

Narratives on Working Hours: An Analysis of “Pioneer” Brokering Agencies for Live-in Care Work in Germany

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Narratives on Working Hours: An Analysis of “Pioneer” Brokering Agencies for Live-in Care Work in Germany. In the “gray market” for live-in care work in Germany, brokering agencies are playing an increasingly important role in shaping working conditions. Drawing on six expert interviews with “pioneer” brokering agencies, this article centers on these agencies’ narratives on working hours. The analysis reveals that these agencies’ understanding of working hours is contradictory: working hours are either referred to as a fixed, intersubjectively measurable category or as a subjective phenomenon, leaving scope for divergent opinions. These perspectives are evident in the assumption of an (in)separability of working and leisure time, and in the understanding of leisure time as a personal need or a valid demand. In this context, constructing working hours as a subjective category thus functions as a legitimization narrative for extensive working hours. These findings are connected to the contradictory interpellations of live-in care workers, such as “fictive kin” and “manager of the self”, and to the underlying understandings of work. *Sociología* 2021, Vol. 53 (No. 5: 463-482)
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Introduction

In the wake of the current Covid-19 pandemic, brokering agencies have become increasingly visible in public discourse in Germany (Habel – Tschenker 2020)². In the media, they have highlighted the problem of a potential shortage of live-in carers in domestic care due to border policies and called for live-in care workers’ entry into the country to be facilitated; within the agencies themselves, live-in carers have been asked to extend their rotas, which often lengthened the amount of time spent working extensive hours to several weeks or months (ibid.). The extensive media coverage revealed the agencies’ importance as influential agents in the care market in Germany.

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Moreover, this extension of rotas highlighted the important role played by the agencies in the working conditions of live-in carers.

But brokering agencies played an important role in the German live-in care market even prior to the pandemic. As this market is sparsely regulated and lacks clear legal regulations and control, brokering agencies have considerable leeway to interpret the framework of this “gray market” (Rossow – Leiber 2019). In empirical research, the working conditions of live-in carers in Germany have been identified as precarious - above all due to the extensive working hours (Karakayali 2010; Satola 2015). As brokering agencies play such an important role in shaping working conditions, this paper aims at analyzing these agencies’ narratives regarding working hours. To this end, the paper focuses on a specific group of brokering agencies, the so-called “pioneers” (Leiber et al. 2019). These agencies take a proactive critical stance on the unclear legal situation and shape the market either through political lobbying or by virtue of their size. Most of them are highly active members of trade associations and aim to change the negative image of the migrant live-in care sector. The article starts by providing an overview of how live-in care arrangements are organized in the German “gray market” and the role of brokering agencies in this market. Second, based on six expert interviews with representatives of “pioneer” brokering agencies, the role of these agencies in the German care market is developed. Third, drawing on the interviews, the agencies’ narratives on working hours are analyzed. Fourth, the article expands on these findings by linking them to different theoretical approaches and contradictory interpellations of live-in care workers, and by highlighting different underlying understandings of work. Fifth and finally, the paper closes with a short summary.

Brokering agencies and the “gray market” in Germany

Live-in care work arrangements in Germany mostly involve female migrant care workers from Central and Eastern Europe undertaking domestic work, care work, and basic nursing for elderly care recipients. There are estimated to be between 300,000 (Stiftung Warentest 2017: 88) and 600,000 live-in carers (Lutz 2018: 29) working in German households. Consequently, even taking a low estimate, live-in care workers perform one-quarter of all paid care work in Germany (Emunds 2019: 155). Globally, working conditions in live-in care work do not meet standards of decent work (Anderson – Shutes 2014). Moreover, it is striking that in a wealthy state such as Germany, migrant live-in care workers face precarious working conditions including extensive working hours and an expectation of continuous availability (Karakayali 2010; Satola 2015). Instead of having clear working hours and free time, there are often no limits to the time worked in the shared living situation. A certain continuity can

