



**CENTRE FOR NEW  
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**Unable to Shape the Political Arena:**

**The Impact of Poor Quality**

**Employment on Unions in Post-**

**Transition Chile**

**Kirsten Sehnbruch**  
University of Chile

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**Unable to Shape the Political Arena:  
The Impact of Poor Quality Employment on Unions in Post-Transition Chile**

**Abstract**

This article examines why, after 20 years of government by a centre-left coalition, the political position of unions in Chile has probably weakened. The academic literature has predominantly focused on the political and sociological factors that have shaped labour legislation and potential reform.

This paper complements these perspectives with empirical evidence and argues that, in addition to the political and sociological factors that the literature has highlighted, the increased use of flexible forms of employment makes it impossible for unions to recover a position of strength with their current methods of organisation and mobilisation, and therefore concludes that Chile's unions need to find new ways of acting in the political arena.

*Keywords: Unions, Chile, Labour, Quality of Employment*

## Introduction

After 20 years of government by Chile's centre-left coalition, known as the Concertación, labour reform is one of the most salient unresolved issues of the country's political and economic development process. Despite an initial reform during the Aylwin government, the structure of the current labour code remains almost unchanged since the dictatorship of Augusto Pinochet deregulated labour markets and significantly weakened unions.<sup>1</sup> Several attempts have been made to reform labour legislation since Chile's transition to democracy, but they have all failed to rebalance the power structures between capital and labour, which the country inherited from its military dictatorship. Chile's labour movement remains a weak political actor in the face of an increasingly powerful business sector, which dominates the country's development process.

The combination of unexpected and popular labour mobilisations during 2007 and the effects of the 2008/9 worldwide economic crisis temporarily turned labour issues into a priority item on the agenda of socialist President Bachelet. Her government responded to these mobilisations by instituting a commission on employment and equity that was charged with the task of preparing proposals for a legislative reform in an attempt to calm down the conflictive atmosphere.<sup>2</sup> Although the commission made extensive policy recommendations, it had no lasting impact on the political and economic structures that underlie the unequal balance of power between labour and capital.

In fact, it is becoming clear that the Chilean union movement, despite its successful mobilisations during 2007-2008, is now in an even weaker position than during the 1990s. This article complements the existing theoretical explanations for union weakness in Chile with empirical evidence, which shows that employment relationships have become so fragmented that it is becoming nearly impossible for unions to organise effective political action. It argues that the unequal balance of power between labour and capital has led to generally deteriorating employment conditions that further weaken the labour movement despite an essentially unchanged legislative environment. Simultaneously, the lack of political progress on labour reform

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1 María L. Cook, *The Politics of Labor Reform in Latin America: Between Flexibility and Rights* (Pennsylvania, PA: Pennsylvania State University Press, 2007); Volker Frank, *The Labour Movement in Democratic Chile, 1990-2000* (Notre Dame, IN: University of Notre Dame, 2002) and Volker Frank "Politics without Policy: The Failure of Social Concertation in Democratic Chile, 1990-2000", in *Victims of the Chilean Miracle*, P. Winn (ed.) (Durham: Duke University press, 2004), 71—124; Louise Haagh, *Citizenship, Labour Markets and Democratisation: Chile and the modern Sequence* (London: Palgrave Macmillan, 2002); Kirsten Sehnbruch, *The Chilean Labor Market: A Key to Understanding Latin American Labor Markets* (New York and Basingstoke: Palgrave Macmillan, 2006).

2 Kirsten Sehnbruch, "A Record Number of Conflicts? Michelle Bachelet's Inheritance of Unresolved Employment Issues", Working Paper no. 27 (Berkeley: Center for Latin American Studies, 2006).

has exacerbated the deterioration of employment conditions as employers have found practical ways of circumventing labour legislation. These interacting and mutually reinforcing factors have generated a vicious circle of precarious employment and a weak labour movement that will have long-term negative effects on Chile's economic, social and political development.

This paper begins by reviewing the different interpretations that the literature has presented of the weakness of Chilean unions and extends these accounts to the recent government of Michelle Bachelet, a socialist President, who was expected to further the interests of labour. Specifically, it discusses two components of Chilean labour market legislation on which the legislative debate has historically focused: severance pay and unionisation regulation. These two issues have acquired a strong symbolic value in the ideological positions of the social actors that shape the political debates, and serve to illustrate the extent to which both unions and the business sector have become stuck on defending the existing status quo, even if this traditional legislation has limited practical impact or is ill-suited to the realities of the modern labour market.

The discussion of these two components of legislation in particular serves as background information to the second section, which uses empirical evidence to show to which extent the discussion of labour reform during the last twenty years has become divorced from the practical reality of employment conditions in Chile.<sup>3</sup> The data illustrates the extent to which the fragmentation of employment relationships in Chile has effectively created conditions that make it very difficult for unions to organise.<sup>4</sup>

The paper concludes by examining the implications of these developments for the future role of unions in Chile. It argues that Chilean unions are institutionally weaker now than they were during the late 1980s and during the transition to democracy in

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<sup>3</sup> For academic discussions of Chile's labour movement, see for example, Janine Berg, *Miracle for Whom? Chileans Workers under Free Trade* (New York: Taylor & Francis group, 2006); Ruth Berins Collier and David Collier, *Shaping the Political Arena* (Notre Dame, IN: Notre Dame University Press, 2002); Cook, *The Politics of Labor Reform*; Frank, *Labour Movement in Democratic Chile, 1990-2000*; Frank, "Politics without Policy: The Failure of Social Concertation in Democratic Chile, 1990-2000"; Haagh, *Citizenship, Labour Markets and Democratisation: Chile and the Modern Sequence*; Winn, *Victims of the Chilean Miracle*.

Of course, there is also an extensive body of technical literature (especially from international development institutions), which generally argues that the Chilean labour market lacks employment flexibility, but contributes little to the debate about the relative strength of unions except that it recommends maintaining union and collective bargaining related legislation while significantly reducing severance pay regulation. See for example Indermit Gill and Claudio Montenegro, *Is Chile's Labour Market Serving the Poor as well as the Rich?* (Washington DC: World Bank, 1998); James Heckman and Carmen Pagés, *Law and Employment: Lessons from Latin America* (Washington DC: World Bank, 2003). The data thus attempts to complement Cook's model that describes Chile's labour reform process as having passed from a period of radical pro-worker politics to one of labour flexibility by quantifying the extent of this flexibility and its repercussions on the political position of unions.

ent: *Lessons from Latin America and the Caribbean* (Chicago, 2004).

the early 1990s. Their main option for strengthening their political position now requires forms of organisation and mobilisation that fall outside of currently existing legal norms.

## **1. The interrelated process of stalled labour reform and weakened unions**

### *1.1. The political origins and legacies of post-transition union development*

As numerous authors have highlighted, labour reform is one of the most salient issues that the Concertación was unable to resolve during its 20 years in government.<sup>5</sup> The academic literature has frequently focused on the weakness of the Chilean union movement as an explanatory factor of the stalled reform process. However, it is equally important to recognise that this mechanism has also worked the other way around: the reform process itself, which has left the demands of *all* social actors unresolved, has generated changes in employment relationships, which in turn further weaken unions. This section attempts to explain how the different arguments presented in the literature – historical, political and sociological – as explanations for the weaknesses of Chilean unions and the stalled labour reform process interact to shape a labour market over which unions have little influence.

First, if we examine Chilean unions from a political and historical perspective, we have to conclude that they have always been relatively weak compared to some other countries in Latin America and compared to the development of unions in Europe. Angell describes the historical growth of the Chilean labour movement as “gradual and slow” rather than as “rapid and abrupt” as in countries such as Argentina under Peron or Brazil and Mexico where unions were incorporated into the state.<sup>6</sup> Traditionally, unionisation levels reached official rates of 10.3% in 1964 and 18.2% in 1969, although the real unionisation rates were probably closer to 30% at that time.<sup>7</sup> Although membership numbers increased during the late 1960s, the highpoint of union influence was during the government of Salvador Allende (1970-1973), when

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5 Patrick Barret, “Labour Policy, Labour Business Relations and the Transition to Democracy in Chile” *Latin American Studies* 33 (2001), 597—561.

6 Alan Angell, *Politics and the Labour Movement in Chile* (Oxford: Oxford University press, 1972), 42., explains how official rates at the time probably underestimated real unionisation levels, partly due to the fact that the government’s figures did not include public sector unions as well as other inaccuracies of definition in the calculation of the data. Ruth Berins Collier and David Collier, *Shaping the Political Arena.*, examine the linkages between labour movements and the development of democracy, as does Cook, *The Politics of Labor Reform in Latin America: Between Flexibility and Rights.*

7 Angell, *Politics and the Labour Movement in Chile*, Chapter 3., explains how official rates at the time probably underestimated real unionisation levels, partly due to the fact that the government’s figures did not include public sector unions as well as other inaccuracies of definition in the calculation of the data.

unionisation reached levels of 37%. Although this may still seem a relatively low level compared to European countries at the time, the comparison is not a fair one as European countries do not have vast informal employment sectors that restrict the potential labour force which unions can organise.

