

Treatment Disparities Viewed through the Lens of the Network Firm

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The decentralization of productive processes through vehicles such as the network firm or global value chain has led to a significant and well-documented growth of inequality in wages and other work conditions. Some attempts have been made at the Québec, ILO and European Union levels to combat the inequality associated with atypical employment, through legislative measures aimed at combating treatment disparities based on employment status. In this paper, the author evaluates the effectiveness of these measures by proposing and testing a new analytical model – one which distinguishes between the location of production (or work activity) and the nature of the employment relationship. Production may be either decentralized or centralized, and within each of those options, the employment relationship may be either externalized or internalized. Thus, the model generates four possible combinations or “quadrants” in which to map an area for comparison of employment conditions. Within each quadrant, the author assesses the legislative tools intended to address treatment disparities based on status, concluding in each case that they fall well short of what is needed. Ultimately, she argues that the definition of treatment disparities must be broadened to take into account the social division of labour within the network firm. Accordingly, disparity of treatment should be found to exist whenever groups of workers doing the same or equivalent work within the same network firm are provided with different employment conditions.

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1. INTRODUCTION

The breakup of wage labour into a wide range of atypical or non-standard statuses¹ often associated with less favourable work and employment conditions, and the fragmentation of productive processes within the network firm or the value chain,² are both associated with growing inequalities.³

Over the past thirty years, labour law at the subnational, national⁴ and international levels has attempted to abolish some of the inequalities, including pay inequalities, between workers carrying out the same task within the same establishment. This way of addressing the issue is insufficient because it is limited to the geographical boundaries of the establishment or the legal boundaries of the firm, and it generally ignores the social division of labour that often assigns groups of workers to tasks that are different and differently treated but may be equivalent in that they require similar levels of qualifications, effort, responsibility and hardship.

This article proposes a definition of the disparities in employment conditions that are found in new forms of production and work

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- 1 Carlos Frade & Isabelle Darmon, "New modes of business organization and precarious employment: Towards the recommodification of labour?" (2005) 15:2 *Journal of European Social Policy* 107; Stéphanie Bernstein, Urwana Coiquaud, Marie-Josée Dupuis, Laurence Léa Fontaine, Lucie Morissette, Esther Paquet & Guylaine Vallée, "Les transformations des relations d'emploi: une sécurité compromise?" (2009) 6:1 *Regards sur le travail* 19; Jean Bernier, Guylaine Vallée & Carol Jobin, "Les besoins de protection sociale des personnes en situation de travail non traditionnelle" (Québec: Ministère du travail, 2003); Leah F Vosko, ed., *Precarious Employment: Understanding Labour Market Insecurity in Canada* (Montreal: McGill-Queen's University Press, 2006) [Vosko, *Precarious Employment*].
 - 2 Simone Dahlmann & Ursula Huws, "Global Restructuring of Value Chains and Class Issues" (2009) 39 *Revue Interventions économiques*; Jörg Flecker & Pamela Meil, "Organisational Restructuring and Emerging Service Value Chains: Implications for Work and Employment" (2010) 24:4 *Work, Employment & Society* 680; Tashlin Lakhani, Sarosh Kuruvilla & Ariel Avgar, "From the Firm to the Network: Global Value Chains and Employment Relations Theory" (2013) 51:3 *British Journal of Industrial Relations* 440.
 - 3 International Labour Organization, *World Employment Social Outlook 2015: The changing nature of jobs* (Geneva: International Labour Office, 2015) at 32-55.
 - 4 Québec will be used throughout this article as an example.

organization, such as the network firm and the value chain, and a model for their analysis. Our purpose is to make these disparities visible — a step that must precede any kind of legal codification.

The discussion is divided into four parts. First, we will show the limits of the concept of discrimination (Part 2) and of the labour law tools intended to fight treatment disparities that are based on employment status (Part 3). Then, we will describe the structure of inequalities in productive forms organized as chains or networks (Part 4), and we will conclude by proposing a model for the analysis of treatment disparities arising from this structure (Part 5).

Though this analytical model is presented and illustrated on the basis of North American, and specifically Québec, realities, it can be applied to other contexts because externalization of employment and its variants are widespread throughout the world. The trend towards decentralized industrial relations in a number of European countries, and as a corollary the heightened importance of establishment- or company-level bargaining, threatens to increase treatment disparities between workers carrying out equivalent work or related tasks within different firms of the same network firm or value chain.

2. THE DISCRIMINATION LENS AND ITS LIMITS

Wage disparities between groups of workers have existed for many years. The history of the minimum wage provides ample evidence of this. In 1937, for instance, there were 153 different minimum wages in Québec, defined by industrial sector and geographical area, as well as other criteria including sex, age, and disability.⁵ Initially naturalized and legitimized, these disparities were later socially constructed as discrimination and fought through legislation.

The term discrimination is used to describe situations in which a worker's employment conditions are less favourable because the worker belongs to groups that are subject to social relations of domination (gender-based, racialized or ageist relations) or that are denied

5 See Christian Desjèts & Denis Ledoux, *Histoire des normes du travail au Québec de 1885 à 2005: de l'Acte des manufactures à la Loi sur les normes du travail* (Québec: Publications du Québec, 2006).

recognition (sexual orientation).⁶ Discrimination may be direct, indirect or systemic. Direct discrimination explicitly targets members of groups, whereas indirect discrimination arises from a rule that is seemingly neutral but whose application causes harm to members of those groups. Systemic discrimination is rooted in social structures such as the employment or compensation structures of firms. It arises, for instance, from the fact that men and women are concentrated in different jobs and often in different sectors of activity, with predominantly female sectors and jobs receiving inferior compensation.

While legal reform has countered some forms of inequality, inequalities have shifted to other categories of workers, based on other grounds — although the same workers may, in fact, experience the inequalities. For instance, discrimination according to sex has been replaced by wage disparities between “heavy” and “light” work,⁷ to the detriment of the same category of workers, i.e. women. Pay discrimination on the basis of age has been forbidden, but this is bypassed through clauses establishing treatment disparities on the basis of hiring date⁸ that ensure less favourable conditions for new hires, who include a higher proportion of immigrants and young people. Everything happens as if legislation were tracking down discriminatory practices, but inequality, like a many-headed hydra, were constantly reappearing under new forms.

6 The Québec *Charter of Human Rights and Freedoms* defines discrimination as a “distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.” Sections 16 to 20 explicitly address discrimination in employment. It is worth noting that discrimination on the basis of employment status is not prohibited. *Charter of Human Rights and Freedoms*, CQLR c C-12 [CHRF].

7 Examples include collective agreements in the health-care sector and decrees regarding the maintenance (cleaning) of public buildings. Martine D’Amours & Frédéric Hanin, “Sectoral Regulation in Subcontracting Relationships: The Impact of Collective Agreement Decrees on Employment Conditions” (2019) 21:2 CLELJ 433.