be traced to historical servants in Germany, who always had to be on duty, had to ask for permission to leave the house, and for whom there was no distinction between working time and leisure time (Scheiwe 2014). Consequently, Lutz (2011) refers to live-in care workers as “the new maids” and Parreñas (2001) calls them the “servants of globalization”³. Since historically, labor law protection did not apply to servants, today domestic work is still not clearly regularized. A landmark for domestic workers is the ILO’s Domestic Workers Convention, 2011 (No. 189), which was ratified by Germany in 2013, coming into force in 2014. The Convention, which aims at protecting domestic workers and enabling decent working conditions, treats domestic work as equal to other forms of labor (Böning 2015; ILO 2011; Scheiwe 2015). The Convention demands the implementation of minimum working conditions and social security for domestic workers and the protection of their human rights. Specifically, it includes rights to maximum working hours, fixed leisure time, and vacation. However, Germany adopts the exemption rule in Art. 2(ii), around which there is an ongoing debate as to whether this should also be applied to live-in carers⁴. Consequently, this form of work is not clearly regulated by German law, because live-in carers are either not specifically addressed or possibly even excluded from the relevant law (Leiber et al. 2019). This political inaction and silence regarding the situation of live-in care workers is considered a “complicity” of the German state (Lutz – Palenga-Möllenbeck 2010), which relies on private care support provided by cheap migrant labor. Moreover, in empirical practice, many employees neglect the provisions of the Working Hours Act. It can therefore be argued that live-in care work is marked by an “inadequate legislation and bad practice” (Scheiwe 2014: 81; author’s translation). That said, recently a Bulgarian live-in care worker did successfully manage to take her case to a labor court to secure payment for all her working hours (Faire Mobilität 2020). This case reveals that it is possible for live-in carers to use the law as a tool for defending their rights.

While most live-in care work is believed to be organized as irregular work, it is also increasingly being mediated by brokering agencies. When the

³ Parreñas’ (2001) term “servants of globalization” refers to a wider group of domestic workers, because she includes not only live-in carers in elderly care in her sample, but also other types of domestic work (housecleaning and childcare), as well as live-in carers and live-out carers (ibid.: 18).

⁴ The exemption, which is also part of the German Working Hours Act, includes employees who live in a common household with their clients and nurture, care for, or guide them autonomously (Section 18 para. 1 p. 3 ArbZG (*Arbeitszeitgesetz*)) (Böning 2015). This paragraph, which was established to address the situation of parents in SOS Children’s Villages excludes these employees from the protection of the Working Hours Act. It is generally argued that this exemption does not apply to live-in carers, because their employment cannot be regarded as “autonomous” work and because they do not share a household (including a shared budget, for instance) with their clients (Bucher 2018: 115; Scheiwe 2014; Scheiwe 2015). The exception is therefore considered to be a “lex SOS-Kinderdorfmutter” (Scheiwe 2014: 72), which applies specifically to this form of employment.

agencies entered the live-in care market, what was once a “black market” became a “gray market” (Leiber et al. 2020; Rossow – Leiber 2019). The term “gray market” indicates that the different actors – households of care recipients and brokering agencies – refer to a legal framework, but do not comply with the law entirely (Rossow – Leiber 2019). Consequently, there is a gray area between the so-called “black market” and legal practices. In the German “gray market”, the agencies employ three different legal models: employer-employee relationship, self-employment, and “posting”⁵. The posting model is the most frequent one and the self-employment model, too, is becoming increasingly popular, whereas the families of care recipients rarely opt for the employer-employee relationship model due to the bureaucratic effort (ibid.). The three different models bring different legal problems and often rely on a lack of oversight. One of the main problems – specifically for the employer-employee relationship model and the posting model – is the breach of working time limits (Bucher 2018). Due to a lack of oversight and gaps in legislation, brokering agencies de facto have the power to define working conditions.

Brokering agencies have become important actors in the “gray market” in Germany. According to the German Stiftung Warentest (2017: 88), the number of brokering agencies in Germany increased from 60 to 266 between the years of 2009 and 2016. Other research evidence suggests that there may be even more agencies than this: for example, Steiner et al (2019: 5) analyze brokering agencies offering their services in various locations in the city of Frankfurt am Main and identify 337 agencies in 2017. Rossow, Matuszczyk, and Leiber (2019: 375) name 274 German brokering agencies and 225 Polish brokering agencies engaged in posting to Germany.

With regard to the agencies’ impact on working conditions, empirical research shows that brokering agencies generally ignore labor law protection and use live-in carers as a vulnerable labor force, to increase their own profits (Bachinger 2016; Schilliger – Schiling 2017). In light of this, self-organized migrant protests for decent live-in care work specifically target brokering agencies (Schilliger – Schiling 2017). Further, recent research has focused on the analysis of the agencies’ narratives (Lutz – Benazha 2021; Palenga-Möllenbeck 2021; Schwiter et al. 2014; Steiner et al. 2019). These studies analyze how the agencies distance themselves from accusations of exploitative

⁵ In the employer-employee relationship model, the live-in carer serves as an employee in the care recipient’s household, with the latter acting as the employer. In the posting model, the live-in carer is hired by the foreign brokering agency as the employer and is obliged to undertake care work for the family via a contract. As social security contributions are lower in the sending countries, the aim of this model is to offer live-in care work at a lower price. In the self-employment model, the live-in carer works as a freelancer, while the brokering agency is only responsible for the placement process. In this model, it is possible to circumvent German labor law provisions pertaining to working hours and the minimum wage, because they do not apply to freelance workers (Bucher 2018). However, as Bucher (2018: 138f.) argues, live-in care work lacks the distinctive characteristics required to be classified as self-employment, which is why the risk of “bogus” self-employment can be seen as immanent to live-in care work.

