# Climate Change and Working Time: A Complex Challenge



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**Abstract** Working time has been traditionally focused on adapting working hours in order to allow a reconciliation of work and family life whilst assuring the workers' health and safety. Recently, a new factor impacts in the organisation of the working time. It is climate change which also has an important effect on the working conditions. This issue will certainly be a decisive factor to be taken into account in the designing and monitoring working time in the near future. The climate emergency demands for an innovative regulation from the International Institutions and introduce a new challenge for the domestic labour and social security law. Thus, in Europe, both the European Union and the Member States have a significant role in enacting innovative regulations and, additionally, in the promotion and encouragement to the social agents to negotiate "climatic oriented" working conditions.

**Keywords** Climate change · Working time · Health and safety at work

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### 1 Introduction: Working Time as a Changing Factor

The limitation of working time to achieve reasonable and adequate working hours has been a demand that has guided its regulation in Europe since the beginning of the Industrial Revolution.<sup>1</sup> It was a demand initially proposed, between others,<sup>2</sup> by manufacturer and social reformer Robert Owen claiming for "eight hours labour, eight hours recreation and eight hours rest", an innovative motto at that time.<sup>3</sup> In fact, during the nineteenth century, workers had to sustain exhausting hours, in an environment where abuses and excesses became the most pressing problems for the protection of workers. This aim had also been mainstay of trade unions demands.

However, it was a complex challenge for the states. Enacting legislation limiting working time at the national level posed a profound international problem since such a decision would lead to the possibility of enormous competition between countries, giving advantage of those with lax regulations.<sup>4</sup>

The Treaty of Versailles was a milestone on this regard,<sup>5</sup> whilst establishing the terms of peace in the First World War and at the same time including labour-related content concerning this issue in its part Part XIII: Section I of the Treaty. To be more specific it regulates the urgent need to improve working conditions "as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week."

The Treaty also recognised, in Article 427, the existence of certain fundamental principles that had to be respected by the members of the League of Nations. In this regard, "recognising that the well-being, physical, moral and intellectual, of industrial wage-earners, is of supreme international importance". Complementarily, member states should endeavour to apply, among others, "The adoption of an eight-hour day or a forty-eight hours week as the standard to be aimed at where it has not already been attained".

In addition, the Treaty included the terms for the constitution of the International Labour Organisation (hereinafter ILO). The ILO soon accomplished the objective of regulate the working time. Thus, Convention No. 1 (1919) dealt with the limitation of working hours (industry). This Convention called for the establishment of an eight-hour working day. However, the international instrument also allowed for an extension of the weekly working time up to 48 h on certain occasions and introduced a wide range of exceptions.

<sup>&</sup>lt;sup>1</sup> Hopkins (1982).

<sup>&</sup>lt;sup>2</sup> In fact, he was not the first, although he is one of the best known. We can also mention, among others, Thomas More, a precursor advocating for six hours of working time in his controversial work Utopia (More, 1516).

<sup>&</sup>lt;sup>3</sup> Owen (1849).

<sup>&</sup>lt;sup>4</sup> Indeed, competition is a concern that underline permanently, even today, when a state adopts more protective regulation for workers in terms of working time.

<sup>&</sup>lt;sup>5</sup> Versailles Treaty 28 June 1919.

<sup>&</sup>lt;sup>6</sup> See Part XIII, Section II General Principles, Article 427.

<sup>&</sup>lt;sup>7</sup> Ut supra.

The rationale behind the limitation of working time was the need to reduce long working hours, which affected the health of workers. The adoption of the Convention gave rise to a trend in different countries who confirmed this with an identical approach. Subsequently, different ILO Conventions continued this tendency, which was followed in Europe by different legal texts in other international Institutions, as the Council of Europe (hereinafter CoE), the European Union (hereinafter EU) and states. In short, the limitation of working time contributed positively to protecting the health and safety of workers. Indeed, there are many scientific studies proving the adverse effects on a human being when it comes from long working days or working at night.

However, the organisation of working time has been affected by other factors and has evolved significantly, especially with the incorporation of women into paid work. In fact, the entry of women into the working world, departing from their traditional position in the domestic sphere, led to the need first to guarantee her health and safety regarding the maternity, <sup>10</sup> and later to establish reconciliation rights, which would allow women to combine professional and personal responsibilities.