Chile was the first Latin American country to adopt a coherent Labour Statute in 1931 and is considered the home of Latin America's oldest labour movement. The purpose of the Labour Statute was to ensure the co-operation of organised labour in industrialisation and import substitution during the decades that followed. The labour movement also served as a political actor that pressured the state with demands for increased social benefits. Although the expansion and coverage of Chile's social policies increased significantly during this time, the fact that this was achieved through a movement that demanded different rights for different groups of union members led to the establishment of a very fragmented and stratified system of social policies, which, for example, accorded more generous benefits to white collar than blue collar workers.<sup>8</sup>

In terms of labour policy, this meant that the labour markets operated through a system of privileges and licences that became necessary to exercise certain professions. A two tiered structure had emerged within the formal sector of the labour market consisting of a privileged set of 'elite' workers and employees, who were employed either by the public sector or in state owned enterprises and of the 'other' employees and workers of the private sector, who were subject to a host of different rules and regulations.

Before 1973, a union could be established in a company, if 55% of the workers approved. Membership was then extended automatically to all workers in the company. Prior to 1973, unions also enjoyed collective inter-company bargaining rights so that the vast majority of unions negotiated by industrial sector. As will be discussed below, severance pay legislation that made it very difficult for employers to make workers redundant also contributed to the relative strength of labour.

As Winn has remarked: "The Popular Unity era marked the highpoint of [union] membership, representativity, influence, power and organisation. Their membership ... grew to roughly a third of the workforce. Their leaders were consulted on issues of national policy and shaped labour relations."<sup>9</sup>

After the military coup of 1973, however, the pendulum swung towards the opposite direction. Unions were severely repressed, legislation was enforced in a way favourable to employers not workers, and pressure grew for an extensive labour

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8 Dagmar Raczynski, *Strategies to Combat Poverty in Latin America* (Washington DC: John Hopkins University Press, 1995), 208.

9 Winn, *Victims of the Chilean miracle*, 17.

reform. This reform was finally carried out in 1979.<sup>10</sup> In line with the sweeping reforms of deregulation and liberalisation, this reform abolished many of the rights that Chilean workers had gradually acquired in prior decades. Thus, it became easy to fire workers, severance pay was halved, and unions (initially outlawed by the dictatorship) were again permitted to function, but with significantly reduced rights to organisation, collective bargaining and strikes. The combination of the dictatorship's repression of labour leaders and unions with the reduced wages, high unemployment rates and the loss of job security that individual workers faced emaciated the strength of Chile's labour movement.<sup>11</sup> It is further important to consider that under the dictatorship, employers could act essentially with impunity as the labour courts were biased in their favour, leaving workers with no legal recourse if their rights were violated.

However, towards the end of the 1980s, the Chilean union movement, in particular the miners, became a strong and important actor in demonstrations against the dictatorship and a key player in bringing about a democratic transition.<sup>12</sup> In an attempt to assuage the "social debt" accumulated during the dictatorship and to repay the political support of unions during the transition process, the government of Patricio Aylwin negotiated a labour reform in 1994, which required employers to justify dismissals and re-established severance pay limits to previous levels.<sup>13</sup> However, the rights of unions to organisation and collective bargaining remained curtailed. In particular, collective bargaining was confined to individual companies, not economic sectors, and employers retained the right to replace striking workers.<sup>14</sup>

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10 Cook, *The Politics of Labor Reform*; Frank, *Labour Movement in Democratic Chile*; Frank, "Politics without Policy: The Failure of Social Concertation in Democratic Chile, 1990-2000"; Haagh, *Citizenship, Labour Markets and Democratization*; and Sehnbruch, *The Chilean Labor Market: A Key to Understanding Latin American Labor Markets*.

11 This paper can only present a much abbreviated and therefore somewhat simplistic account of the history of lab refs in Chile. For more detail on the development of labour market reforms during these periods, see Alan Angell, "Unions and Workers in Chile during the 1980s", in *The Struggle for Democracy in Chile*, Paul Drake and Iván Jaksic (eds.) (Lincoln: University of Nebraska Press 1991); Manuel Barrera and Samuel Valenzuela, "The Development of Labour Movement Opposition to the Military Regime" in *Military Rule in Chile: Dictatorship and Oppositions*, Arturo Valenzuela and Samuel Valenzuela (eds.) (Baltimore MD: The John Hopkins University Press, 1986); Fernando Coloma, "Regulaciones Laborales y Funcionamiento del Mercado Laboral en Chile" in *Regulación del Mercado de Trabajo en América Latina*, Gustavo Marquez (ed.) (Santiago: Centro Internacional para el Desarrollo Económico, 1994); Frank, "Politics without policy: The Failure of Social Concertation in Democratic Chile, 1990-2000"; Pablo González, "Normativa y política laboral en Chile", *Colección Estudios*, no.43, (Santiago: CIEPLAN, 1996) and Sehnbruch, *The Chilean Labor Market: A Key to Understanding Latin American Labor Markets*.

12 Los sindicatos del cobre, porque hicieron el paro que dió origen a las protestas.

También fueron activos el Sindicato de PANAL (textil) y los sindicatos de programas especiales de empleo: el PEM y POJ.

13 See Frank, *The Labour Movement in Democratic Chile, 1990-2000* and Kirsten Sehnbruch, *The Chilean Labor Market: A Key to Understanding Latin American Labor Markets*, for a description of the Acuerdos Marco that were negotiated to mitigate the social debt that democratic governments inherited from the dictatorship.

14 Unions may bargain collectively beyond the company level if their employers agree to this process.

The argument put forward by political scientists to explain the partial nature of this reform and the subsequent weakening of unions since Chile's transition to democracy in 1990 is that they sacrificed themselves for the democratic transition. This means that they did not fight actively for their rights during the first Concertación government, adopted a conciliatory tone and became part of an agreement with the government and employers to enable the smooth functioning of democracy in Chile. These negotiations on labour reform thus set a precedent for future negotiations, in which a return to historic standards of labour legislation were traded off against significant increases in the minimum wage (which allowed salaries to recover from the extremely low levels that they fell to during the dictatorship) in the interests of political stability.<sup>15</sup>

Despite repeated attempts during both the governments of Eduardo Frei and Ricardo Lagos to address these issues, no progress was achieved.<sup>16</sup> The government of Michelle Bachelet did not even attempt to present potential reforms on these issues.

Chilean unions thus faced the classical dilemma of unions under left-wing governments: Their political support was taken for granted even when successive Concertación governments did not fulfil their promises to unions in terms of reforming legislation relevant for them.

Although it is true that during the early 1990s Chilean unions did actually sacrifice some of their demands for the sake of democratic stability, it is also true that the country's economic success during the 1990s entrenched establishment beliefs in the free market development model that the Concertación governments had inherited from the dictatorship. In terms of labour policy, this model is based on flexible employment relationships and low levels of industrial action and conflict. Thus, although successive Concertación governments have paid lip-service to union demands for legislative changes that would strengthen their negotiating positions in exchange for their political support, they have not pursued this agenda very forcefully. This leaves the unequal balance of power between labour and capital skewed towards capital.<sup>17</sup>

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15 See Cook, *The Politics of Labor Reform in Latin America: Between Flexibility and Rights*; Frank, *The Labour Movement in Democratic Chile, 1990-2000*; Frank, "Politics without Policy: The Failure of Social Concertation in Democratic Chile, 1990-2000"; and Haagh, *Citizenship, Labour Markets and Democratisation*: 62–76.

16 For details on the labour reforms of the Frei and Lagos governments, see Guillermo Campero, "Union Organization and Labor Relations", in *Chile in the nineties*, Cristián Toloza and Eugenio Lahera (eds.) (Stanford, CA: Stanford University Press, 2000); Frank *Labour Movement in Democratic Chile, 1990-2000*; Franck, "Politics without Policy: The Failure of Social Concertation in Democratic Chile, 1990-2000"; and Sehnbruch, *The Chilean Labor Market: A Key to Understanding Latin American Labor Markets*.

17 Patrick S. Barrett, "Labour Policy, Labour-Business Relations and the Transition to Democracy in Chile", in *Journal for Latin American Studies*, Vol 33, No. 3, 2001., makes this argument for the earlier Concertación governments, and points out its consequences for the development of Chilean democracy. His argument remains just as valid today.

Perhaps the only two indicators of the limited success unions had during this period in fighting for rights and political influence were the successive increases of the minimum wage that they negotiated, and also that legislative reform favourable to unions was maintained – at least officially – on the political agenda of the Concertación.<sup>18</sup> However, as Lopez has argued, the minimum wage increases were very much a policy that the Concertación used to reduce poverty rates.<sup>19</sup> This was a social policy objective that generated almost universal support among its members, and therefore the requisite political will to fight opposition from the right-wing parties. The following section will illustrate the relative successes and failures of union demands for reform with the specific examples of severance pay and union legislation.<sup>20</sup>

In addition to the historical and political arguments, we should also consider sociological explanations that have examined the erosion of union power in Chile. Increased international competition and globalisation, in Chile as elsewhere, have led to reorganisations at the workplace, particularly through subcontracting arrangements, that have significantly impacted the lives of workers and their families. In part they have contributed to the changes that the Chilean labour market has undergone during recent decades.