8 See Diane Gagné, Diane & Marie-Josée Dupuis, “Quand le syndicat devient vecteur d’inégalités: les effets des clauses ‘orphelins’ sur l’association syndicale” (2016) 71:3 RI/IR 393; Mélanie Laroche, Patrice Jalette & Frédéric Lauzon Duguay, “Les disparités de traitement entre nouveaux et anciens salariés” (2019) 2 Terrains & travaux 45.

Under pressure from social movements and particularly movements of young people, these disparities in turn have been fought through legislation, although in a very incomplete manner. Treatment disparities according to hiring date provide an example in Québec. The first prohibition in the *Act Respecting Labour Standards (ALS)*,⁹ which occurred in 1999, concerned wages and a wide range of working conditions.¹⁰ When the Act was reformed in 2018, the prohibition was extended to insurance and pension plans, but this applied only to plans established after June 2018. Generally speaking, only permanent differences in treatment are forbidden under the Act, while those that are likely to subside within what is deemed a reasonable period are not forbidden.¹¹

3. THE EMPLOYMENT STATUS LENS AND ITS LIMITS

The breakup of wage labour into a wide range of atypical or non-standard statuses has also generated many disparities in pay and working conditions.¹² Part-time or temporary workers, students, and workers recruited through an employment agency often receive lower pay, do not have as many days off, and are excluded from social benefit plans (to give just a few examples).¹³

There has been an attempt to fight these different conditions associated with atypical employment through legislation. Since 1990, in Québec, a part-time worker performing the same tasks as another worker in the same establishment cannot receive a lower rate of wage

9 *Act respecting Labour Standards*, CQLR c N-1.1 [ALS].

10 Hours of work; statutory general holidays and non-working days with pay; vacations and rest periods; absences owing to sickness or accident; family or parental leave and absences; notice of termination of employment or layoff; provision of uniforms, equipment and tools; training and travel expenses. *ALS*, section 87.1.

11 See Dalia Gesualdi-Fecteau & Michel Lizée, cited in Laroche et al, *supra* note 8 at 50.

12 See Vosko, *Precarious Employment*, *supra* note 1; Bernier, Vallée & Jobin, *supra* note 1.

13 See Guylaine Vallée “Pluralité des statuts de travail et protection des droits de la personne: quel rôle pour le droit du travail?” (1999) 54:2 RI/IR 277; Jean Bernier, “Les conventions collectives et les emplois atypiques” (2007) 4:1 Regards sur le travail 2; Jean Bernier, “La location de personnel temporaire au Québec: un état de situation” (2012) 67:2 RI/IR 283; Martine D’Amours, “Le ‘nouveau’ travail indépendant: une mutation en forme de paradoxe” (2019) 23:5 Management international 78.

(section 41.1) nor a reduced annual leave or indemnity (section 74.1).¹⁴ *ALS* reform that occurred in 2018 extends this prohibition to employees performing the same tasks in the same establishment, where the lower rate is solely because of the employee's employment status. It also introduces the prohibition of a wage disparity against workers hired by a personnel placement agency who perform the same tasks as the employees of the client enterprise, in the same establishment (section 41.2).

Provisions enacted by Québec lawmakers are part of an international movement. The ILO's Part-Time Work Convention¹⁵ (1994), and European Union directives on part-time work¹⁶ (1997), fixed-term work¹⁷ (1999), and temporary agency work¹⁸ (2008), are intended to abolish forms of discrimination based on employment status or, in the case of temporary agency work, to apply the principle of equal treatment, meaning that "the basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job" (art. 5, subparagraph 1).¹⁹ As noted in a recent ILO report,

14 Originally, the prohibition did not apply if the part-time worker was earning more than twice the minimum wage. Since the 2018 reform, the prohibition applies without reference to wage levels.

15 ILO C175, Part-Time Work Convention, 1994.

16 Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time working concluded by UNICE, CEEP and the ETUC.

17 Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

18 Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

19 The principle is watered down in the next few subparagraphs, however, particularly subparagraphs 2 and 4. Subparagraph 2 reads: "As regards pay, Member States may, after consulting the social partners, provide that an exemption be made to the principle established in paragraph 1 where temporary agency workers who have a permanent contract of employment with a temporary-work agency continue to be paid in the time between assignments." Subparagraph 4 reads: "Provided that an adequate level of protection is provided for temporary agency workers, Member States in which there is either no system in law for declaring collective agreements universally applicable or no such system in law or practice for extending their provisions to all similar undertakings in a certain sector or geographical area, may, after consulting the social partners at national level and on the basis of an agreement concluded by them, establish arrangements concerning the basic working and employment conditions which derogate from the principle established in paragraph 1. Such arrangements may include a qualifying period for equal treatment."

laws intended to establish equal treatment regardless of employment status have been numerous in countries described as advanced, and particularly in Europe where progress is mainly attributed to the three directives mentioned above.²⁰

While the above-mentioned Convention and directives view differentiated treatment on the basis of employment status as a form of discrimination, we propose to distinguish between the concepts of *discrimination* and *treatment disparities*. Both of these can generate social and income inequalities, and both can even mutually reinforce each other, since groups subject to discrimination are proportionally overrepresented within non-standard forms of employment.²¹ However, they are different in nature.

While discrimination is a “distinction, exclusion or preference” based on characteristics of an individual or group and inscribed in a social relation of domination or in a denial of recognition²² (sex, race, age, disability, sexual orientation, etc.), treatment disparities refer to workers’ *position* in the hierarchy of employment statuses within a firm or establishment. So far, legislation has been unable to eliminate either of these phenomena.

In fact, a number of criticisms have been directed against legislative advances intended to abolish disparities based on employment status. Vosko²³ points out that regulations adopted by the ILO merely extend some of the protections of labour law to forms slightly different from the standard embodied by typical salaried employment, while excluding other forms of work for pay;²⁴ the protection they are

20 See ILO, *World Employment Social Outlook 2015*, *supra* note 3 at 115.

21 See Vosko, *Precarious Employment*, *supra* note 1; Wayne Lewchuck, Marlea Clarke & Alice de Wolff, *Working without Commitments: The Health Effects of Precarious Employment* (Montreal: McGill-Queen’s University Press, 2011).

22 See Nancy Fraser. *Qu’est-ce que la justice sociale? Reconnaissance et redistribution* (Paris: La Découverte, 2011).

23 See Leah F Vosko, *Managing the Margins: Gender, Citizenship, and the International Regulation of Precarious Employment* (Oxford: Oxford University Press 2010) at 73; International Labour Organisation, *Non-standard employment around the world: Understanding challenges, shaping prospects* (Geneva: ILO, 2016).

24 The regulations maintain the distinction between wage labour and independent work, except that in some European countries, certain independent workers (especially those who are economically dependent) are granted forms of protection previously only given to wage-earners.

intended to embody is not “equal,” but “effective.” Using the United Kingdom to illustrate their case, Rubery and Grimshaw²⁵ note that obstacles arise when equal pay is pursued as an objective. Among these obstacles, they cite the fact that female part-time workers are concentrated among certain employers and occupations, and that equal rights for part-timers do not apply *between* organizations.