and unfair business practices and construct this form of employment as a legitimate practice despite its precarious working conditions. This body of research identifies legality as one dominant narrative (Steiner et al. 2019). By referring to laws, certificates, and contracts, brokers present their offer as a legal alternative and distance themselves from other allegedly exploitative agencies. They highlight the legal character of their businesses in order to create legitimacy. Moreover, by focusing on legality, the agencies manage to remain silent on the issues of working conditions and dimensions of power inequality. However, due to the unclear legal situation, legal conformity does not guarantee decent working conditions (ibid.). Moreover, the motif of legality has been classified as part of the overarching narrative of social security (Palenga-Möllenneck 2021). This narrative also helps the agencies to differentiate themselves from other agencies and from the informal market. Within this narrative, besides the legality of their services, the agencies highlight their professionalism, fair wages, reliability of information, stable employment, and social rights (ibid.). Thus, live-in care is constructed as a “win-win situation” for the households and the care workers alike, which enables the agencies to construct themselves as benevolent actors in the care market (see also Schwiter et al. 2014). However, the narrative of social security stands in stark contrast to the lack of provision of such security in reality, for instance in the agencies’ working contracts (Palenga-Möllenneck 2021). Furthermore, other studies also analyze agencies’ narratives with regard to the legitimization of working hours. With these narratives, brokers normalize live-in care work, depicting it as a job like any other with a contract stipulating a working day of five to nine hours. At the same time, however, they construct live-in care work as a special case, in which working time and leisure time are individually arranged and interpreted according to the client’s needs (Schwiter et al. 2014). Moreover, agencies redefine working time as “shared leisure time”, even though the live-in carer’s presence is expected (Schwiter et al. 2014; Lutz – Benazha 2021). Consequently, what can be considered leisure or working time depends on the care recipient’s needs. The fact that the live-in carer might spend their leisure time in a way that differs from their expectations, such as watching a movie with the care recipient, is overlooked (Lutz – Benazha 2021). This reveals a clear hierarchy between the care recipient and live-in care worker. Despite the narrative of an idyllic shared life, the live-in carer is still living in someone else’s life (ibid.). Thus, the analyses of the agencies’ narratives revealed various different ways of legitimizing precarious working conditions in live-in care work.

This article follows this critical research on the agencies’ narratives with a focus on a specific group of brokering agencies. Leiber, Matuszczyk, and Rossow (2019) develop the typology of brokering agencies as “pioneers”,

“minimum effort players”, and “followers”. “Pioneers” demonstrate a “proactive creative will and action to change the current environment of the sector” (ibid.: 382), for instance through political lobbying and minimum standards of self-regulation, whereas “minimum effort players” try to offer the lowest price and make the least possible effort when it comes to legal compliance. “Followers” engage in political lobbying and the implementation of quality standards as well, but – unlike “pioneers” – do not set the agenda. The authors show that a minority of the brokering agencies (“pioneers” and “followers”) strategically engage in the public debate and in forms of self-regulation, while most of the brokering agencies (“minimum effort players”) do not. Consequently, they summarize: “Thus, from a political perspective – concerning decent working conditions for domestic migrant care workers as well as high quality services for elderly people – these results should not be read too quickly as a reassurance that such conditions will improve through corporate approaches alone” (ibid: 387). They are therefore skeptical whether the “pioneers” efforts to self-regulate have the potential to improve working conditions, which is also one of the questions this paper seeks to address.

The article is based on six qualitative expert interviews conducted with representatives of private brokering agencies and welfare organizations. In regard to our sample, the article refers to the aforementioned typology (Leiber et al. 2019), but specific changes were made to the original typology’s sample. Our sample therefore differs from that of the typology, with the three most important differences as follows: first, the typology only includes micro and small brokering agencies (ibid.: 380), whereas our sample also includes agencies of medium size and larger. Second, the typology focuses exclusively on private for-profit agencies (ibid.: 373), while our sample includes nonprofit welfare associations as well. In Germany, welfare organizations also play a part in shaping the conditions of live-in care work and are active in brokering (see also Benazha et al. 2021), which is the reason why we included them in our sample. Third, the typology deals exclusively with German agencies (ibid.), whereas our sample also includes agencies based in other countries, which offer posting in Germany.