There is an abundant literature of case studies of different economic sectors that have suffered significant changes to their employment conditions due to Chile's insertion during the 1980s into the global economy. In particular, the literature has focused on Chile's export sectors, such as mining, forestry, fishing, fruit and agriculture and their related processing industries such as food processing or paper and pulp manufacture.<sup>21</sup> The studies show a universal process of economic consolidation in

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18 I have argued elsewhere that the Concertación's true commitment to labour reform that would strengthen unions is questionable. See for example Sehnbruch, *The Chilean Labor Market: A Key to Understanding Latin American Labor Markets*; and Sehnbruch, "Unresolved Conflict within the Consensus: Bachelet's Inheritance of Labor and Employment Issues", in *The Bachelet Government*, Silvia Borzutzky and Gregory Weeks (eds.) (Miami, FL: University Press of Florida, 2010).

?During the Bachelet administration, this issue was one that divided the Concertación during the discussions initiated by the Commission on Employment and Equity. Also, Concertación senators voted against labour reform, Frei Government?? Check.

19 Diego Lopez (2009)

20 See Geddes (1995) for a discussion of union weakening due to their failure to achieve desired reforms and Remmer (2002) for arguments as to why unions' influence persists.

21 See the chapters by Miller Klublock, "Class, Community and Neoliberalism in Chile: Copper Workers and the Labor Movement Turing the Military Dictatorship", in *Victims of the Chilean Miracle*, Peter Winn (ed.) (Durham: Duke University press, 2004); Rachel Schurman, "Shuckers, Sorters, Headers and Gutters: Labor in the Fisheries Sector", in *Victims of the Chilean Miracle*, Peter Winn (ed.) (Durham: Duke University press, 2004); Joel Stillerman, "Disciplined workers and Avid Consumers: Neoliberal Policy and the Transformation of Work and Identity among Chilean Metal Workers", in *Victims of the Chilean Miracle*, Peter Winn (ed.) (Durham: Duke University press, 2004), Winn in Winn (2004). Also, see Rafael Agacino and Magdalena Echeverría (eds.), "Flexibilidad y Condiciones de Trabajo precarias" (Santiago, Programa de Empleo y Trabajo, 1995), Pablo Escobar and Diego Lopez, "El Sector Forestal en Chile: Crecimiento y Precarización del Empleo", Colección Estudios Sectoriales, no. 12 (Santiago, Programa Empleo y Trabajo, 1996); and Helia Henríquez, Teresa Gálvez and Teresa Selamé,

which smaller firms and family run businesses (including small scale agriculture and fishing) have been absorbed into large firms operating on an industrial scale. This process has changed lifestyles and family dynamics, especially as it has attracted a greater proportion of women into the work force. The studies of these sectors also show an increasing degree of employment flexibilisation that has accompanied this process of insertion into globalised and highly competitive markets. Thus, workers are more frequently hired on a short-term or temporary basis (often without any kind of formal written contract), their wage structures are frequently related to their productivity and their working hours contingent upon the employers' demands for labour.

The response of unions to these changes have been varied, and it seems that cooperative strategies were not necessarily more successful than confrontational ones.<sup>22</sup> Overall, the balance is a negative one: at best unions have maintained their political power, at worse it has deteriorated. In no sector have unions actually succeeded in increasing their negotiating power.

Studies of specific economic sectors and individual companies show that Chilean firms adjusted to international competition by reducing labour costs as well as investing in labour saving machinery. However, efforts to improve production standards, for example by reducing product wastage or delivering on time, rather than cutting wage costs, were often limited, which placed a double burden on workers, who had to increase piecework output and work overtime to help companies adjust to new competitive standards. The case studies show that it was just as difficult for Chilean companies to adjust to new international standards as it was for workers. However the social burden of the adjustment process in most cases was borne by workers.<sup>23</sup>

Although production processes all over the world have had to adjust to globalisation and increased competition from low income developing countries in Asia, which in turn has affected employment conditions and the bargaining position of unions, Chilean unions entered this process from a weakened position that was established

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"Trabajadores a Control Remoto: El Trabajo a Domicilio en Chile", Cuaderno de Investigación no.9 (Santiago, Dirección del Trabajo, 1999).

22 Joel Stillerman, 'Disciplined workers and Avid Consumers.

23 See the chapters by Miller Klublock, "Class, Community and Neoliberalism in Chile: Copper Workers and the Labor Movement Turing the Military Dictatorship", in *Victims of the Chilean Miracle*, Peter Winn (ed.) (Durham: Duke University press, 2004); Rachel Schurman, "Shuckers, Sorters, Headers and Gutters: Labor in the Fisheries Sector", in *Victims of the Chilean Miracle*, Peter Winn (ed.) (Durham: Duke University press, 2004); Joel Stillerman, "Disciplined workers and Avid Consumers: Neoliberal Policy and the Transformation of Work and Identity among Chilean Metal Workers", in *Victims of the Chilean Miracle*, Peter Winn (ed.) (Durham: Duke University press, 2004), Winn in Winn (2004). Also, see Rafael Agacino and Magdalena Echeverría (eds.), "Flexibilidad y Condiciones de Trabajo precarias" (Santiago, Programa de Empleo y Trabajo, 1995), Pablo Escobar and Diego Lopez, "El Sector Forestal en Chile: Crecimiento y Precarización del Empleo", Colección Estudios Sectoriales, no. 12 (Santiago, Programa Empleo y Trabajo, 1996); and Helia Henríquez, Teresa Gálvez and Teresa Selamé, "Trabajadores a Control Remoto: El Trabajo a Domicilio en Chile", Cuaderno de Investigación no.9 (Santiago, Dirección del Trabajo, 1999).

through the repression of a dictatorship.<sup>24</sup> They were therefore especially ill-equipped to deal with such changes. In addition, and as we will see in section 2, the processes that flexibilise a labour market in practice have gone much further in Chile than elsewhere, despite the fact that there have been no legislative changes to actively encourage short-term hiring. This means that since employers have not achieved their objectives of making labour relations more flexible through a process of political reform, they have simply taken matters into their own hands and made use of existing legislation to achieve their objectives of labour flexibility. However, before looking at the empirical evidence for these changing hiring practices, however, we must discuss the specifics of the legislation that has triggered this process of flexibilisation, and at the political process that has shaped it.

### *1.2. Symbolic Legislation: Severance Pay and Union Regulation*

As Cook has argued, "Labour laws often hold symbolic value, serving as a reminder of a time when workers' organisations were more powerful."<sup>25</sup> The symbolic value of legislation, however, has two sides to it: both workers *and* employers act according to the symbolism that drives labour policies. In the Chilean case, while workers look back on the Allende period as the status quo that they would like to recover in terms of their power to organise and influence politics, employers remember the pre-dictatorship period as a traumatic experience in terms of dealing with labour, both collectively and with individual employees, especially because the legislation at the time made it so difficult for employers to fire workers. Conversely, they remember the period of the dictatorship as an ideal labour market scenario, because there were few restrictions to firing workers and almost no enforcement of what little labour legislation remained.

In an attempt to explain the current attitudes and negotiating positions of unions and employers, this section examines the two key components of the labour reform process that have acquired a symbolic value over time and that have created the current political impasse: severance pay and union legislation.

#### *1.2.1. Severance pay Legislation*

Severance pay legislation is the perfect example of the symbolic value that laws can acquire in the context of labour markets, and the political debate regarding severance pay illustrates the politics behind the reform process.

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<sup>24</sup> These changes have been especially pronounced in Anglo-Saxon countries. See for example, Richard Freeman, *America Works: Critical Thoughts on the Exceptional U.S. Labor Market* (New York: Russel Sage Foundation, 2007).

<sup>25</sup> Cook, *The Politics of Labor Reform in Latin America: Between Flexibility and Rights*, Pp.2. Sehnbruch (2006a) also makes this arg. Employers have to pay a small fine if they replace striking workers since Lagos ref.

The origin of the conflict centred on severance pay is the "immobility law" implemented in 1966: employers could not fire workers, except under very limited circumstances, and if they did do so, they had to pay them one month's wage for every year of employment at their company without a maximum ceiling amount. Effectively, this legislation prevented employers from firing workers, hence it was dubbed the "immobility law". As discussed above, the Pinochet dictatorship at first ceased to apply this law and later reformed it, reducing severance pay limits to 5 months wages and requiring no justification for making workers redundant.

Since 1990, unions have been attempting to regain the acquired rights to severance pay that they lost during the dictatorship. The Aylwin government's labour reform of 1992 raised severance pay from a maximum level of five months wages to eleven months, and again required employers to justify dismissals (although it made it very easy to do the latter).<sup>26</sup> While this reform was initially accepted by employers in the interests of making some concessions to labour under democratic government, they have long been arguing (backed by Chile's right-wing parties and the Washington based International Financial Institutions), that this high maximum level of severance pay makes the country's labour market too rigid, and that dismissing workers should be made easier and cheaper.