From a wider perspective, we see that attempts to fight treatment disparities according to employment status through labour law tools (in Québec and at the international level) are held in check by four major limitations. Some of these are summarized, without any claim to being exhaustive, in Table 1, below.

1. The attempt to fight treatment disparities is aimed at specific aspects of work and employment conditions. In some cases, only wages are targeted.
2. Workers with the same type of employment relation (i.e. the wage relation) are used as the comparator.
3. Workers performing the same tasks (or holding the same kind of position) are used as the comparator. The ILO and the Council of the European Union use a broader formulation, referring to workers “engaged in the same or similar work/occupation, due regard being given to qualifications/skills” (for fixed-term workers) or seniority (for part-time workers).
4. The area of the comparison is restricted to the geographical boundaries of the establishment, or, more rarely, the legal boundaries of the firm. If there are no comparable workers within the same establishment, European directives make it possible to move up to the firm, the branch of activity, or the national level to find a comparison point.²⁶

25 Jill Rubery & Damian Grimshaw, “The 40-year pursuit of equal pay: A case of constantly moving goalposts” (2015) 39 *Cambridge Journal of Economics* 319.

26 “[A] full-time worker who . . . is employed in the same establishment or, when there is no comparable full-time worker in that establishment, in the same enterprise or, when there is no comparable full-time worker in that enterprise, in the same branch of activity, as the part-time worker concerned.” ILO C175, *supra* note 15, art 1(III).

TABLE 1
Some Québec and International Labour Law Tools Designed
To Eliminate Treatment Disparities: Grounds, Comparator,
and Area Covered by the Comparison

<i>Law or Directive</i>	<i>Basis of Disparity</i>	<i>Aspects Targeted by the Prohibition on Treatment Disparities</i>	<i>Comparator</i>	<i>Area of Comparison</i>
ALS (section 87.1)	Hiring date	<ul style="list-style-type: none"> • Wages, hours of work, various types of time off, notice of termination of employment or layoff, provision of uniforms, equipment and tools, training and travel expenses; • 2019 addition: pension plan and other social benefits, unless the disparity existed before June 11, 2018 	Wage-earners carrying out the same tasks	Same establishment (physical location where the work is carried out)
ALS (sections 41.1 and 74.1)	Employment status	Wages Annual leave and indemnity	Same	Same
ALS (section 41.2)	Personnel placement agency	Wages	Employees of client firm (performing the same tasks)	User firm
ILO Convention 175²⁷	Part-time work	Same protection in terms of right to organize, OHS and discrimination Forbids giving a lower wage (calculated proportionally) Equivalent conditions in terms of social security, maternity protection, employment termination, etc.	Full-time workers in a comparable situation: (i) having the same type of employment relationship; (ii) engaged in the same or a similar type of work or occupation	Same establishment or, when there is no comparable full-time worker in that establishment, in the same firm or, when there is no comparable full-time worker in that firm, in the same branch of activity

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²⁷ *Ibid.*

TABLE 1
Some Québec and International Labour Law Tools Designed
To Eliminate Treatment Disparities: Grounds, Comparator,
and Area Covered by the Comparison (*continued*)

European Union Council Directive on part-time work (97/81/EC) ²⁸	Part-time work	Principle of non-discrimination: employment conditions cannot be less favourable	Comparable full-time workers, i.e. having the same type of employment contract or relationship and who are engaged in the same or a similar work/occupation, due regard being given to other considerations which may include seniority and qualifications/skills	Same establishment Similar indications if there is no comparable full-time worker in the same establishment
European Union Council Directive on fixed-term work (1999/70/EC) ²⁹	Fixed-term work	Same	Comparable permanent workers, i.e. workers engaged in the same or similar work/occupation, due regard being given to qualifications/skills	Same
European Union Council Directive on temporary agency work (2008/104/EC) ³⁰	Temporary agency work	Equivalent conditions relating to the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays, and pay	Workers directly recruited by the user firm to occupy the same job	User firm

28 Council Directive 97/81/EC, *supra* note 16, Annex: Framework agreement on part-time work, sections 3 & 4.

29 Council Directive 1999/70/EC, *supra* note 17, sections 3 & 4.

30 Directive 2008/104/EC, *supra* note 18, sections 3 & 5.

Moreover, while the labour law instruments reviewed in this article acknowledge that length of service or seniority are legitimate reasons for treatment disparities,³¹ two problems remain: (1) some Québec collective agreements include disparities as to how seniority is calculated, applied, and converted;³² and (2) in a number of collective agreements, employment status trumps seniority as a way of gaining access to certain benefits.³³ Only the 1999 European Council Directive addresses this problem, indicating that “period-of-service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length-of-service qualifications are justified on objective grounds” (clause 4, paragraph 4).

The impact of attempts to fight disparities based on employment status through legislation and other labour law instruments is therefore limited, since such laws or tools can be eluded simply by ensuring the work is done outside the wage employment relation (by an independent worker) or outside the legal boundaries of the firm (through outsourcing, temporary employment agencies, franchises). Marchington et al.³⁴ note that anti-discrimination laws and other laws are rendered inoperative by relations involving multiple employers. Moreover, the fact that the comparator is a worker performing the same tasks in the same work site (the establishment) also reduces the impact of these laws: the employer can escape the legal obligation to provide equality of treatment merely by assigning typical and atypical employees to different tasks within a given establishment, or by relocating segments of production in other work sites.

31 See in particular *CHRF*, *supra* note 6, section 19, and *ALS*, *supra* note 9, section 87.2. See also the jurisprudence cited in Sylvain Lepage, “Les pratiques défavorables au nouveau salarié dans la convention collective: le cas de la double échelle” (1989) 30 C de D 531; however, this article deals with a different issue, namely the union’s duty of fair representation under the *Labour Code*.

32 See Vallée (1999), *supra* note 13; Bernier (2007), *supra*, note 13.

33 Author; article currently under evaluation.

34 See Mick Marchington, Damian Grimshaw, Jill Rubery & Hugh Willmott, *Fragmenting Work: Blurring Organizational Boundaries and Disordering Hierarchies* (Oxford: Oxford University Press, 2005) at 69.

4. STRUCTURES OF INEQUALITIES IN NEW PRODUCTIVE FORMS

A growing part of production is carried out today in organizational forms that fragment production while extending control beyond the firm's legal boundaries. The ILO estimates that more than one job in five is located within global supply chains.³⁵

A number of theoretical approaches have been used to study these productive forms, the two most well-known being global value chains (GVC)³⁶ and global production networks (GPN).³⁷ While these approaches are based on different epistemological positions, they define their object in similar ways, the common points of their definitions being the existence of productive decentralization among entities that are legally distinct but related to each other through contract relations, and the unequal power of these entities.³⁸ Thus, Quinlan defines the supply chain as

... an elaborate set of successive contractual arrangements designed to provide a good or service for a principal organization such as agricultural produce to a large supermarket chain. The succession of contracts is not simply the result of uncontrolled subcontracting; rather, a supply chain is a network, with

35 See ILO, *World Employment Social Outlook 2015*, *supra* note 3 at 132.

36 Gary Gereffi & Miguel Korzeniewicz, *Commodity Chains and Global Capitalism* (Westport, Conn: Praeger, 1994); Gary Gereffi, John Humphrey & Timothy Sturgeon, "The governance of global value chains" (2005) 12:1 *Review of International Political Economy* 78.

