar effects to those described by other studies of self-employment. First, there was a significant irregularity in contributions, which resulted in limited or no access to social benefits. Second, the Single Tax Regime was used as a tool to increase flexibility via outsourcing, as well as to disguise the hiring of wage employees.

3.1. Formalization without social benefits

Traditionally, self-employed workers presented a very low level of social security contributions. In 1999, of all of the workers registered under the self-employed workers' regime, only 33.7% made their contributions (SAFJP & Instituto Di Tella, 1999:33). This percentage decreased until reaching a low of 7.3% in 2002, during the crisis (MTESS, 2002:36). Between 2005 and 2007, only 10% of those registered paid their contributions to the social security system (ANSES, 2007). The low level of contributions can be explained by different factors.

One of these was the so-called "social security provision culture of the self-employed worker" (Bertranou & Casalí, 2007). Because of the way in which they develop their activities, self-employed workers often believed they were able to provide their own "protections" without turning to formal State programs. This capacity to "self-insure" themselves through their own strategies was complemented by a distrust of the social security system (Bertranou & Casalí, 2007; Poblete, 2008a). Moreover, the low level of benefits paid led to a lack of interest in contributions. According to data from the Social Security Agency, between 1986 and 1989, 96% of retired self-employed workers received the minimum retirement benefit (Schulthess & Lo Vuolo, 1991:10). Another factor which discouraged the payment of social security contributions was the lack of sanctions for non-compliance (Galín, 1999: 271). The Argentine regime, like the "Latin model" analysed by Piore y Schrank (2008), prioritized compliance with the norms more than sanctions. Indeed, there have been successive moratoriums throughout the years,[17] until the installation of a paradoxical "permanent moratorium" in 2004.[18] From that moment on, self-employed workers could register with a voluntary regularization regime, benefiting from reductions in their debts.

[17] Between 1995 and 2004, there were three moratoriums that permitted self-employed workers to renegotiate their debts (Poblete, 2008a: 54).
[18] Presidential Decree 164/04 (Official Journal, 06/02/2004).

In the specific case of single taxpayers, between 1998 and 2005, 72.2% of workers were registered in one of the two lowest-income categories. During the first year of the Single Tax Regime's application, 39.6% of workers were registered in the lowest income category, and 32.6% in the second-lowest. The other six categories of the Single Tax Regime only accounted for about 27.8% of single taxpayers and from 2000 onwards, they would not represent more than 20%. Although the two categories with the lowest incomes maintained their relative weight in regards to the total number of single taxpayers, there was a growing increase in the lowest income category. This category represented 53% of registrants in 2000 and 60.2% in 2003 (Salim & D'Angela, 2006a: 14). This means that the contributory capacity of the majority of single taxpayers was low due to their income level.

Even if the real value of the contributions required diminished significantly since 2000,[19] participants' ability to pay the single tax was limited. Single taxpayers' capacity to contribute depends greatly on their possibility of generating income on the market, and is therefore subject to the prevailing economic situation. According to a study conducted between 1998 and 2009, only 18% of single taxpayers had access to social benefits. Only 8% of these made all of the payments during 36 months; 5% had made 30 payments; and 5% 18 payments (Ruffo, 2011: 220). Within the 18% of single taxpayers who had access to social benefits, there are 5% who could lose these rights by ceasing to make regular payments. This explains the low level of coverage of single taxpayers by the social security system.

3.2. Single Tax Regime: Extensive or Fraudulent use?

The self-employed worker's statute has been frequently used to disguise undeclared salaried work relations. Indeed, during the 1990s, the single taxpayer category was used to avoid labour regulations with the goal of flexibilising work relations. In various productive environments[20], employers contracted –as independent contractors- workers registered as single taxpayers in order to carry out tasks previously performed by permanent employees. These contracts were rather like subcontracts, given that they were regulated not by labour law but by commercial law. As a result of this extensive use of the figure of the single taxpayer, former wage employees were converted into self-employed service providers. In this case, the labour fraud was indisputable. However, in other situations, the definition of the fraud was less evident. This is the case in the use that the State made of this statute since contracting self-employed workers as individual service providers was made legal.