One of the few issues on which experts now agree, is that severance pay should be reduced and replaced by a more generous unemployment insurance system. However, the details of how this would be structured cause much disagreement.<sup>27</sup>

To understand the symbolic value of severance pay for unions, we have to remember that it used to serve as unemployment insurance to workers, who were dismissed. Although there is no reliable data that allows us to assess what proportion of the labour force historically benefited from this right, to what extent legislation was complied with in reality, or to what extent severance pay was effective in covering periods of unemployment, the legislation itself nevertheless established a powerful symbol of worker rights that place the responsibility for protecting workers during periods of unemployment squarely on the employer.

To employers, on the other hand, severance pay is historically associated with the immobility law and the economic "traumas" of the Allende years. More than any other legislation in Chile, severance pay therefore constitutes a symbol of labour market rigidity and the primary clause of legislation that they object to.<sup>28</sup>

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26 For details see Frank, etc. explain necesidad de la empresa clause. (Employers can fire workers stating business reasons for their dismissal; WORKING, NO ACÁ)

27 See Consejo Asesor Presidencial Trabajo y Equidad, 'Percepciones sobre Relaciones Laborales y Equidad' (Santiago, Consejo Asesor Presidencial Trabajo y Equidad, 2007).

28 In Sehnbruch, *The Chilean Labor Market: A Key to Understanding Latin American Labor Markets.*, explains that employers associate severance pay with the immobility law that prevented them from firing workers during the 1970s. Given this historical context, severance pay to Chilean employers represents their worst nightmare.

Today, there is still no reliable data on the extent to which severance pay legislation is complied with in practice. We know that many employers either refuse to pay it outright or come to a negotiated agreement with a worker that reduces the real amount due simply because workers have little legal recourse to help them enforce their rights. Survey data suggests that in a very low proportion of cases, workers actually receive the full amount due.<sup>29</sup>

Therefore, while on paper, Chile's severance pay legislation looks costly by international standards, in practice, it is actually in line with or even below international standards. The last two Concertación governments have attempted to circumvent the dual problem of unpaid severance pay (as argued by unions) and the allegation of labour market rigidities (as argued by employers) by instituting an unemployment insurance system that deducts employer contributions from severance pay obligations.<sup>30</sup> This means that employers no longer have to pay as large a lump sum when and if they make a worker redundant, but the basic entitlement to a maximum amount of 11 months wages remains, with the result that they continue to pressure for great labour flexibility.<sup>31</sup>

Severance pay legislation is therefore the perfect example of the kind of legislation that employers have been unable to abolish, but that unions have successfully maintained. While unions view it as the symbol of their acquired rights, employers consider it a symbol of employment rigidity. However, even more importantly, it is the reaction of employers to this perceived rigidity and their fear of having to pay large amounts of severance pay that has determined the shape of the Chilean labour market. Instead of hiring workers with open-ended contracts for the long term, which could potentially entitle them to severance pay, employers have simply shortened the employment durations of their workers and found ways of avoiding this legislation through a combination of exploiting legal loopholes and rotating workers with greater frequency.

Paradoxically, the remaining strength of the union, which has prevented further formal deregulation of the labour market, has contributed to weakening the overall position of unions as employers have acted unilaterally, leading to a state of de facto and non-negotiated labour market flexibilisation.

### *1.2.2. Union legislation*

A similar and related process of unilateral labour market flexibilisation on the part of employers has occurred as a result of the symbolic value that employers associate with

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29 These comments are based on the author's own survey data (see Sehnbruch 2006a) and also on numerous interviews with officials from the Labour Office undertaken between 1999 and 2009.

30 The unemployment insurance incorporates workers hired after Oct 2002.

31 For details on how the structure of the ui is linked to the sevp mechanism, see Acevedo () and Sehnbruch (2006b).

union regulation in general, and with Chile's limited collective bargaining and industrial action legislation in particular.

As mentioned above, an employer's right to replace striking workers and the restriction of sector-wide collective bargaining are two issues that rank Chilean labour legislation among the most union-unfriendly in the world. This legislation reduces collective bargaining to the company level, which means that it is only really effective in public sector unions and in large companies.<sup>32</sup>

The striking and collective bargaining legislation is a specific example of the kind of acquired right that workers historically lost and have yet to regain. On this issue, employers have clearly used all their access to political pressure to prevent unions from regaining these rights through the right-wing parties, which have consistently opposed a reform. However, in practice, they have gone even further than this, as they deem even the currently existing legislation on strikes and collective bargaining too restrictive.<sup>33</sup>

The data from the Chilean Labour Inspectorate shows two distinct, but related developments that in practice make it extremely difficult for workers to organise sector wide and even firm level activity: large and medium-sized companies have split into multiple smaller companies, which are all brought together in a holding company, but that prevents workers from bargaining collectively as a single union with a single employer.<sup>34</sup> For example, the large department store chain, Almacenes Paris, has split into 125 separate sub-companies, each of which acts as a separate legal entity when it comes to employing workers, even though they all operate as a single business unit.<sup>35</sup>

A similar process has occurred through the outsourcing of work to individual employees, who work from home. This development is particularly pronounced in some sectors, such as the textile industry and services.<sup>36</sup> In addition, employment surveys are showing that wage-earners are increasingly being employed on a free-lance basis (*honorarios*), instead of being given formal employment contracts. This

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32 For historical reasons Chilean unions in the mining sector are the strongest unions in the private sector as mining has long been the backbone of the Chilean economy. See table in appendix, which compares cn lab leg to international standards. The current legislative standard dates back to the initial labour Code of 1924 (Frank).

33 For an excellent account of how these power struggles played out during the labour reform of the Lagos government, see Frank, "Politics without Policy".

34 See Peter Winn (ed.), *Victims of the Chilean Miracle*, and Magdalena Echeverria, *La Historia Inconclusa*

de la Subcontratación (Santiago: Dirección del Trabajo, 2010).

35 This method of hiring is referred to in Chile as "Multi-RUTs", an expression which illustrates that single companies are operating through multiple tax identification numbers, know in Chile as the RUT. For a thorough account of these and other subcontracting practices in Chile, see Echeverria, *La Historia Inconclusa de la Subcontratación*. However, we have no data on the real extent to which the Chilean labour force is affected by this hiring practice.

36 The Ministry of Labour estimates that 100,000 workers work from home, and has presented a law that will regulate their employment conditions.

mechanism, although strictly speaking illegal, is difficult to detect by the institutions enforcing labour legislation and allows employers to avoid the issue of employment contracts all together.<sup>37</sup>

Together short-term contracts, outsourcing, tele-work and honorario employment form powerful mechanisms that fragment the Chilean labour market. Although the data available on these precarious employment relationships is still very rudimentary, it is nevertheless clear that the proportion of workers hired under such arrangements has increased dramatically in recent years even though there have been no legislative changes that have encouraged them. This is a perfect example of labour market change occurring independently of the legislative process and of any political process.

The Chilean governments of recent years, therefore, despite being left-wing, have not acted as an effective regulator of labour relations, leaving free market forces to shape them instead. The consequence of this approach, apart from having a negative effect on equity and economic productivity, is that Chile's unions have become even more politically marginalised.<sup>38</sup>

## 2. The Empirical Evidence

Although the existing literature has recognised the negative effect of the informal sector on unions, it has never focused in detail on those hiring conditions which, while legal, lead to increasingly precarious and short-term employment conditions among formal jobs.<sup>39</sup> In fact, the definition of the informal sector proposed by the International Labour Organisation (ILO) is no longer capturing the dynamic changes of modern Latin American labour markets, in which flexible hiring conditions are increasingly changing the nature of the formal employment to the extent that the traditional long-term job with a single employer, a fixed wage, a full-time working week and social security contributions no longer constitutes the norm, even though

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37 Workers employed on an honorario basis are not covered by the Labour Code, although in theory, every employment relationship longer than two years is considered an open-ended contract by law. However, without the requisite paper trail, it would require a court procedure to enforce this. See also the data presented in the next section of this article on this point.

38 For a review of the positive effect that labour market regulation can have on productivity, Nicholas

Crafts, Regulation and Productivity Performance, University of Warwick Draft paper, 2006; Tapio Palokangas, Labour Market Regulation, Productivity-Improving R&D and Endogenous Growth, Discussion Paper No. 720 (Bonn, Germany: IZA, 2003); and Servaas Storm, Why labour market regulation may pay off: Worker motivation, co-ordination and productivity growth, (Geneva, Switzerland: ILO Economic and Labour Market Paper, 2007).

39 See for example Cook, *The Politics of Labor*, Pp. 15.

employment legislation continues to be based on this assumption.<sup>40</sup> In addition to these changes, however, the proportion of “informal” jobs, such as workers without contracts and the self-employed is not declining. This section presents both descriptive and analytical data on the Chilean labour market, in particular on how employment conditions affect the probability of being a member of a union.