37 See Peter Dicken, Philip F Kelly, Kris Olds & Henry Wai-Chung Yeung, "Chains and networks, territories and scales: Towards a relational framework for analysing the global economy" (2001) 1:2 *Global Networks* 89; Jeffrey Henderson, Peter Dicken, Martin Hess, Neil Coe & Henry Wai-Chung Yeung, "Global production networks and the analysis of economic development" (2002) 9:3 *Review of International Political Economy* 436.

38 As these and other authors have pointed out, "relations of dependency and domination do not disappear as a result of this situation, since the organization continues to be based on the centrality of some firms in relation to others, and power relations are shaped by this centrality." See Sara Lafuente Hernandez, Esteban Martinez Garcia & David Jamar, "Syndicalisme de réseau ou négociation collective coordonnée: deux réponses syndicales au développement de la sous-traitance de site" (2015) 13 *Travail Emploi Formation* 28 [our translation].

contract conditions and oversight so that the principal can retain control of the quality and timeliness of the goods provided.³⁹

According to Lafuente-Hernandez et al.,⁴⁰ “the concept of the network firm or the dispersed, many-headed or hybrid firm, is useful in accounting for this diffuse organization existing beyond the limits of labour law institutions. The network firm is characterized by the fact that the organizational spaces of productive activity are dissociated from the legal contours of firms. The firms forming the network are formally independent but are linked by contract relations (not necessarily relations of capital), and by a coordinated organization which is the basis for real and unified economic activity.”

Both value chains and network firms⁴¹ rely on various forms of productive decentralization among entities that are legally distinct, yet connected to each other through contract relations, and this has an impact on both work and employment. On the one hand, these organizational forms increase the division of labour by distributing the tasks required to produce goods or services among several entities and workplaces. We refer to this phenomenon as *productive fragmentation* or *productive decentralization*. On the other hand, they embed the employment relation in a commercial relation, a phenomenon we refer to as *externalization*. According to Huws,⁴² externalization means the regulation of employment by commercial law through several possible types of configuration: independent work, work for an intermediary (such as a temporary employment agency), outsourcing, and franchises or public-private partnerships.

Productive decentralization and externalization sometimes overlap and are sometimes interdependent, but there is a broad consensus in the literature that they result in a diversity of hierarchical employment systems.⁴³ Results may vary depending on how skilled

39 See Michael Quinlan, *Supply Chains and Networks* (Canberra: Safe Work Australia, 2011) at 1.

40 See Lafuente Hernandez et al (2015), *supra* note 38 at 28 [our translation].

41 The term also applies to public-sector organizations, such as in the case of services for the elderly or vulnerable (Boivin, 2013) or childcare (Bellemare, 2020). See *infra* notes 68 and 69.

42 Ursula Huws, *The Globalisation Glossary: A Researcher's Guide To Understanding Work Organisation Restructuring in a Knowledge-Based Society* (Leuven: Katholieke Universiteit Leuven, 2008).

43 See Marchington et al, *supra* note 34.

the workers are and how complex the externalized activities are.⁴⁴ However, the impact of the differential between those whose employment conditions are maintained or even enhanced following their incorporation into value chains (essentially qualified employees whose skills are in demand), and those whose conditions are made worse, is precisely to increase inequalities. The impact on employment also depends on the configuration of the value chain and inter-firm power relations,⁴⁵ and on the institutional context.⁴⁶

The following discussion, based on the literature, identifies new hierarchies of (a) tasks and qualifications, and (b) quality of jobs that are emerging in chain or network configurations.

(a) New Productive Forms and the Hierarchy of Tasks and Qualifications

Productive decentralization refers to the division of labour among various worksites to produce a product or service. Workplaces can be fragmented over several countries or regions to take advantage of the wage and institutional differences present in each jurisdiction. These differences “accommodate” capital, especially in terms of labour laws and social protection. However, the productive decentralization present within a single jurisdiction can also produce inequalities. Thus, recent studies in Europe and the United States show a growing proportion of inequalities can be attributed to the compensation differential between establishments and increased occupational concentration of workers in establishments. The studies reviewed by Batt and Appelbaum “suggest that firms have found it useful to increase the specialised division of labour — segmenting

44 See Bernard Baudry, “L’impact des nouvelles relations de quasi-intégration sur la gestion de l’emploi des fournisseurs” in Héloïse Petit & Nadine Thévenot, eds, *Les nouvelles frontières du travail subordonné* (Paris: La Découverte, 2006) 121; Dahlmann & Huws, *supra* note 2; Flecker & Meil (2010), *supra* note 2; Lakhani et al (2013), *supra* note 2.

45 See Dahlmann & Huws, *supra* note 2; Flecker & Meil (2010), *supra* note 2; Lakhani et al (2013), *supra* note 2; Lafuente Hernandez, *supra* note 38.

46 See Dahlmann & Huws, *supra* note 2; Flecker & Meil (2010), *supra* note 2; Lakhani et al (2013), *supra* note 2; Rachid Belkacem, Cathel Kornig & François Michon, eds, *Visages de l’intérim en France et dans le monde* (Paris: L’Harmattan, 2011).

labour markets based on occupational expertise or ‘core competencies’ and the sorting of workers by skill level or skill type into higher and lower paid firms and establishments.”⁴⁷ Nuancing this point of view, based on their review of various publications, Hammer and Riisgaard conclude that in productive chains or networks, we find divisions between workers carrying out different steps of the labour process, which are usually described by the concept of “segmentation,” and complex, overlapping divisions between groups of workers carrying out the same tasks; these divisions are known as “tiering.”⁴⁸ In other words, the wage differential between different worksites is not always attributable to the different nature of the tasks and the qualifications required to perform them but also to economic and institutional factors.

Similarly, a whole stream of literature concludes that the impact of externalization is to change the nature of the work and skills required both in the contracting company⁴⁹ and among subcontractors.⁵⁰ Two divergent positions exist with regard to the nature of the externalized tasks. For some, the externalized tasks are less complex than those performed within the contracting company and require lesser skills. For others, the externalized tasks may be the same as those performed within the contracting company. Illustrating the first approach, the study based on the French case by Perraudin et al. finds “a hierarchization of the productive fabric” that is reflected in the skill structure.

Thus, the dependence among firms created by the subcontracting relation affects the structure of skills within firms: the interfirm hierarchy has repercussions on the skill structure. These findings are consistent with the idea that the

47 Rosemary Batt & Eileen Appelbaum, “The networked organisation: The implications for jobs and inequality” in Damian Grimshaw, Colette Fagan, Gail Hebson & Isabel Tavora, eds, *Making Work More Equal: A new labour market segmentation approach* (Manchester: Manchester University Press, 2017) 77.