[19] According to Ruffo (2011), the real value of the single tax regime contribution decreased by about 56% between 2000 and 2009.
[20] The case of the subcontracting of rural workers under the category of single taxpayer was analyzed in Poblete (2008b)

In 1995, for the first time, self-employed workers were allowed to lease services to the State as individual providers. A self-employed person was considered to be a one-person business. When this new regulation for temporary public workers was created, it was applied to very few government areas, and was primarily aimed towards the hiring of professionals as part-time consultants. In 2001, as a result of the State's financial crisis, this employment regulation was extended to the entire national public administration. Despite the original intent of this regulation, it came to be used to contract self-employed workers for administrative or maintenance work as full-time workers. These workers represented 64% of all self-employed workers hired by public administration in 2002 (ONEP, 2003). As a consequence of this over-intensive use of this employment category, these workers found themselves in labour relationships characterized by ambiguous working conditions and reduced social protection.

These lease-of-service contracts contain several stipulations. The first is the invariability of the contractual relationship linking the public administration and the self-employed worker. The only contractual relationship admitted between the two parties is an independent labour relationship. Neither party can change the nature of this contractual relationship for any reason. The second is that self-employed workers must work alone; they cannot employ someone else to help them with their contractual obligations because they are hired as a one-person business. The third is that a self-employed worker has to make regular payments to the social security system and purchase all the necessary insurance because the State will not "assume any responsibility for life insurance, health insurance, labour risk insurance, travel insurance, or any kind of insurance which might be necessary or convenient for the fulfilment of the contract."[21] The fourth is that a self-employed worker is the only responsible party for any claims related to contractual activities coming from a third party. The last stipulation is that a self-employed worker who signs a lease-of-service contract must follow the orders of a superior, as if he were in a traditional wage relationship. These five stipulations that define the self-employed worker's labour relationship with the State show us that this relationship has ambiguous traits. The obligation to pay social security contributions is clearly present, as is the responsibility to assume entrepreneurial risk, yet also included is the obligation to work in a subordinate fashion, much like a wage employee.

The duration of the lease-of-service contract is set forth in writing, and the terms of the contract cannot be changed or extended under any circumstances, even if the self-employed worker continues working when the contract expires in order to fulfil contractual obligations. If the two parties decide to continue their labour relationship, they must sign

[21] Presidential Decree 92/95, clause 2.

another fixed-term contract. This is a clear example of an employer, in this case the State, "attempt[ing] to shift the risks of productive activity and employment onto workers by categorizing work relationships as commercial arrangements rather than employment" (Fudge, Tucker & Vosko, 2003:195)

The labour relationship established by such a lease-of-service contract is very fragile because either party can break it at any time, for any reason. Moreover, if the State decides to break off the labour relationship, it has no obligation to make severance payments. Yet, according to the goals of this new public employment regulation, the fragility of the labour relationship was not problematic because the system was created with the sole intention of hiring qualified self-employed workers as part-time consultants. It was supposed that independent workers who signed a lease-of-service contract with the State had other clients and did not depend solely on their independent activity in the public administration. According to the regulation, these two characteristics would avoid economic dependence on the State.

However, since there were no restrictions on the types of services that could be hired out this way, many self-employed workers entered into the national public administration by using lease-of-service contracts. Most of them were not hired to work as part-time consultants, but were rather assigned administrative duties as full-time workers. Those hired as part-time consultants represented a minority of lease-of-service contractors: 14% of all contractual independent workers in public administration in 2002 (ONEP, 2003). By contrast, self-employed workers hired to perform administrative duties represented 64%. Only half of these had the level of education required to perform these activities: 54.4% had finished secondary school and only slightly more than a quarter of those (27.4%) had a university degree. As for their income level, half of them were registered in the lowest bracket of the Single Tax Regime, with the other half registered in the second lowest income bracket (ONEP, 2005). Empirical data shows that, until 2002, most self-employed people working in the public administration as lease-of-service contractors, and registered in the two lowest income brackets, were in a "dependent" self-employment relationship because the State was their principal (or only) employer.