### *2.1. Hiring practices in Chile: Occupational Status, Subcontracting and Job Rotation*

This section presents data that shows that employers in Chile have influenced labour market outcomes more effectively as economic rather than as political actors, although as the previous section argued, they have acted politically, too. This means that in practice, despite unchanged regulation, the structure of the Chilean labour market has changed, which at the very least prevents unions from becoming a strong political actor. It is this continued weakness of unions through the contractual conditions of formal employment relationships that has been overlooked by the academic literature as well as by Chilean unions themselves, as they have never explicitly focused their political agenda on the excessive flexibility of employment conditions.

This section will look at three important types of data, which allow for a general presentation of employment relationships in Chile: first, survey data from Chile's household survey, the Caracterización Socioeconómica (CASEN) and its social security survey, the Encuesta de Protección Social (EPS), second, survey data on company hiring practices collected by the Labour Inspectorate through its survey of employers and workers, the Encuesta Laboral (ENCLA), and, third, administrative data from the unemployment insurance system on the duration of employment relationships.<sup>41</sup> The data shows that since 1990 there has been a gradual decline in the proportion of open-ended contracts and a marked increase in the proportion of short-term contracts, while informal workers (defined as wage-earners without contracts) have consistently made up an important proportion of the total workforce. In addition, data from the Labour Inspectorate suggests that the proportion of employment relationships based on subcontracting arrangements has increased by 50% over the last 10 years, while real data from the unemployment insurance system shows an extremely high level of job rotation. Although the data on these particular labour market characteristics is, unfortunately, somewhat incomplete, it nevertheless allows us to draw some basic conclusions about hiring patterns in Chile that affect unions and their ability to organise workers.

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40 See Sehnbruch, *The Chilean Labor Market: A Key to Understanding Latin American Labour Markets* for a discussion of the adequacy of the ILO's definition of informal employment.

41 The *Dirección del Trabajo* is the government body in charge of enforcing compliance with labour legislation.

The most important labour market variable that we have to consider is the distribution of the occupational status of the labour force, a composite variable that groups workers according to their legal employment situation, which in turn determines the entitlements associated with their jobs.<sup>42</sup>

Latin American labour codes and the statutes governing the associated social security systems make a clear distinction between the salaried or dependent work force and the self-employed or independent work force. This is an important distinction to make because only dependent workers are covered by labour legislation and obliged to contribute to social security systems (health, pension and unemployment insurance). Within the category of dependent workers, a further distinction is made between different types of contracts. The variable “contract or occupational status” must be considered as fundamental to the concept of quality of employment as it determines not only the potential duration of a job but also forms the legal basis of an employees’ rights and obligations.<sup>43</sup> This type of analysis is essential in the context of a modern labour market as it groups jobs together that are subject to similar legal provisions and also allows us to examine how much the legal entitlements that these jobs generate vary according to the different types of contract used today. Table 1 below presents such a view of the Chilean labour market.

*Table 1: Occupational Status*

<b>Occupational Status</b>	<b>2003</b>	<b>2006</b>
<b>Open-ended contract</b>	<b>42,7</b>	<b>41,9</b>
Fixed-term contract (a)	6,2	7,3
Project based contract (b)	3,8	5,1
Apprenticeship (c)	0,1	0,1
Temporary contract (d)	0,3	0,3
<b>Total atypical contracts (a+b+c+d)</b>	<b>10,4</b>	<b>12,9</b>
Wage-earners without formal contracts (e)	17,6	16,2
Wage-earners employed on free-lance basis (f)	4,9	5,3
<b>Total wage-earners without contracts (e+f)</b>	<b>22,5</b>	<b>21,5</b>
Employer (g)	4,0	3,1
Professional self-employed (h)	2,8	3,2
Self-employed (i)	17,6	17,4
<b>Total independent workers (g+h+i)</b>	<b>24,4</b>	<b>23,7</b>
<b>Total labour force</b>	<b>100,0</b>	<b>100,0</b>

42 This method of classifying workers was developed in Sehnbruch 2004 and 2006. It is based on the argument that other forms of analysing the Chilean labour force miss the legal entitlements that form the basis of an employment relationship. The method has been extended further and adopted by the Chilean government in 2009 (see Ruiz-Tagle and Sehnbruch 2010).

43 For detail on the legal definitions regulating short-term hiring conditions, see Sehnbruch, *The Chilean Labor Market: A Key to Understanding Latin American Labour Markets* and the Código del Trabajo.

Source: Ruiz-Tagle and Sehnbruch (2010).

The analysis of other employment characteristics based on this basic breakdown of the labour force shows that the most precarious category of employment in terms of a worker's employment conditions is the wage-earner without a formal written contract. They are the workers with the lowest wages; they do not pay social security contributions; they generally receive no vocational training whatsoever; they have the shortest tenures and rotate frequently between low quality jobs; they cannot unionize; they can obviously be hired and fired at will; and they are not entitled to severance pay or unemployment insurance. Their only legal recourse is to sue their employer for having employed them illegally, but the steps involved in this procedure are time consuming and complex. Most Chilean workers do not even consider this option. Any analysis of labour market data that does not specifically look at the employment conditions of workers without formal written contracts is thus ignoring one of the most important problems of the Chilean labour market.

The importance of looking at the Chilean labour market from this perspective cannot be overemphasized. Any other breakdown of the data according to different categories would miss the crucial distinction between these different types of contract.

Table 2 shows how the different types of contracts and occupational positions within the salaried sector have developed since the first survey data on types of contracts became available in 1996. The main trends that can be observed in this table are that the proportion of open-ended contracts is gradually declining, while that of short-term contracts is gradually increasing. Informal employment within the salaried sector, however, remains broadly stable. Data from Chile's EPS survey displays a similar trend.<sup>44</sup>

Table 2: Development of types of contract, 1996-2006

Type of Contract	1996	1998	2000	2003	2006
<b>Open-ended</b>	61.0	61.1	61.7	58.2	57.0
<b>Atypical</b>	12.7	12.0	12.8	14.9	18.2
<b>No contract</b>	26.3	27.0	25.6	26.9	24.8
<b>Total wage-earners</b>	100.0	100.0	100.0	100.0	100.0

Source: author's own calculations with Casen data, 2006. The 2003 and 2006 totals differ from Table 1 because the data here does not include honorario contracts, for which there is no historical data beyond 2003.

44 See Ruiz-Tagle and Sehnbruch, "Desigualdad y condiciones laborales: desafíos futuros del mercado laboral chileno", en Ideas para Chile: Aportes desde la Centro-Izquierda, Clarisa Hardy (ed.) (Santiago: LOM Ediciones, 2010).

The tendencies shown by the above data are replicated by data from the labour force survey (Encla) of the Labour Inspectorate.

The Encla is the only survey in Chile that asks employers about the employment conditions of their workers. On many issues, such as outsourcing and subcontracting, it is the only information available. However, this survey has some serious methodological limitations, mainly because it sends its own staff of enforcement officers to undertake the survey fieldwork. This means that its data shows that almost no workers are employed without any formal written contract, which we know is not true from other surveys that show that the proportion of workers without contracts is over 20% of the labour force. The Encla is also not a fully representative survey of the Chilean labour market as it interviews companies (employers and their workers) and therefore only captures information from the formal sector. In addition, the survey sample of the Encla was not nationally representative until 2008, which makes the 2008 data not strictly comparable with previous years.

Despite these limitations and in the absence of alternative sources of information, we can use the data to confirm overall trends observed in the Chilean labour market. For instance the data clearly shows a decline in the proportion of open-ended contracts in Chile while the proportion of short-term contracts is increasing. Over a ten year period, a nine percent shift is quite significant.

*Table 3: Open-ended versus Atypical contracts among wage-earners*

<b>Types of Contract</b>	<b>1998</b>	<b>1999</b>	<b>2002</b>	<b>2004</b>	<b>2006</b>	<b>2008</b>
<b>Open-ended</b>	81.2	82.8	79.5	77.1	70.0	72.2
<b>Atypical</b>	18.8	17.2	20.5	22.9	30.0	27.8

*Source: Dirección del Trabajo, Encla, various years.*

An interesting result from the Casen surveys is that short-term and flexible employment relationships are predominantly found in larger companies rather than smaller ones. This result is somewhat counterintuitive as one would normally expect smaller companies that cannot afford to pay the full price of labour legislation to attempt to reduce labour costs through flexibilisation. However, the data, which is consistent with results from the Encla, shows that it is larger firms which use flexible employment conditions, possibly because they have more legal resources or knowledge that enables them to take advantage of the stipulations of the labour code and of legal loopholes.<sup>45</sup>

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45 Even though it is theoretically illegal to hire workers more than twice on a short-term contract, this legislation is frequently ignored or circumvented. It is common for workers with short-term contracts to state in employment surveys that they have been working in the same firm for long periods of time (more than three years). Large companies are particularly inventive in finding ways around legislation.

Conversely, we should note that the proportion of workers without formal written contracts declines with the size of the company. However, only 10 percent of the workforce is employed by companies with more than 200 workers.