48 Nikolaus Hammer & Lone Riisgaard, “Labour and Segmentation in Value Chains” in Kirsty Newsome, Philip Taylor, Jennifer Bair & Al Rainnie, eds, *Putting Labour in its Place: Labour Process Analysis and Global Value Chains* (London: Palgrave Macmillan, 2015) 83.

49 Alison Davis-Blake & Joseph P Broschak, “Outsourcing and the Changing Nature of Work” (2009) 35:1 Annual Review of Sociology 321.

50 ILO, *World Employment Social Outlook 2015*, *supra* note 3.

use of outsourcing leads to a transfer of the least skilled labour towards the most dependent firms in the hierarchy of the productive system.⁵¹

A report commissioned by the ILO points in the same direction, stating that “GSCs often break up the production process such that more knowledge-intensive tasks remain concentrated in the lead firm, while less knowledge-intensive tasks are outsourced to suppliers in other countries.”⁵²

However, other studies representative of the second approach show that externalized activities may be the same as those carried out internally. This is the case for translators and journalists,⁵³ in insurance and services to business,⁵⁴ and in the metal industry.⁵⁵ The argument is taken up by Weil,⁵⁶ who asserts that until the 1980s, firms externalized peripheral activities, whereas now, they divest themselves of activities that traditionally belonged to their core business — as shown by cases such as mining or the production of chocolate.

(b) New Productive Forms and the Disintegration of the Employer Figure

When multiple entities play the role of employer, this allows disparities in terms of wages and other employment conditions. Externalization often has the effect, or even the objective, of using the differential between conditions of work and employment to

51 Corinne Perraudin, Héloïse Petit, Nadine Thèvenot, Bruno Tinel & Julie Valentin, “Dépendance interentreprises et inégalités d’emplois: hypothèses théoriques et tests empiriques” (March 2009), Documents de travail No 117 (Centre d’études de l’emploi) at 16.

52 ILO, *World Employment Social Outlook 2015*, *supra* note 3 at 144.

53 Martine D’Amours, “Devenir traducteur indépendant: l’impact structurant de la clientèle” (2013) 54:2 *Revue française de sociologie* 331.

54 Ulrike Muelberger & Sonia Bertolini, “The Organizational Governance of Work Relationship Between Employment and Self-Employment” (2002) 6 *Socio-Economic Rev* 449.

55 Chiara Benassi & Lisa Dorigatti, “Straight to the Core – Explaining Union Responses to the Casualization of Work: The IG Metall Campaign for Agency Workers” (2014) 53:3 *British Journal of Industrial Relations* 533.

56 David Weil, *The Fissured Workplace: Why Work Became So Bad For So Many And What Can Be Done About It* (Cambridge, Mass: Harvard University Press, 2014) [Weil, *Fissured Workplace*].

reduce costs. From this point of view, the goal of externalization has changed: while it formerly involved activities requiring a specific investment in skills or equipment, today it is associated with other objectives such as bringing labour costs down, preventing unionization, and transferring employer responsibilities to other entities.⁵⁷

As Weil points out,⁵⁸ by using externalization, lead firms substitute price-setting for wage-setting. In the vertically integrated firm, to ensure horizontal equity, wages were set according to objective criteria (such as seniority) that were detached from individual performance. Disparities between employment categories were similarly restricted to ensure vertical equity. This meant that under the traditional model, low-skilled workers were able to get better wages. In the world of fissured work, the problem of wage disparities (between categories of employees) is pushed outside the boundaries of the firm, and the reference wage is no longer the pay given to higher echelons of the firm that is the direct employer, but the pay given to multiple competitors with the status of subcontractors.

Many illustrations of this phenomenon have been analyzed in the scientific literature. For instance, Perraudin et al. document a wage differential between the contracting firm and the subcontracting firm, at every level of qualification:

For each type of qualification, there are compensation differentials that reflect the hierarchy of the productive fabric. Wages are lowest in establishments that are strictly contractors; next are establishments that are both contractors and contracting firms. Wages are highest in establishments that are strictly contracting firms, and the difference is significant for all three qualification levels, after controlling for the characteristics of the establishment and workforce. The relation is particularly significant for the least qualified workers and is slightly less significant for those who are highly qualified.⁵⁹

Other authors find some variability in working and employment conditions in outsourced entities, with this diversity attributable to

57 See Weil, *Fissured Workplace*, *supra* note 56; Perraudin et al, *supra* note 53; Virgile Chassagnon, “Fragmentation des frontières de la firme et dilution des responsabilités juridiques: l’éclatement de la relation d’emploi dans la firme-réseau multinationale (2012) 1 *Revue internationale de droit économique* 5.

58 See Weil, *Fissured Workplace*, *supra* note 56 at 83-92.

59 See Perraudin et al, *supra* note 51 at 18-19 [our translation].

the respective relationships and power resources of the lead and out-sourcing firms.⁶⁰

5. PROPOSING AND TESTING AN ANALYTICAL MODEL

To analyze the disparities in employment conditions existing in the value chain or the network firm, we must first redefine the boundaries of the firm to understand its sociological reality beyond its legal definition.⁶¹ The focus of the analysis must be extended beyond the legal boundaries of the firm and the geographical boundaries of the establishment to include all of the entities participating in the value chain or network, or, in the words of Lafuente-Hernandez, firms “linked by contract relationships (and not necessarily relations of capital), and by a coordinated organization which is the basis for real and unified economic activity.”⁶²

As a corollary, we must also broaden the *definition* of treatment disparities to include not only the position of workers in the hierarchy of employment statuses within a firm or an establishment but also the hierarchy of interfirm relations within a value chain or network firm.

The analytical model⁶³ we are putting forward to identify these treatment disparities involves an initial distinction between the

60 Jill Rubery, Fang Lee Cooke, Jill Earnshaw & Mick Marchington (2003) “Inter-Organizational Relations and Employment in a Multi-Employer Environment” 41:2 *British Journal of Industrial Relations* 265; Marchington et al, *Fragmenting Work*, *supra* note 34; Flecker & Meil, *supra* note 2; Lafuente Hernandez et al, *supra* note 38.

61 Pierre Verge, *Configuration diversifiée de l'entreprise et droit du travail* (Québec: Presses de l'Université Laval, 2003); Pierre Verge, “La coexistence de la liberté d'entreprise et de la liberté syndicale” (2012) 67:3 *RI/IR* 526; Marie-Laure Morin, “Le droit du travail face aux nouvelles formes d'organisation des entreprises” (2005) *Revue internationale du travail* 5.