To achieve the aim of family responsibilities, as a first step, International Institutions, like the ILO, and governments all over the world established a set of rules

<sup>&</sup>lt;sup>8</sup> So far, there are four updated agreements, four in provisional status, one pending revision, four superseded and five repealed, covering the regulation of working time in sectors as diverse as industry, mining, road transport, hotels, commerce, public works, hospitals, and others. Moreover, some ILO conventions in particular sectors, such as those concerning maritime labour (CTM2006) or fishing (C188), also include provisions on this issue. There are also conventions dealing with the regulation of night work and numerous recommendations on all these issues. More information is available via the ILO webpage NORMLEX https://www.ilo.org/dyn/normlex/en/f?p=NORMLE XPUB;12030:0::NO:::.

<sup>&</sup>lt;sup>9</sup> Only in the EU Council Directive 93/104/EC of 23 November 1993, the Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/ EC and the recent Directives 1999/63 and 95/EC, 2000/79 EC and 2002/15/EC were in charge of regulating working time aspects for specific sectors, such as seafarers, flight crews in civil aviation and mobile road transport activities, respectively. The Council of Europe also included provisions in the European Social Charter which stated in its Art. 2 About The right to just conditions of work, "with a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake: (1) to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit; (2) to provide for public holidays with pay; (3) to provide for a minimum of two weeks' annual holiday with pay; (4) to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed; (5) to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest." Additionally, the Art. 3 reinforce the right to safe and healthy working conditions in relation to the environment. 4) to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations.

<sup>&</sup>lt;sup>10</sup> See the Maternity Protection Convention (No. 3), the Maternity Protection Convention (Revised) No. 103, and the Maternity Protection Convention (No. 183). The European Social Charter also protected the maternity in its Article 8. In the EU framework the Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

which have modified the formulation of working time. The initiative led to a system of flexibility with reference to the leave of absence, through maternity and parental leaves. Within the ILO framework, the Women with Family Responsibilities Recommendation (R123), considered in its Preamble that "many such women have special problems arising out of the need to reconcile their dual family and work responsibilities", and noted "that many of these problems, though they have particular relevance to the opportunities for employment of women workers with family responsibilities".

In Europe, the initiatives of the EU have encouraged the different countries to enact regulations at the national level guaranteeing men and women the right to organize their professional and personal issues without discrimination. In a first step, Council Directive 96/34/EC of 3 June 1996, on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC, <sup>11</sup> had been developed encouraging to "adapt working conditions to family responsibilities". <sup>12</sup> Subsequently, Directive 2010/18/EU of 8 March 2010, implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC, <sup>13</sup> considered the need for work-life balance. Nevertheless, the content of its rules and regulations were focused on specific policies aiming at the reconciliation of work and family but in certain addressed to women.

In this vein, as a second step, we have progressively witnessed a change of perspective: the evolution from reconciliation to co-responsibility. The ILO addressed this issue with the Workers with Family Responsibilities Recommendation (R165). The convention recognized, Article 4, the right to take account of the workers with family responsibilities needs in terms and conditions of employment. The Recommendation aim for "more flexible arrangements as regards working schedules." Regarding Europe, the evolution takes place in the CoE and the EU. The CoE included in the European Social Charter (revised) the new Article 27, establishing "the right to equality of opportunity and treatment for men and women workers with family responsibilities". On the other hand, the EU guarantees co-responsibilities issues in different regulations: the Charter of Fundamental Rights of the European Union (Art. 33), the European Pillar of Social Rights, pillar No.9, and the Directives. Accordingly, the Directive (EU) 2019/1158 of 20 June to June 15 developed this new perspective allowing the exercise of care work for men and women, configured by the figure of leaves and encouraging the organisation of work with flexible working hours. The corresponding to the second perspective working hours.

In recent years we have witnessed an essential factor to be taken into account in the working conditions: the increase in extreme weather phenomena, such as cold and heat waves of unprecedented intensity. This changing scenario will have a direct impact on the working force. In fact, the climate emergency had even caused deaths

<sup>&</sup>lt;sup>11</sup> OJ L 145, 19.06.1996.

<sup>&</sup>lt;sup>12</sup> Case C-243/95, Hill and Stapleton v The Revenue Commissioners and Department of Finance (ECJ 17 June 1998), para. 42.

<sup>&</sup>lt;sup>13</sup> OJ L 68, 18.03.2010, 13–20.

<sup>&</sup>lt;sup>14</sup> Article 18.

<sup>&</sup>lt;sup>15</sup> OJ L 188, 12.07.2019, 79–93.