*Table 4: Types of contract according to the size of firms*

<b>Number of workers in firm</b>	<b>Open-ended Contracts</b>	<b>Atypical Contracts</b>	<b>No Contract</b>	<b>Employer</b>	<b>Prof. Self-employed</b>	<b>Self-employed</b>	<b>Total Workforce</b>	<b>Vertical Total, %</b>
2 - 5	22.66	4.18	30.31	10.54	5.45	26.87	100.00	22.9
6 - 9	46.81	11.30	31.51	10.37	0.00	0.00	100.00	7.0
10 - 49	56.54	19.99	20.30	3.16	0.00	0.01	100.00	22.8
50 - 199	59.78	25.50	13.74	0.98	0.00	0.00	100.00	17.2
200 and more	69.71	20.51	9.46	0.32	0.00	0.00	100.00	30.1
<b>Total workforce</b>	<b>43.52</b>	<b>13.94</b>	<b>18.87</b>	<b>3.10</b>	<b>3.20</b>	<b>17.37</b>	<b>100.00</b>	<b>100.0</b>

*Source: author's own calculations with Casen data, 2006. The data excludes workers, who claim to work on their own and those, who presented no information.*

Another method that employers use both to reduce the workforce for which they are responsible and to flexibilise the conditions under which workers are hired is subcontracting. Unfortunately, this is a phenomenon on which very little data exists. In fact, the Encla constitutes the only source of information on this variable. Defining what constitutes subcontracting is notoriously difficult as the concept includes both workers hired on a permanent basis through a second company, which allows the principal company to avoid direct responsibility for the employment relationship, as well as workers who are brought in on a temporary basis for a particular job. According to the legal reform that was implemented in 2006 on subcontracting, companies are allowed to outsource any tasks of their business activity. This means that they can outsource 100% of their workers. However, the principle company is ultimately responsible for employment conditions including security and safety regulation. The most important issue that the legislation leaves unresolved is that companies do not have to offers workers exercising the same tasks equal working conditions. This means that subcontracted workers can earn substantially less than non-subcontracted workers, even though they are carrying out the same jobs.<sup>46</sup> In addition, subcontracted workers often have different contractual relationships (atypical contracts versus open-ended contracts), which in turn can lead to generally inferior employment conditions.

The issue of subcontracting is extremely important in the context of the options that Chilean unions have for organising because it can constitute one of the most important mechanisms that prevent unionisation. The Labour Inspectorate estimates that 30 percent of companies in Chile subcontract out part of their production. This represents

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46 For more details, see Diego Lopez, 'Subcontratación y Conflictos Laborales: Un Creciente Descontento en el Trabajo' (Santiago: Universidad Central, 2008) and Echeverría *La historia inconclusa de la subcontratación*. Echeverría considers subcontracting to be the principle strategy that employers have used to flexibilised the Chilean labour market.

an increase of approximately 50 percent since 1998. While medium sized companies tend to use subcontractors less (44 percent), larger companies do so more extensively (just under 60 percent). As discussed above, subcontracting is one of the typical employment mechanisms used in Chile in order to flexibilise a company's labour force.

Overall, among the companies that employ subcontracted workers, the average proportion of workers who have been subcontracted only reaches a level of 12 percent. Although this figure does not appear very high, we have to remember that subcontracting is a widespread method in some industries in particular. In the mining sector, for example, 38 percent of workers are subcontracted, while in construction the proportion is 22 percent.<sup>47</sup>

*Table 5: Subcontracting in Chile*

<b>Subcontracting in %</b>	<b>1998</b>	<b>2008</b>	<b>By Company size in %</b>	<b>2008</b>
<b>Companies that subcontract</b>	<b>20.0</b>	<b>30.5</b>	<b>Medium sized firms</b>	<b>44,2</b>
Companies that do not subcontract	80.0	69.5	Large firms	58,7

*Source: Encla. Note that the survey sample from 2008 is slightly different from prior years.*

It is further important to note that union leaders evaluate the impact of subcontracting on employment conditions, wages and union activities very negatively. 46.6% of union leaders state that subcontracted workers have worse employment conditions, 43.1% report a negative impact on wages and 62.1% claim that subcontracting affects union activities adversely.

*Table 6: How union leaders evaluate subcontracting arrangements*

<b>Issues evaluated</b>	<b>%</b>	
Employment Conditions: Subcontracted workers vs plant workers	Worse	46.6
	Makes no difference	39.7
	Better	1.7
	Do not know	12.1
Impact on wages of plant level workers	Worse	43.1
	Makes no difference	46.6
	Better	1.7
	Do not know	8.6
Impact on Union action and activities	Worse	62.1
	Makes no difference	32.8
	Better	0.0
	Do not know	5.3

<sup>47</sup> Dirección del Trabajo, *Encuesta Laboral* (Santiago: 2008).

Source: *Aporte al Debate Laboral N°19. Los Riesgos Laborales de la Subcontratación. Dirección del Trabajo.*

Another set of labour market data that can be used to assess the extent of different hiring practices in Chile is the administrative data from the unemployment insurance system that was instituted in 2002. Unfortunately, the data also excludes the formal sector. Another limitation is that it only includes contracts signed after 2002, which means that although the number of workers who have passed through the system is almost equivalent to the total amount of workers active in the Chilean labour market at any one time, there is still a proportion of the workforce that is not included in the system because their contracts predate 2002, the year of the system's inception.

Nevertheless, the database has captured the employment history of the majority of Chilean workers, who are formally employed. It is therefore a good indicator of both job rotation and the types of contracts prevalent among those workers covered by the insurance.

Table 6 shows that 46.7 percent of the contracts currently included in the unemployment insurance system are of a short-term duration while 53.3 percent are open-ended. 58.4 percent of the insured have not been in their present jobs for more than one year. Perhaps the most astonishing result of the data is that only 17.4 percent of those covered by the insurance have held their jobs for longer than three years. Put differently, only 3.2 percent of those workers, who joined the system in 2002 are still in the same job seven years later. We should also note that almost 56 percent of open-ended contracts have lasted less than two years, which leads to the conclusion that high job rotation is not limited to short-term contracts. This is consistent with data gathered by the Encla surveys. According to the 2008 Encla, half of the open-ended contracts last no longer than three years, while one in five ends within one year after being signed.

*Table 7: Contributors to the Unemployment Insurance system by type and duration of contract, 2008*

Type of Contract, % of total contributors	0-13 m	+13 m - 2 yrs	+ 2 - 3 yrs	+3 - 4 yrs	+4 - 5 yrs	+5 - 6 yrs	+6 - 7 yrs	Total
<b>Percentages of total workforce</b>								
Open-ended contracts	19.8	10.0	7.5	5.4	4.2	3.4	3.0	53.3
Atypical contracts	38.6	5.1	1.7	0.6	0.3	0.2	0.1	46.7
<b>Total labour force</b>	<b>58.4</b>	<b>15.1</b>	<b>9.2</b>	<b>6.1</b>	<b>4.5</b>	<b>3.6</b>	<b>3.2</b>	<b>100.0</b>
<b>Vertical Percentages, by duration of employment</b>								
Open-ended contracts	33.9	66.2	81.5	88.5	93.3	94.4	93.8	53.3
Atypical contracts	66.1	33.8	18.5	9.8	6.7	5.6	3.1	46.7
<b>Total labour force</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>98.4</b>	<b>100.0</b>	<b>100.0</b>	<b>96.9</b>	<b>100.0</b>
<b>Horizontal Percentages, by type of contract</b>								
Open-ended contracts	37.1	18.8	14.1	10.1	7.9	6.4	5.6	100.0
Atypical contracts	82.7	10.9	3.6	1.3	0.6	0.4	0.2	99.8
<b>Total labour force</b>	<b>58.4</b>	<b>15.1</b>	<b>9.2</b>	<b>6.1</b>	<b>4.5</b>	<b>3.6</b>	<b>3.2</b>	<b>100.1</b>

Source: Superintendencia de AFP. Note that not all the horizontal and vertical percentages add up to 100 because the data provided by the Superintendencia is provided in abbreviated percentages of one digit.

The information presented in this section indicates that the Chilean labour market has become more flexible, both in terms of the hiring conditions of individual workers as well as through subcontracting arrangements. The different sources of data present a coherent picture in terms of the overall increasing trend of flexible hiring conditions, although they differ on the extent of this flexibility. The following section examines how these flexible hiring conditions affect the situation of unions and their capacity to organise their membership as well as to recruit new members in this highly fragmented labour market.

## 2.2. Unionisation in Chile under flexible employment conditions

Given the fragmentation of working relationships described above, it is not surprising that unions remain weak political actors. However, one of the contradictory developments of unionisation in Chile is that union and collective bargaining levels have remained broadly stable during the last 20 years, albeit at a relatively low level, despite this fragmentation of working relationships. A valid question to ask would be why they have not weakened further.

Unfortunately, it is difficult to answer this question clearly because there is so little information on employment conditions prior to 1996. This section, however, will examine these developments with the data that is available, beginning with the statistics that are available and then showing how different employment conditions impact the likelihood of being unionised.

This section presents descriptive data on the development of unions in Chile since 1990, on the relationship between employment contracts and unionisation and briefly presents the results of a regression analysis that leads to the same conclusions. The results of the regression are presented in the appendix.