62 See Lafuente Hernandez et al, *supra* note 38 at 28 [our translation].

63 Under the generic term of “fragmentation of employment,” Flecker (2010) had proposed a matrix crossing the organizational/geographical location dimension (same/different) and that of the employer (same or single/different or multiple) to analyze the effects of the phenomena of cross-border relocation of work and flexibilisation of employment. See Jorg Flecker, “Fragmenting Labour: Organisational restructuring, employment relations and the dynamics of national regularity frameworks” (2010) 4:1 *Work Organisation, Labour & Globalisation* 8.

location of production (which is also the location of the work activity) and the employment relationship. The firm may either decentralize production (with work activity being carried out at several sites) or centralize it in the same worksite. Under each of these options, it may externalize or internalize the employment relationship. When we put these two dimensions together, four possible combinations are generated and the area of comparison varies (see Table 2). We will illustrate this model using examples from various empirical studies.

Our model also requires us to consider that decentralized fragments may or may not be different from those that are retained in-house, which means we must find appropriate ways of determining the value of these tasks. Because of the technical and social division of labour created by productive fragmentation, there is a strong possibility that the various labour segments mobilized by the various entities participating in the network may be performing either the same tasks, or tasks that are different but equivalent. “Equivalent work” means a work of equal or comparable value with respect to the criteria on which the job classes are evaluated under the *Pay Equity Act*,⁶⁴ namely the qualifications required, the responsibilities assumed, the efforts required, and the conditions under which the work is performed.

As a consequence, we need to be aware that hierarchical representations of tasks and trades, which are used to justify disparities and are sometimes expressed by the social actors themselves, are socially constructed.⁶⁵

64 *Pay Equity Act*, CQLR E-12.001 [*PEA*], s 57.

65 Jill Rubery’s conceptualization of skills deserves consideration. “Skill is not a set of objectively measured technical competencies, which can be distinguished according to the value they contribute to firm profitability, as argued by core competency theorists. Rather, skills are defined and determined via social and political processes. Equating skill with technical competence means that tacit skills and social capital — two dimensions of skill that are critical to the success of networked organisations — are overlooked.” See Batt & Applebaum (2017), *supra* note 47 at 74-75.

TABLE 2
An Analytical Model for the Analysis of Treatment Disparities

	<i>Work Activity Is Decentralized</i>	<i>Work Activity Is Centralized</i>
Employment Relationship Is Externalized	Quadrant 1 Subcontracting, independent work (genuine or false)	Quadrant 2 On-site independent work or subcontracting Agency workers
Employment Relationship Is Internalized	Quadrant 3 Production shifts to peripheral establishments	Quadrant 4 Typical and atypical salaried employees in direct employment situations

Quadrant 1 shows the combination of productive fragmentation and an externalized employment relationship (area of comparison: the network firm).

In cases where work is done outside the employment relationship and outside the lead establishment, disparities are externalized (workers do not have the same employer) and invisible (they are not in the same workplace). This invisibility is one of the goals that the fissuring of work tries to achieve: the issue of defining salaries, involving principles of equity, becomes instead an issue of input price.⁶⁶ Almost all of the examples of “fissuring” described by Weil are of this nature, including subcontracting, franchising, and value chains relying on several forms of externalization, including dependent self-employment. In the Québec poultry chain, D’Amours and Belzile found disparities in access to work (guaranteed hours) and in work conditions (wages, benefits) between employees involved in packaging poultry for the hub firm and employees doing the same

⁶⁶ See Weil, *Fissured Workplace*, *supra* note 56.

kind of work for the subcontracting firm.⁶⁷ In the Québec network providing home care for dependent persons, Boivin identified differences between public-sector employees and employees hired by social economy firms (as subcontractors) or employment agencies (also as subcontractors).⁶⁸ In chains providing educational daycare services for children, D'Amours (2015) and Bellemare (2020) found a number of differences between the employment conditions of early childhood educators providing services in facilities and those of educators providing services in their homes.⁶⁹ Such disparities also affect highly qualified workers such as freelance journalists and independent translators.⁷⁰

Externalized tasks may be different (externalization of specialized functions) or identical to those performed internally (salaried versus freelance journalists), or without being identical, they may involve the same level of competence (low-skilled workers in the poultry industry). In some cases, differences in treatment are justified by cryptic distinctions related less to different characteristics or skills than to the hierarchy between trades. In the chain providing care for seniors, this is the case for the hierarchy between care for the person

67 Cathy Belzile, "Travailler pour une entreprise sans y être lié par un contrat de travail. Analyse comparée de l'impact de diverses configurations de l'externalisation sur la relation et les conditions d'emploi" (Ph.D. dissertation, Faculté des sciences sociales, Université Laval, 2018); Martine D'Amours & Cathy Belzile, "La chaîne de valeurs du poulet au Québec: le segment de la transformation" (November 2019), *Les nouvelles configurations de la relation d'emploi et leurs impacts sur le travail, l'emploi et l'action collective* (Centre de recherche sur les innovations sociales), online: <<https://www.nouvellesconfigurations.rlt.ulaval.ca/etudes-de-cas>>.

68 Louise Boivin, "Régulation juridique du travail, pouvoir stratégique et précarisation des emplois dans les réseaux: trois études de cas sur les réseaux de services d'aide à domicile au Québec" (Ph.D. dissertation, Faculté des arts et des sciences, Université de Montréal, 2013).

69 Martine D'Amours, "Les travailleuses de la garde d'enfants en milieu familial: à l'intersection des rapports sociaux de travail, de sexe et de migration" (2015) 47:1 *Sociologie et Sociétés* 147; Guy Bellemare, "Le contexte des services de garde au Québec: vers une logique d'entreprise réseau hiérarchisée" (February 2020), *Les nouvelles configurations de la relation d'emploi et leurs impacts sur le travail, l'emploi et l'action collective* (Centre de recherche sur les innovations sociales), online: <<https://www.nouvellesconfigurations.rlt.ulaval.ca/etudes-de-cas>>.

70 See D'Amours (2013), *supra* note 53.

and assistance with daily living.⁷¹ Another example comes from the Québec poultry chain, where the fact that workers in peripheral or subcontracting factories are not involved in slaughtering (unlike workers in hub factories) is used to justify a huge wage difference between the two groups.

Quadrant 2 shows the combination of productive centralization and an externalized employment relationship (area of comparison: the establishment).

In cases where work is carried out on-site by agency workers or subcontractors (including self-employed workers), disparities are externalized (workers do not have the same employer) but visible (the activity is carried out in the same workplace).

Many studies focusing on agency employees have documented such differences in wage and employment conditions, notably Smith,⁷² for an information technology firm in the United States, Wills for housekeeping services in the United Kingdom,⁷³ Duchêne (2015) for the chemical and petrochemical industry in France,⁷⁴ Boivin (2013) and Yerochewski and Gagné (2017) for the care of elderly or vulnerable people in Québec.⁷⁵

Here again, agency workers may carry out the same tasks as in-house employees, or different tasks, or there may be a combination

71 Marie-Hélène Deshaies, “L’action publique québécoise à l’égard des personnes âgées vivant avec une incapacité: Une analyse sociologique des discours entourant le partage de la responsabilité des soins” (Ph.D. dissertation, Faculté des sciences sociales, Université Laval, 2018).