4. Protecting low income independent contractors at the public administration

In 2002, Law 25.164,[22] called the "framework of regulation for public employment," instituted a new contractual system for fixed-term employment contracts. This new legislation

[22] Law 25.164 (Official Journal, 10/08/1999).

was intended to limit the overly extensive use of lease-of-service contracts by creating other flexible contractual forms, such as fixed-term contracts for wage employees. According to this new pattern of employment regulation, wage employees hired using fixed-term contracts were more protected than self-employed workers hired under lease-of-service contracts, but less protected than wage employees hired as permanent workers. This is because dismissal procedures had been simplified: the State did not need to justify its actions or make severance payments if a contract was interrupted.

Even though this legislation promoted the use of these new fixed-term contracts, few dependent self-employed workers changed their status before 2005. The legislation was not robust enough to produce a change in hiring practices, and stronger measures became necessary. Thus, in 2005, a presidential decree[23] established an *obligation* for administrative workers with low-incomes to adjust their status. All lease-of-service contractors who did administrative work earning less than $1,512[24] monthly for full-time work—that is, falling within the second-lowest income bracket of the Single Tax Regime (at that time)—had to sign a new contract with the State as fixed-term wage employees. Also, the hiring of these workers as self-employed workers under lease-of-service contracts was no longer allowed.

With this new presidential decree, the State attempted to minimize the negative consequences of the previously extensive (or even excessive) use of lease-of-service contracts in the public administration. The State determined that these independent contractors were in a very precarious situation, due to the fact that they were in a dependent self-employment relation with the State, which was their only employment provider, and because their low income did not allow them to manage the risks inherent in their self-employment status. Thus, low income became the factor that explained the precarious position of dependent self-employed workers in the labour market.

Data shows that after 2005, most administrative workers who had signed lease-of-service contracts adjusted their status, becoming fixed-term wage employees. During 2005, the number of lease-of-service contractors was reduced by about half, and the number of fixed-term workers tripled: lease-of-service contractors numbered 12,987 in January of that year, and 8,016 in December, whereas fixed-term workers numbered 1,857 in January and 6,505 at the end of the year. The difference between the number of people working under the two types of contracts has grown over the years. In 2007, lease-of-service contractors numbered 4,485 and fixed-term workers 19,480 (ONEP, 2005, 2008).

Even though both types of contract were for fixed terms, with no right to severance payments in the case of contract interruption, they did not provide equal security in terms of

[23] Presidential Decree 707/05 (Official Journal, 06/23/2005).
[24] All values are presented in Argentine pesos.

job stability. In terms of the duration of the contract, fixed-term contracts brought more stability than do lease-of-service contracts. According to data provided by ONEP, in 2007, the number of one-year lease-of-service contracts represented 62.3%, with those lasting six-months or shorter accounting for 29%, and those with a duration of less than three months 10.5% of all lease-of-service contracts (ONEP, 2007, 2008). For fixed-term contracts, one-year contracts represented 78.8%, those lasting from six months to one year accounted for 12.5%, and those with a duration of fewer than six months only 9% in 2007. So we see an opposite tendency in the two types of contracts during this period; lease-of-service contracts have tended to have durations shorter than six months, while fixed-term contracts have tended to have longer durations: those lasting from six months to one year comprised 91.3% of all fix-term contracts in 2007 (ONEP, 2007, 2008).

For low-income self-employed workers, the obligation to adjust their status to become wage employees brought with it various kinds of protection. Even if they signed a fixed-term contract for no longer than a year, which might or might not be extended for another year, they would have access to all the social security benefits: health insurance, a retirement pension and family allowances. Moreover, the adjustment of status exempts them from the entrepreneurial risk associated with outsourced activities.

Thus, the new employment regulation has been partially successful in correcting the over-intensive use of lease-of-service contracts in the public administration by adjusting the status of the workers with the lowest income. However, most self-employed workers who have the State as their principal or only contractor and whose income is slightly higher than the established limit remain in a precarious labour condition because of their economic dependence on the State. This means that they have to assume entrepreneurial risk and have no guarantee of access to the social security system since they cannot regularly pay their social security contributions.