Table 8: Unionisation and Collective Bargaining in Chile

Year	Number of active unions	Affiliation rate, total labour force	Affiliation rate of workers who can form a union	Affiliation rate of wage-earners
1990		13.4	16.2	19.2
1991	7,707	15.1	18.2	21.2
1992	8,323	14.8	17.9	20.7
1993	7,974	13.4	16.0	18.6
1994	7,891	12.9	15.4	18.0

<b>1995</b>	7,505	12.3	14.6	16.7
<b>1996</b>		12.4	14.5	-
<b>1997</b>	7,446	11.5	13.3	15.0
<b>1998</b>	7,439	11.3	13.1	15.0
<b>1999</b>	7,057	10.7	12.7	14.5
<b>2000</b>	7,659	11.1	13.2	14.8
<b>2001</b>	7,410	10.9	12.9	14.6
<b>2002</b>	8,149	11.2	13.1	14.8
<b>2003</b>	8,967	11.8	13.8	15.6
<b>2004</b>	9,416	11.6	13.7	15.6
<b>2005</b>	9,148	11.5	13.4	15.1
<b>2006</b>	9,424	11.0	12.8	14.5
<b>2007</b>	9,365	11.0	12.9	14.8
<b>2008</b>	9,340	11.9	13.9	16.1

Source: Dirección del Trabajo.

In table 8 we can see how both the most important personal characteristics of workers and the characteristics of their jobs affect unionisation rates. The data shows that a total of 13.9 percent of workers are unionised. This rate is slightly higher among men (14.4%) than women (13.2%). In terms of levels of education, unionisation rates increase with higher education and are lowest for those workers, who have only completed primary education. Similarly, older workers are more likely to be unionised than younger workers. The demographic distribution of unionised workers is an important variable that has to be considered as it is not clear at this point whether younger workers are not unionised because they are at an early period of their life-cycle or whether they are not unionised for other reasons, such as, for example, because they believe that unions are unimportant. There is likely to be a component of both reasons in the age structure of union members, of which the second could exercise a negative downward trend on future union membership.

Table 9: The personal characteristics of unionised workers

<b>Sex</b>	<b>Union, %</b>	<b>No Union, %</b>	<b>Total, %</b>	<b>Vertical totals, %</b>
Female	86.8	13.2	100.0	38.2
Male	85.6	14.4	100.0	61.8
Total	86.1	13.9	100.0	100.0
<b>Education</b>				
Primary	90.8	9.2	100.0	30.5
Secondary	84.8	15.2	100.0	26.0
University	84.2	15.8	100.0	28.1
Postgraduate	82.4	17.6	100.0	15.4
Total	86.1	13.9	100.0	100.0
<b>Age Group</b>				
18 - 28	88.4	11.6	100.0	32.6
29 - 39	85.4	14.6	100.0	25.9

40 - 50	84.8	15.2	100.0	24.4
50 - 64	84.4	15.6	100.0	17.1
Total	86.1	13.9	100.0	100.0

*Source: Author's own calculations with EPS 2006 data.*

In terms of their employment conditions, the data below shows that workers with open-ended contracts are more likely to be unionised than workers with short-term contracts or those, who state they have no formal written contract at all.

Another indicator of the formality of employment is whether a worker contributes to a pension system. As we can see in Table 8, only a very low proportion of workers, who do not contribute to a pension system belong to a union. This is consistent with the data discussed above regarding different contractual situations. Conversely, it is likely that being a member of a union contributes to the likelihood of workers having access to social security.

As would be expected, the data also shows that workers employed by large companies are more likely to belong to a union than those, who work in small businesses. Unfortunately, the data from this survey does not allow us to disaggregate firms with more than 20 workers, but information from the Casen surveys shows that larger firms are more likely to have unions.

One of the most remarkable variations between unionisation rates occurs between the different economic sectors. The data shows that workers in the agricultural and construction sectors are the least likely to belong to a union, while those in the mining and utilities sectors have a much higher unionisation rate. The mining and utilities sectors, have traditionally been the two economic sectors of the Chilean economy, which have always had a strong union movement. However, they both also employ the lowest proportion of workers.

Another sector that has traditionally had strong unionisation rates is the public sector, which constitutes part of the social services and transportation sectors in addition to the mining and utilities sectors mentioned above.

Table 10: The employment conditions of unionised workers

Type of Contract	Union, %	No Union, %	Total, %	Vertical totals, %
Open-ended	78.5	21.5	100.0	50.4
Fixed-term	91.1	8.9	100.0	2.4
Project based	86.0	14.0	100.0	0.9
Apprenticeship	100.0	0.0	100.0	0.1
Temporary	94.8	5.2	100.0	5.4
Freelance	93.1	6.9	100.0	10.3
No contract	96.2	3.8	100.0	10.8
Employer	91.1	8.9	100.0	5.8
Prof. Self-employed	93.8	6.2	100.0	1.1
Self-employed	94.1	5.9	100.0	12.6
Total	86.1	13.9	100.0	100.0
<b>Contributions to Pension system</b>				
No	96.4	3.6	100.0	29.3
Yes	81.8	18.2	100.0	70.7
Total	86.1	13.9	100.0	100.0
<b>Company size</b>				
1 worker	96.3	3.7	100.0	14.7
2 - 9 workers	95.4	4.6	100.0	19.1
10 - 19 workers	91.3	8.7	100.0	6.7
More than 20 workers	78.3	21.7	100.0	36.8
No information	82.8	17.2	100.0	22.7
Total	86.1	13.9	100.0	100.0
<b>Economic Sector</b>				
Agriculture	91.2	8.8	100.0	9.0
Mining	59.9	40.1	100.0	1.7
Manufacturing	82.7	17.3	100.0	10.8
Energy and utilities	76.6	23.4	100.0	0.6
Construction	91.7	8.3	100.0	10.8
Commerce	88.5	11.5	100.0	22.3
Transportation	85.8	14.2	100.0	8.7
Finance	88.3	11.7	100.0	8.8
Social services	82.5	17.5	100.0	25.4
No data	2.0	2.2	100.0	2.0
Total	86.1	13.9	100.0	100.0

Source: Author's own calculations with EPS 2006 data.

The descriptive statistics presented in this section are confirmed by the analytical data. However, the regression models allow us to isolate particular characteristics and control for others. For example, both the logit and probit models presented in the appendix show that the personal characteristics of workers are almost irrelevant.

Although male workers are more likely than female workers to be unionised, the difference is very small. The same is true for the different age groups.

Education has more of an impact on unionisation. It is interesting to note that workers with higher levels of education are more likely to be unionised. This is consistent with the results on income levels, which show that workers with higher salaries are more likely to belong to unions.

The analysis of the data on the types of contracts of workers also confirms the results of the descriptive data. Here we can see that, all other things being equal, workers with open-ended contracts are approximately two and a half times as likely to be unionised as workers with other types of contracts. And workers without any formal contract are even less likely than the self-employed to be unionised.

The regression analysis also confirms the results described above on the economic sectors. Controlling for the effect of all other variables, they show that the mining sector is more than two and a half times as likely to be unionised as the average worker, and four and a half times as likely to be unionised as workers in the agricultural and construction sectors.

Unfortunately, it is impossible to replicate this analysis with workers, who are subcontracted as this variable is not included in the employment surveys. However, it can be assumed that subcontracted workers, who in general have more precarious employment conditions, are less likely to be unionised than plant level workers. Only in the mining sector could we expect a relatively high proportion of workers to be subcontracted as non-plant workers constitute a large percentage of workers overall in this sector.

To conclude, the data discussed in this section shows a labour market that is becoming increasingly precarious and fragmented in terms of the legal arrangements that govern working relationships. It also shows that precarious working conditions are inversely related to unionisation. Several important points need to be highlighted:

First, only 43.5 percent of the labour force works under contractual relationships that are covered by traditional labour legislation of the kind that presumes continuous employment with the same employer, i.e. an open-ended contract. The proportion of workers, who are likely to unionise is therefore declining.

Second, if we consider the relatively short job durations found even among workers with open-ended contracts, add to this those workers with atypical contracts or without any contracts and the low income self-employed, we can estimate that approximately two thirds of the Chilean labour force works under employment conditions that are either short-term or precarious in some way, and therefore unlikely to unionise.<sup>48</sup>

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48 See Ruiz-Tagle and Sehnbruch, "Desigualdad y condiciones laborales: desafíos futuros del mercado laboral chileno"

If we add the very high proportion of subcontracted workers into this equation, it becomes obvious why the proportion of Chilean workers, who would be able to unionise is low and declining.

The empirical data and the survey data cited above coincides very strongly with the extensive qualitative and quantitative fieldwork that I have undertaken in Chile. In approximately 200 interviews, workers complained again and again about the insecurity they feel with regard to their jobs. Low incomes, fear of being fired or becoming ill, or the knowledge that a contract will expire create a widespread sensation that poverty lurks just around the corner. Most workers, when asked about whether they belong to a union express either fear of losing their jobs if they founded or joined a union, or alternatively displayed little interest because they considered unions to have little potential impact on their situations.