72 Vicki Smith, *Working in Restructured Workplaces: Challenges and New Directions for the Sociology of Work* (Thousand Oaks: Sage Publications, 2001) at 7-28.

73 Jane Wills, “Subcontracted Employment and its Challenge to Labor” (2009) 34:4 *Labor Studies Journal* 441.

74 François Duchêne, “La sous-traitance interne, ou l’injection d’une relation commerciale structurante dans la relation salariale” (2015) 13 *Travail Emploi Formation* 9.

75 Carole Yerochewski & Diane Gagné, “Quand le droit conforte les stratégies syndicales reproduisant les arrangements institutionnels sources de discrimination systémique” (2017) 72:3 *RI/IR* 551.

of the two models.⁷⁶ The firm studied by Smith, for instance, involved several different situations. In some departments, the organization of work did not create a separation between agency workers and permanent employees, who worked on the same teams; agency workers were not assigned to specific functions implying lesser qualifications or lesser responsibility, but performed a wide range of functions. In other departments, agency workers held deskilled positions and worked on an assembly line not shared with others. There was also an intermediate model.

In taking up and adapting Osterman's theory of employment systems, Lautsch studied the working conditions associated with four groups of temporary workers employed through placement agencies. Her findings confirmed her central hypothesis that the internal strengths of firms, and specifically their strategies related to flexibility, lead to atypical jobs that have different characteristics and produce different results. Thus, when managers call on a temporary labour force in order to reduce costs, the employees involved are likely to be relegated to peripheral tasks associated with work conditions that are inferior to those of typical employees. By contrast, if the goal is to respond to peak demand or to develop new products within a short period of time, temporary employees are more likely to be given the same tasks as regular employees, and to benefit from conditions closer to theirs.⁷⁷

Quadrant 3 shows the combination of productive fragmentation and an internalized employment relationship (area of comparison: the firm).

In cases where production is fragmented between main and peripheral establishments that are owned by a single firm (either directly or through subsidiaries), disparities are internalized (workers have the same employer) but are not always visible (since workers do not

76 Kristina Håkansson & Tommy Isidorsson, "Work Organizational Outcomes of the Use of Temporary Agency Workers" (2012) 33:4 *Organization Studies* 487; Jill Rubery, Mick Marchington, Damian Grimshaw, Marilyn Carroll & Sarah Pass, "Employed under different rules: the complexities of working across organizational boundaries" (2009) 2 *Cambridge Journal of Regions, Economy & Society* 413.

77 Brenda A Lautsch, "Uncovering and Explaining Variance in the Features and Outcomes of Contingent Work" (2002) 56:1 *Indus & Lab Rel Rev* 23.

have the same workplace, the same union, or the same collective agreement).

In the case of the Québec poultry chain, an analysis of collective agreements, and a complementary analysis of job offers posted on websites, enabled Belzile to identify disparities between various establishments owned by the same employer, some of which performed the slaughtering and initial processing of poultry, while others were in charge of further processing.⁷⁸ Work and employment conditions were much better in the first group than in the second, and the differences could not be explained by the value added to the final product, since the peripheral factories in charge of further processing actually added more value than the central factories. Treatment disparities were justified by the fact that the establishments were specialized (slaughter and initial processing versus further processing) and did not have the same reference market, but worker skill levels were very similar. In fact, workers in peripheral establishments had to be much more versatile than those in the central establishments, since they might be assigned to a variety of operations.

Quadrant 4 shows the combination of productive centralization and an internalized employment relationship (area of comparison: the establishment).

When atypical employees hired directly by the firm (to provide part-time, temporary, occasional, supernumerary or other forms of labour) do not benefit from the same employment conditions as regular employees, treatment disparities are both internalized (they may be more or less significant depending on union strategy and the nature of the compromise negotiated with the employer) and visible.

At the level of the establishment,⁷⁹ two types of disparity are possible. The first type derives from the fact that some employment statuses are excluded from the application of collective agreements. A significant number of collective agreements concluded under the Québec *Labour Code* exclude regular part-time employees and temporary employees. Between 2003 and 2015, exclusion of part-time employees in collective agreements filed with the Ministry of Labour

78 See Belzile (2018), *supra* note 67.

79 We focus here on unionized workplaces, in which disparities are more easily identified. Ethnographic-style field studies would be required to identify and measure disparities in non-unionized workplaces.

fell (from 61.9% to 55.8% of employees, and from 58.7% to 51.6% of collective agreements), while the exclusion of temporary employees rose slightly (from 54.3% to 56.8% of employees, and from 55.5% to 58.5% of collective agreements). Meanwhile, 85.4% of collective agreements, which affect 86.4% of student employees, do not contain any provision regarding student employees.⁸⁰

The second type of disparity is related to the fact that collective agreements that do incorporate atypical employees may give them only partial protection (in 2015, this was the case for 31.6% of collective agreements for part-time employees and 41.3% of collective agreements for temporary employees⁸¹) or may give them conditions less favourable than those enjoyed by permanent (regular) employees holding full-time positions. This phenomenon was already documented in studies carried out in the late 1990s.⁸² Bernier's study (2007) of 156 private-sector collective agreements⁸³ showed that treatment disparities according to employment status affected the accumulation and application of seniority first and foremost (seniority being a key principle to access various benefits and one that is used everywhere to determine how to choose between several employees in a position to claim the same benefit). At the same time, they also affected access to grievance procedures, wages, entitlement to paid leave and social benefits, eligibility for overtime, rules about how overtime was paid, etc.⁸⁴

These atypical employees often carry out the same tasks as regular employees, particularly when their function is to replace regular employees who are on vacation or on leave. However, the atypical

80 Figures calculated by the author on the basis of data from the Ministry of Labour of Québec: "Portrait statistique des conventions collectives en vigueur analysées au Québec en 2015" (2017); and "Portrait statistique des conventions collectives en vigueur analysées au Québec en 2003" (2005).

81 Figures calculated by the author on the basis of data from the Ministry of Labour.

82 See Jean Bernier, Guylaine Vallée & Carol Jobin, *supra* note 1; See Vallée (1999), *supra* note 13.

83 The collective agreements, each one applying to at least 75 employees, had been filed in 2004 with the Québec Labour Relations Commission. They covered a total of 34,307 employees in five sectors of activity known to make significant use of atypical workers: hotels and restaurants, large food retailers, other retailers, manufacturing, and municipalities. Bernier (2007), *supra* note 13 at 4.

84 See Bernier (2007), *supra* note 13.

employees may be excluded from more prestigious functions that require longer training and are consequently better paid.