<sup>&</sup>lt;sup>16</sup> Guerrero-Padrón et al. (2023), 607–614.

to workers in exceptional cases.<sup>17</sup> Thus, is it necessary to pay greater attention to the side effects on the legal and labour framework? And another crucial question arises: Should we encompass these issues in the regulatory design of working time?

## 2 Climate Change and Its Effects on Employment

Climate change has implications for the future of the planet and its citizens, but it also has a significant effect on the field of Labour law. Thus, to accommodate the Labour law to the crisis derived from global warming is essential to guarantee safe and healthy working conditions. <sup>18</sup>

Most reports and documents dealing with climate change refer to its consequences on the economic and social crisis in all sectors, highlighting that the primary sector will be affected on a larger scale. <sup>19</sup> Some authors are also concerned with identifying the geographical areas where the effects will be most acute. <sup>20</sup> In Europe, the impact will be most significant in the southern areas, particularly in the Iberian peninsula. <sup>21</sup> However, the least developed countries will be the most affected by the consequences of climate change. <sup>22</sup> It is significant that, whilst recognising the need for more decent jobs to be created, the various contributions focus mainly on the economic impact of the loss of traditional jobs. <sup>23</sup> Thus, the desirability of introducing more sustainable and technologically developed "green" activities is noted, <sup>24</sup> which will, eventually, create new employment opportunities. <sup>25</sup>

 $<sup>^{17}\,</sup>https://www.upi.com/Top_News/World-News/2022/07/17/Spain-heat-death-toll350/7181658063083/.$ 

<sup>&</sup>lt;sup>18</sup> As stated in Article 1 (2) of the United Nations Framework Convention on climate change (1992), "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods" will be a complex issue.

<sup>&</sup>lt;sup>19</sup> In the primary sector, energy, finance and insurance, construction, logistics, and tourism, weather phenomena affect the risks and the possibility of claims. In extenso, Climate Change and employment. Also, Alvarez-Cuesta (2021), 354–355.

<sup>&</sup>lt;sup>20</sup> Reflecting this problematic issue: Pereira et al. (2021).

<sup>&</sup>lt;sup>21</sup> Ut supra.

<sup>&</sup>lt;sup>22</sup> ETUC et al. (2007), 13 and ILO (2019b), 65-71.

<sup>&</sup>lt;sup>23</sup> Communication of the European Commission of 11 December 2019 entitled 'The European Green Deal', COM(2019) 640 final.

<sup>&</sup>lt;sup>24</sup> ILO (2018).

<sup>&</sup>lt;sup>25</sup> ILO (2019a, b), 9: "The extension of this analysis shows that almost 25 million jobs will be created and nearly 7 million lost globally. Of the latter, 5 million can be reclaimed through labour reallocation - that is, 5 million workers who lose their jobs because of contraction in specific industries will be able to find jobs in the same occupation in another industry within the same country. This means that between 1 and 2 million workers are likely to be in occupations where jobs will be lost without equivalent vacancies arising in other industries and will require reskilling into other occupations. It also means that massive investment will be needed to train workers in the skills required for close to 20 million new jobs."

Faced with this situation, the United Nations had advocated acting along the lines of so-called "sustainable development". This concept can be defined as "social and economic advance to assure human beings a healthy and productive life, but one that did not compromise the ability of future generations to meet their needs own needs". These initiatives are directly related to the 2030 Agenda and the Global Sustainable Development Goals (SDGs), which, if we look at the world of work, are connected to SDGs 8 (decent work and economy growth), 11 (sustainable cities and communities), and 13 (climate action).

Without denying the phenomenon's multifaceted nature and the different links with aspects as complex as those mentioned above, governments are focused on decarbonising the economy by transitioning to a circular model on the one hand. On the other hand, there is talk of adapting to the impacts of climate change and implementing sustainable development in line with decent work, reducing inequalities. Notwithstanding, it is a difficult challenge to identify what is "decent work" taking into account the new approach introduced by the climate crisis.

As a consequence of this, it is not sufficient to re-direct traditional training to the performance of "sustainable activities". Therefore, other international regulatory solutions are also needed to tackle the new obstacles arising from this phenomenon in "traditional" occupations and guarantee decent work at all levels.

It is essential to note that the ILO emphasized the relevance of paying attention to this factor in some of its conventions, in order to adapt the distribution of working time to those conditions that are less harmful to the health of workers.<sup>27</sup> Concerning working time, even some reports are focused to refer to the number of hours lost due to heat stress, which affects the poorest countries more intensely,<sup>28</sup> it needs to be highlighted that it happens also in Europe and the regulations will require amendments to solve the problem.