While the literature on unions has mentioned the problem that the informal sector reduces the proportion of workers, it has not considered in detail the impact of flexible working arrangements on the union movement as a whole.<sup>49</sup> Traditionally, informal sector refers to the definition established by the ILO, which defines it as workers employed by companies with fewer than five employees, domestic workers, the self-employed without higher education, and non-remunerated family members, who work in a business. The data discussed above, however, shows that this definition is generally outdated, particularly if we consider the effects of modern hiring conditions and short-term employment durations on the possibilities of workers to organise. More important than company size or self-employment (the principal variables of the ILO's definition of informal sector) are the contractual conditions under which workers are hired, whether a worker is subcontracted or not, and the potential duration of an employment relationship. Precarious working conditions mean, on the one hand, that workers are unlikely to want to risk the displeasure of their employers by organising a union as they risk losing what little they have. On the other hand, it reduces their stakeholderhood in a particular job, as they are unlikely to stay in any one working relationship for a long time. Both factors contribute to weakening the power of unions in Chile.

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49 Cook, *The Politics of Labor Reform in Latin America: Between Flexibility and Rights.*, discusses informality in passing. Chs in Winn book? discuss individual sectors.

### 3. Conclusion

For Chilean unions, it has clearly been easier to defend existing rights to severance pay than to mobilise for new rights, in particular for a labour code that is more union friendly.<sup>50</sup>

The data presented in this paper show that multiple different processes are influencing the structure of the Chilean labour market and affecting the way unions can recruit and operate. The empirical evidence adds a new perspective to the existing political, historical and sociological interpretations of union development in Chile. In particular, we have to consider that the absence of a legislative reform that respects employer demands for more employment flexibility has spawned a reaction that is absolutely contrary to the intentions of the existing legislation. By not changing legislation with regard to severance pay, the recent governments of the Concertación and the unions themselves have provoked the unintended consequence that employers have flexibilised employment relationships on their own, which has led to a labour market structure that is based on short-term employment relationships and subcontracting.

We could even conclude, given the short-term term and flexible hiring mechanisms of the Chilean labour market, that it is surprising that unions have even maintained their affiliation levels. The political outcomes of recent legislative negotiation processes show that they have maintained their status since the early 1990s, even though this status is a relatively weak one. However, the current position of Chilean unions is not one from which they will be able to strengthen themselves in the future, and not one from which they can effectively counteract the power that employers have acquired in recent years.

In many ways, the situation of Chilean unions is similar to that of unions in other countries, which have suffered the effects of deindustrialisation, privatisation, and anti-union legislation and action, such as those in the United Kingdom or in the United States.<sup>51</sup> However, in Chile unions are relatively weaker than in these other countries because they are regulated by very restrictive legislation that makes Chilean labour legislation one of the most union unfriendly in the world. If we add to this the fact that the public policy consensus in Chile has on the whole be union unfriendly, based on the idea that unions ultimately reduce employer profits rather than being positive contributors to the productive process, the situation of Chilean unions is extremely weak indeed, and thus unable to provide an effective counterweight to the power of employers.

There are several ways out of this dilemma. The first and most immediate solution, and which has partially already occurred during the Bachelet administration is for

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50 Cook, *The Politics of Labor Reform in Latin America: Between Flexibility and Rights* makes the point that it is easier for unions to defend existing acquired rights than to mobilize for new ones.

51 Freeman.

unions to establish forms of industrial action that fall outside of established mechanisms of union legislation, even if these are technically illegal. Second, a renovation of the political agenda of unions that incorporates the issues of modern labour market arrangements, such as flexible hiring conditions and reform of the vocational training system, is essential. Third, a national political discourse that incorporates the unresolved demands of the population in all areas related to employment, inequality and social policy as well as the national development process would help to re-establish unions as a more influential social actor able to attract the attention of members and non-members alike. Fourth, pressure from organisations interested in establishing a level playing field for international trade, in particular from the OECD of which Chile became a member in 2009, could help to promote a more progressive political agenda towards unions in Chile.

During the Bachelet administration, several incidents of industrial action occurred, which illustrate both the potential power of unions and their current weaknesses. For example, subcontracted workers from the forestry and copper sectors forced their employers by means of successful strikes to accept collective bargaining arrangements, which extended to the entire sector and applied to various companies and their unions. The strikes were remarkable for two reasons: intercompany collective bargaining in Chile had become almost defunct before these negotiations resurrected the concept, and subcontracted workers had never yet successfully organized across an entire sector, let alone successfully bargained collectively.

The strike of the forestry workers has probably been the most remarkable strike in Chile in many years. Its success rests not only on the fact that the company eventually had to give in to the demands of workers, but even more importantly other companies in the sector immediately sat down and negotiated deals favourable to their workers to avoid a similar debacle. This success clearly empowered the Chilean union movement as a whole during 2007 and has led to similar strikes in other economic sectors.<sup>52</sup>

A similar type of industrial action occurred in the Copiapó valley, where fruit exporters and temporary workers from multiple companies and subcontractors succeeded in negotiating an inter-company sector-wide agreement that established a minimum wage of 251,000 pesos for all workers in the sector.<sup>53</sup>

These examples of forestry and agricultural workers illustrates that unions can potentially organise sector-wide industrial action that can have a strong positive impact on the negotiating position of their members, despite extensive subcontracting in these sectors.

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52 For a detailed discussion of these events, see Diego Lopez , 'Ingreso Mínimo: Salir de la Pobreza o Mejorar la Redistribución?' El Mostrador, 01.05.2009. [www.elmostrador.cl](http://www.elmostrador.cl) and Diego López, 'El Movimiento Sindical en el Gobierno de Bachelet: Nuevas Acciones y Liderazgos' (Santiago: Fundación Friedrich Ebert, 2009).

53 Ibid.

Conversely, the results of similar strikes by subcontracting workers of the state owned copper company Codelco failed to produce the results desired by the unions involved. Although an order from the Labour Inspectorate to reinstate 5,000 currently subcontracted workers, who were deemed to be undertaking tasks that were not legally subcontractable, as plant workers, Codelco refused this order, arguing that this would increase its labour costs by too much. When the company refused, the workers organized a strike. The matter dragged on between June and October of 2007. The legal battle between Codelco and the Labour Inspectorate ended up being fought in the labour courts, and was only brought to a conclusion when the President intervened personally and requested the reinstatement of at least 1,000 workers.<sup>54</sup>

This case not only illustrates the weakness of the unions of subcontracted workers in an economic sector, which has been a traditional union stronghold, but also exemplifies the attitude of the Bachelet government, which like previous Concertación governments, favoured the interests of employers above those of unions.

We can therefore conclude that Chilean unions need to find alternative ways of organising their members and of staging industrial action in order to regain a position of bargaining power as a national political actor.

The fact that the Concertación now constitutes the political opposition to the centre-right government of Sebastián Piñera perhaps presents a new opportunity for unions as they are no longer bound through their ties to centre-left parties to support the government and can potentially engage in active opposition to government. In addition, the argument that unions have to sacrifice themselves for the sake of the survival and stability of democracy can no longer be reasonably be applied now that an alteration of governing coalitions has put a definitive end to any lingering ideas that Chile is still in a process of democratic transition.

Contradiction of remaining strength vs political weakness.

Make sure conclusions are clear about the fact that employers have acted politically as well as in practice.

The contradictory result is that despite all of these mechanisms of flexibilisation we still have stable union levels. It shows that the power of unions is not so much in their numbers, but in what they can achieve.

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54 Ibid.

## Appendix

**Table 1**

Regression analysis of the factors that impact unionisation levels

Variables	Impact on Unionisation	Variables	Impact on Unionisation
Sex	0.157*** (0.00295)	Head of household	-0.0194*** (0.00303)
Age	0.0222*** (0.000124)	Mining	1.233*** (0.00867)
Primary education	0.00242* (0.00124)	Manufacturing	0.554*** (0.00615)
Secondary education	0.122*** (0.00116)	Energy	0.601*** (0.0140)
Higher education	-0.0430*** (0.000494)	Construction	-0.0540*** (0.00681)
Region I	0.0781*** (0.00855)	Commerce	0.276*** (0.00584)
Region II	0.173*** (0.00656)	Transport	0.369*** (0.00657)
Region III	0.330*** (0.00874)	Financial Services	0.0102 (0.00684)
Region IV	0.286*** (0.00636)	Social services	0.721*** (0.00577)
Region V	0.106*** (0.00433)	Atypical contract	-0.623*** (0.00796)
Region VI	0.0667*** (0.00601)	Freelance contract	-1.015*** (0.00868)
Region VII	0.402*** (0.00562)	No contract	-0.756*** (0.00966)
Region VIII	0.280*** (0.00405)	Prof. self-employed	0.264*** (0.0213)
Region IX	0.0135** (0.00645)	Self-employed	-1.012*** (0.0103)
Region X	0.356*** (0.00480)	Employer	0.194*** (0.00900)
Region XI	-0.248*** (0.0188)	emp_emer	0.472*** (0.00967)
Region XII	0.436*** (0.00993)		

*Source: Author's own calculations with data from EPS Survey, 2006.*