A single hub firm may appear in several quadrants. In the poultry processing industry, for instance, hub firms studied by D'Amours and Belzile owned central factories (slaughterhouses) and peripheral factories (further processing) in which workers had inferior conditions (quadrant 3); in a subcontracting factory, workers carried out the same tasks and had working conditions similar to those prevailing in the peripheral factory (quadrant 1), but there were significant differences in terms of wages and social protection; meanwhile, in their central factories, the hub firms hired atypical employees (quadrant 4) as well as agency workers (quadrant 2), whose conditions were significantly inferior to those of regular employees.⁸⁵ In her doctoral thesis, Belzile minutely analyzed the differences in work and employment conditions for workers in the various types of factories and for various types of status.

We will now assess the impact, within each quadrant, of legislative tools intended to fight treatment disparities according to employment status (see Table 1).

Under Québec law as it now stands, productive fragmentation combined with an externalized employment relationship (quadrant 1) puts disparities beyond the reach of the *Act respecting labour standards*. When there is productive fragmentation without an externalized employment relationship (quadrant 3), disparities are also beyond the reach of the Act to the extent that the comparator is an employee working in the same establishment. In both of these scenarios, the division of labour between various firms or establishments involves tasks and qualifications that are sometimes different, but sometimes equivalent or related — Wial uses the term “loose coupling of jobs” to describe this kind of relationship between jobs calling for the same qualifications or skills.⁸⁶

Only disparities between typical and atypical employees carrying out the same tasks within the same establishment (quadrant 2 for agency employees and quadrant 4) would be affected by the new provisions added to the *ALS*, and even then, only disparities regarding

85 See D'Amours & Belzile, *supra* note 67.

86 Howard Wial, “The Emerging Organizational Structure of Unionism in Low-Wage Services” (1993) 45 *Rutgers L Rev* 671.

wages (for all employment statuses) and annual leave (for all statuses, except agency workers) would be forbidden. It is therefore highly likely that despite these changes to the Act, disparities according to employment status will not disappear, since firms can get around the ban simply by assigning typical and atypical employees to different tasks or to relocate these tasks in a different establishment.

Turning to the ILO Convention on Part-Time Work (C175), we find that the comparison may include a worker “engaged in the same or a similar type of work or occupation.” The use of the word *similar* would make it possible to limit the effect of segmentation; however, we would still need to know the meaning given to this word by laws and jurisprudence. In the Convention, the basis for comparison is the establishment, but if there are no full-time workers in the establishment, it is possible to move up to the firm or even the activity branch. The employer, of course, can always create full-time jobs within the establishment in order to avoid any wider comparison.

By contrast, under European Union Council directives on part-time or fixed-term work, it would be possible to compare the conditions applying to an atypical employee with those applying to a typical worker “engaged in the same or similar work/occupation, due regard being given to qualifications/skills.” However, there is a risk that this potential widening may be compromised by the tendency to establish a hierarchy among skills, following a set of rules constituting an obstacle to the recognition of jobs described as low-skilled and the enhancement of their value.⁸⁷ Like the ILO Convention on Part-Time Work, the European directives define the establishment as the basis for comparison, but if there are no full-time workers in the establishment, comparisons can be made at the level of the firm or even the activity branch. Therefore, we must conclude that these legislative tools are unable to fight treatment disparities in value chains and network firms, even though they open the door to two wider comparisons (from the same task to a similar task, and from the establishment to the firm and the sector).

It becomes apparent that we must broaden our definition of treatment disparities to take into consideration the social division of

87 Didier Demazière & Emmanuelle Marchal, “La fabrication du travail non qualifié. Analyse des obstacles à la valorisation” (2018) 3-4:155-156 *Travail et employé* 5.

labour within the network firm — an organization that often assigns groups of workers to tasks that are different but may be equivalent, i.e. of equal or comparable value.

We therefore suggest the following definition: treatment disparities refer to the position of workers in the hierarchy of employment statuses and interfirm relations within a network firm, and to their position within the segmentation of tasks often associated with this hierarchy. In our view, there is disparity of treatment when groups of workers doing the same or equivalent work within the same network firm are given different employment conditions.

6. CONCLUSION

In the value chain or network firm, what we see are disparities in work and employment conditions *according to workers' positions in the hierarchy of employment statuses and interfirm relations, and in the hierarchy of tasks, trades and occupations often associated with this hierarchy*. The concept (or idea) of treatment disparities seems highly appropriate for the study of the employment conditions differential in these configurations, because it provides an organizing principle with which to review the literature on various aspects of the “social question” — poverty, precarity, disparities — within the network firm.

To understand the phenomenon of treatment disparities, it is necessary to address fragmentation/centralization of the productive activity and externalization/internalization of the employment relation. We therefore identify three levels⁸⁸ of treatment disparities:

- (a) at the level of the establishment: between regular employees and others, whether or not they are hired by the firm;
- (b) at the level of the firm: between establishments assigned to various segments within the division of labour; and
- (c) at the level of the value chain or network: between hub firms and their subcontractors.

88 Belzile compared working and employment conditions at these three levels in her doctoral dissertation on the poultry chain in Quebec: *supra* note 67.

Our work suggests that, because workers employed by the various entities making up the network or value chain may perform equivalent work even when if they do not perform the same work, the principle of equal pay for equivalent work, set out as early as 1975 in section 19 of the Québec *Charter of Human Rights and Freedoms*,⁸⁹ should be given concrete expression beyond the establishment. Precisely in order to “redress differences in compensation due to systemic gender discrimination,” the Québec *Pay Equity Act* compares predominantly female and predominantly male jobs that are deemed equivalent, according to recognized criteria for assessing jobs: qualifications, responsibilities, effort, and working conditions. However, this comparison is currently limited to the enterprise level, and can be extended beyond only if there are no predominantly male job classes in the enterprise.⁹⁰

Our analysis also suggests that anti-discrimination laws will not be sufficient to counteract all treatment disparities. The literature currently provides multiple indications that members of the labour force belonging to groups that experience discrimination (such as women or racialized minorities) are also those who have the lowest employment statuses and positions within firms, value chains and network firms. The concept of treatment disparities is compatible with the notions of intersectionality⁹¹ or consubstantiality⁹² of social relations, and should be used along with them in research and policy-making.

Our contribution has two notable limitations. The first is that it deals with domestic chains or networks (located within a single jurisdiction) at a time when value chains and network firms are deployed at the global level and are built on enormous treatment disparities between countries and jurisdictions. The model can first be tested and criticized as it applies to one jurisdiction, and this can provide

89 “Every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place”: *CHRF supra* note 6, s 19.

90 *PEA, supra* note 64, s 1.

91 Kimberle Crenshaw, “Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics” (1989) 1 *University of Chicago Legal Forum* 139.

92 Danièle Kergoat, “Dynamique et consubstantialité des rapports sociaux” in Elsa Dorlin, ed, *Sexe, race, classe, pour une épistémologie de la domination* (Paris: PUF, 2009) 111.

a starting-point to develop a more complex model involving multiple levels of analysis that would include the supranational level. Secondly, our study was limited to the analysis of certain Québec laws, an ILO convention and a few European Union directives. The analysis could be usefully extended through study of case law, which would make it possible to identify the evolution of the interpretation of the law by the courts.