In principle, there are certain activities, generally correspond to the primary sectors, which, as they are carried out outdoors, require actions that can reduce the impact of higher temperatures on the health of workers. Thus, agriculture and fishing work have been the subject of discussion since these are the activities with the longest working weeks.<sup>29</sup>

<sup>&</sup>lt;sup>26</sup> The term 'sustainable development' was launched in the report on Our Common Future in 1987 delivered by the Brundtland Commission (Oslo, 20 March 1987). Available via https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf.

<sup>&</sup>lt;sup>27</sup> ILO (2019b), 72.

<sup>&</sup>lt;sup>28</sup> In general, because of a higher share of agricultural and construction employment (Kjellstrom et al. 2019). On the other hand, the same report highlights that Central Africa, West Africa, South Asia and South-East Asia are the most affected regions, mainly because they are the poorest in the world. The ILO also highlighted this problematic issue (2019b), 65–71.

<sup>&</sup>lt;sup>29</sup> According to Eurostat, in 2021, skilled agricultural, forestry and fishery workers had the longest average working weeks in the EU (42.9 h). Available via https://ec.europa.eu/eurostat/statistics-exp lained/index.php?title=Hours\_of\_work\_-\_annual\_statistics#How\_does\_the\_average\_working\_week\_vary\_across\_economic\_activities\_and\_occupations.3F (Medhurst 2009, 9). The Impacts of Climate Change on European Employment in the Medium-Term, GKH.

In recent years, significant technological advances in agriculture have undoubtedly facilitated working conditions. However, the reality is that they cannot all be automated at the moment. It is therefore crucial to take these factors into account in order to adjust workplace conditions and working hours so that they are less harmful to workers' health. For instance, it would be appropriate to provide farmers with rest facilities, where they would be protected from the elements and have access to a supply of water -or hot and cold drinks- that could alleviate the harshness of working in the open air. Notwithstanding, at this point, it would be better to set compulsory rules to avoid extending working time at peak weather hours and periodic breaks to minimize the climate risks.

As far as fishing activities are concerned, rising fuel costs, fishing quota limitations and warming waters also affect employment. Additionally, the decrease in crew members again affects the need for longer working hours, resulting in greater exposure to the elements.<sup>30</sup> Nevertheless, recent legislative initiatives such as ILO Convention 188 and Directive (EU) 2017/159 fail to facilitate the protection of fishers in terms of working time by ensuring decent conditions in an increasingly hostile climate.<sup>31</sup>

In any case, the primary sector is not the only one affected by climate change, but this impact is evident in all activities that can be carried out in the open air, <sup>32</sup> but also in others that are apparently less exposed, such as those carried out indoors. However, all workers have the right to safe and healthy working conditions in relation to the working environment, thus this right needs to be assured to everyone taking into account the working place.

# 3 Are We Contributing to a just Transition by Rethinking Working Time?

These challenges described above require a change of paradigm. On the one hand, despite not being capable of anticipating the future, it is certain that many jobs will be lost and replaced by others, and we will have to adapt to other formulas under conditions such as those described above. Despite this, many other jobs will be

<sup>&</sup>lt;sup>30</sup> ETUC (2007), 20.

<sup>&</sup>lt;sup>31</sup> Ribes-Moreno (2022).

<sup>&</sup>lt;sup>32</sup> For instance, recently in Spain has been enacted a Royal Decree which includes some measures taking into account the working time to protect workers when orange or red weather alert situations occur, affecting environmental conditions in outdoor work, or in cases of risk due to adverse weather events (Royal Decree-law 4/2023, of 11 May, DO No. 113 of 12 May 2023. Previously, a ruling has made it mandatory to provide adequate clothing for the new inclement weather conditions, and even sun protection, to postmen who provided services outdoors, as part of health and safety measures. Juzgado de lo Social No.9, Las Palmas de Gran Canaria, Judgement of 22 December 2017, (ECLI: ES:JSO:2017:62) available via https://www.poderjudicial.es/search/AN/openDocument/f79be127764e0653/20180305.

maintained as of now,<sup>33</sup> notably office work. Such jobs seem to be, in practice, more protected from the adverse effects of climate change.

Indeed, air-conditioned workplaces would make it easier for workers to adapt and reduce their climatic discomfort. However, it is essential to be aware that hot and cold air systems generate emissions that increase the heat outside, which can be contradictory. In addition, the constant use of air-conditioning devices entails high economic costs and energy consumption.