Conclusion

The analysis of the evolution of self-employment regulation in public administration brings up questions similar to those that were presented at the time of the creation of the self-employment statute in 1955: should it be necessary to have capital to perform activities as a self-employed worker? Should there be a minimum capital requirement needed in order to be able to assume the entrepreneurial risk and to make regular contributions to the social security system?

In 1955, Congress gave a vague answer to these questions due to the fact that economic independence was not considered a second criterion for determining self-

employment statute. However, in the debate over the law that legalized this labour statute at that time, three ideal-types of self-employed worker were introduced and distinguished by the activities they performed and the capital they possessed. The first ideal-type of self-employed worker identified by Congress was the entrepreneur. This kind of independent worker was defined as performing intellectual activities using patrimony as capital. The second ideal-type was the craftsman who did manual work and used the income of his/her activities as the capital necessary for continuing in the labour market as a self-employed worker. The third ideal-type was the professional who did intellectual work, but had no capital. Once Congress recognized that a lack of capital was problematic for the performance of independent activities, a specific credit system for professionals was created. Although this credit system lasted for only four years, its institutionalisation emphasized the importance of capital for assuming all risks related to independent work.

When the Single Tax Regime was created in 1998, this idea reappeared, though it became blurred by the addition of the subcategories mentioned in prior sections (domestic self-employed workers, temporary workers and social single taxpayers). The Single Tax Regime established different income brackets in order to define categories of self-employed workers. These income brackets determined the minimum capital necessary to perform independent activities. Also, the Single Tax Regime distinguished between self-employed workers who leased their services and those who owned small businesses.

From 1998 to 2006, most self-employed workers were in the lowest income bracket. Available data suggests that workers with the lowest income had more difficulty paying taxes and social security contributions (Salim & D'Angela, 2006a). Nevertheless, for the Treasury, nearly $12,000 a year ($1,000 or less monthly) was considered sufficient income for a self-employed worker to perform independent activities.

However, in 2005, the State decided that the status of full-time, low-income, dependent self-employed workers in the public administration had to change because it is unfeasible. Here, the question about whether minimum capital is needed in order to function as an independent worker was answered differently. The State fixed a different minimum income for self-employed workers who leased services to public administration, which was higher than that which applied to the private sector. According to the public employment regulation, all those earning less than $1,512 a month had to sign new contracts as fixed-term wage-employed workers. The line dividing those capable of performing an independent activity from those who did not earn enough to do so was fixed at $2,264 a month in 2006 and increased to $3,041 in 2008.[25] However, even though these monthly earnings almost tripled the legal minimum income at that time, they were still considered insufficient to allow

[25] This minimum was raised, in 2006 and 2008, by Decree 2031/06 (Official Journal, 01/24/2007) and Decree 480/08 (O.J. 03/28/2008).

dependent self-employed workers to assume the risks of their independent activity. Thus, in order to reduce the precarious situation produced by the over-intensive use of the self-employment statute in public administration, many independent workers became wage employees. But this political decision—which recognized low income as a factor that hindered the performance of self-employed workers—did not address the more important problem of economic dependence that characterizes dependent self-employed workers.

Economic dependence is not merely a matter of low income. The analysis of the case of lease-of-service contractors in Argentina underlines the fundamental contradiction inherent in the dependent self-employment category. The combination of formal independence—being registered as a self-employed worker—and economic dependence on one contractor cannot produce a consistent labour status. These characteristics have resulted in an ambiguous labour statute under which the independent worker must absorb all risks related to the labour relationship. This status allows employers (who become "clients") to transfer the economic risks, employment risk and the social risk to independent workers (Morin, 1999). The first of these risks is related to the vagaries of the market and the economy. The second has to do with potential terminations of service and sporadic earnings. The third refers to the incapacity to generate income because of illness, aging, or other reasons. In a situation of economic dependence, it is difficult to imagine how self-employed workers can manage these risks. Under prevailing conditions, independent workers usually find themselves in a very vulnerable position. Thus, the legalisation of this hybrid category of workers produced the institutionalisation of various kinds of precarious labour situations. Moreover, since the dependent self-employment statute has become legal, it has been socially legitimized, and is not considered as problematic enough to be at the core of the debate about new kinds of atypical labour relations.

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