Sometimes, it is impossible to implement an optimal solution in the working places due to the requirement of updating regulations. In other cases, the problem are the economic circumstances regarding the change of installation of efficient technology. Both have an impact on solutions for dealing with thermal stress derived from the temperature and natural phenomena of each continent and state. Indeed, some workers are more vulnerable to this problematic issue, such as women and people with disabilities, thus their personal conditions must also be considered. On one hand, generally speaking, decisions on working conditions are often made without taking into account a gender perspective. For instance, in the case of women, because of their biology, may cause them to be more exposed to different temperatures in offices than their male counterparts. On the other hand, in the case of people with disabilities, may be deeply affected too. Regarding people who use wheelchairs or have mobility problems, the possible occurrence of adverse weather factors may have a significant impact on their access to public transport.

So, what alternatives could provide better solutions? The situation in Europe is complex. First, an emerging state of thinking advocates that we must start by reducing working time to achieve a more sustainable, healthier society. In 2021, according to Eurostat data, the average working week at the EU level lasted 36.4 h. However, this varied across the EU from 32.2 h in the Netherlands to 40.1 h in Greece.<sup>34</sup> Consequently, in some places would be difficult to reduce the working time more. Secondly, governments should consult with social partners and other actors to reach consensual agreements. The ILO argues that social dialogue will be a key instrument for analysing the effects of climate change and, to a greater extent, contribute to effective policies,<sup>35</sup> such as instituting flexible working arrangements that allow workers to adjust their hours and work according to their responsibilities. Thirdly, other theories are taking their proposals to another level, for example, advocating a reduction in working time and limits on the control of consumerism in society.<sup>36</sup> To this end, think tanks like NEF<sup>37</sup> push disruptive theories. They rely on strengthening trade union power to ensure sufficient and adequate wages, limiting maximum

<sup>&</sup>lt;sup>33</sup> United Nations Environment Programme et al. (2008).

<sup>34</sup> Available via https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Hours\_of\_work\_ - annual\_statistics#General\_overview.

<sup>&</sup>lt;sup>35</sup> ILO (2018), 158.

<sup>&</sup>lt;sup>36</sup> Maréchal (2018), 66–70.

<sup>&</sup>lt;sup>37</sup> New Economics Foundation, more information available in the webpage https://neweconomics.org/.

wages,<sup>38</sup> and considering eradicating climate change and inequality at the same time. For instance, one of the NEF researchers, Anna Coote, claims this option is the better solution to reduce working time without reinforcing income inequality.<sup>39</sup>

From our point of view, the most appropriate solution to reduce the adverse effects of climate change at work, may be introducing flexible working hours in companies, but adapted to the environment and the circumstances of workers. The establishment of regulations at EU level tackling this problematic issue and considering the possibilities that technology offers to meet targets, could partly mitigate the effects of climate risks. Thus, provisions need to be included in regional normative instruments to continue this path, just as other historical demands took place. States need to be aware of the changing reality and adapt accordingly. Hence, the ILO and especially the EU have a key role, which they could use constructively by designing and enacting new innovative instruments that can be developed by states in accordance with their own characteristics and in line with social partners. This would be the most appropriate measure and would be in line with decent work, the 2030 Agenda and the SDGs.

#### 4 Conclusions

The challenge of climate change requires new solutions when it comes to working hours. The international community needs to drive a substantial change. However, as far as the world of work is concerned, it is not enough to redirect activities towards more sustainable ones; it is also imperative to ensure the safety and health of workers by promoting flexible and adapted working hours. The climatic characteristics of each continent, each state and each workplace will play a fundamental role in the formulation of working time. For this reason, the role of international institutions in promoting regulatory instruments that encourage collective subjects to negotiate working conditions is essential.

It is necessary to anticipate the future, to foresee and encourage the possibility of collective bargaining being able to deal with situations of this nature which are not of a uniform nature but adapted to their geographical and productive scope. Undoubtedly, Europe are facing a profound paradigm shift that significantly affects working time, enabling companies to comply with the SDGs in the framework of the 2030 Agenda. Consequently, the climate, a factor directly related to the protection

<sup>&</sup>lt;sup>38</sup> Ut supra.

<sup>&</sup>lt;sup>39</sup> Maréchal (2018), 68.

of workers' well-being, will be, together with work-life balance, determining factors in establishing the distribution of working hours.

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