Despite these differences, in our view the typology is a very helpful tool for describing the specific features of our sample, as all the brokering agencies interviewed show characteristics of the “pioneers”. This includes the following features: The agencies in our sample take a proactive critical stance on the unclear legal situation of the “gray market” and thus pursue a risky strategy due to this exposure. The brokering agencies shape the market either through political lobbying or by virtue of their size. Most of them are proactive members of trade associations and aim to change the environment and the negative image of the live-in sector. They want to be perceived as professional,

legal service providers. Moreover, they actively engage in implementing quality standards and employ different forms of self-regulation. For instance, they provide framework conditions for working hours (such as the inclusion of other actors in the care tasks). Based on these characteristics, the brokering agencies and welfare organizations chosen for the interviews are referred to as “pioneer” agencies.

The experts we interviewed included executive directors of brokering agencies, brokering model experts, legal advisors, and project coordinators, all of whom work for a brokering agency or welfare organization. The agencies chosen for the interviews cover different models: two of them offer the employer-employee relationship, two of them offer the self-employment model, and the remaining two the posting model. The agencies range in size – while some only offer their services in a specific region in Germany, other agencies offer services in several posting countries and countries of origin.

Some of the agencies have already had contact with the research institutes of this project as part of previous projects; some were approached in the context of a meeting of a research network; some were found online and contacted. When contacting the agencies, we addressed them as “best practice” agencies and “pioneers” of the brokering market, which actively shape the market and promote themselves as offering a better model. The agencies were therefore aware that we were analyzing only a small share of the field of brokering agencies. Moreover, they were informed that our aim was to analyze how they organize working hours and they received the description of the project on the website of the project’s funding foundation. They were thus aware that our interest was in their organization of working hours, of which their understanding of the concept of working hours is one aspect⁶. The six guided expert interviews (Kaiser 2014) were conducted in March and April 2020 via Skype, as in-person meetings were not possible due to the Covid-19 pandemic. The interviews lasted between one and three hours. The interviews were recorded, transcribed verbatim using F4 software, and analyzed using qualitative content analysis with MAXQDA software (Kuckartz – Rädiker 2019).

Despite the lack of a reliable quantification of their typology, Leiber, Matuszczyk, and Rossow (2019: 379) indicate that the vast majority of brokering agencies belong to the “minimum effort players”. “Pioneers”, in contrast, only make up a very small share of the vast market of brokering agencies in Germany, which is partly visible from the membership in trade

⁶ To explore the organization of working hours by “pioneer” agencies, the agencies’ contracts and their framework conditions for working hours were analyzed. For instance, the inclusion of other actors in the care tasks, intervention in the event of a breach of working hours, and contact persons for live-in carers were all examined. The analysis of the organization of working hours through framework conditions will be published later this year in Habel/Tschenker (2021, forthcoming).

associations (Leiber et al. 2019; Rossow – Leiber 2017; Leiber et al. 2020). Given the small share of brokering agencies being called “pioneers”, six interviews is a relatively large number and certainly enough to provide us with important insights. This is particularly the case, since the group of “pioneers” is a highly influential group of brokering agencies with the ability to shape the market through political lobbying or by virtue of their size. These aspects will be developed further in the following with explicit reference to the interviews themselves.

The role of “pioneer” brokering agencies

“Pioneer” agencies can be considered important actors in live-in care work in Germany. Many “pioneers” are actively engaged in political lobbying and are proactive members of trade associations (Benazha et al. 2021; Leiber et al. 2019; Leiber et al. 2020; Rossow – Leiber 2017). As the “gray market” in Germany is sparsely regulated, “pioneer” brokering agencies are critical of the unclear situation in the market and seek to participate in political processes of regulation. As members of trade associations, they aim at influencing the political sphere and promoting an institutionalization of the sector from below (Benazha – Lutz 2019; Benazha et al. 2021). In the following, I elaborate on the distinctiveness of “pioneer” brokering agencies and their importance for the German “gray market”.

In the interviews, some of the “pioneers” talk about their political strategies and aims. One of the agency representatives emphasizes the aim of achieving the status of a “*legally accepted pillar*”⁷ for live-in care work. Therefore, as this broker highlights, the agencies strongly support any form of legal regulation: “[W]e don’t care what this regulation looks like. Whether it’s the self-employment model, or whether it’s the posting model, or whether it’s a completely new model. We want a legally clear, legally secure model, according to which live-in carers have a status and the agencies have a legal framework, within which they have to act and that they can say with certainty: OK, no one is going to crack down on them tomorrow”. Despite this declared support for any form of regulation, several agencies name the Austrian self-employment model⁸ as the ideal model. The reference to the Austrian model reveals that some agencies’ idea of regulation includes undermining labor law standards and defining live-in care work as an exception. The challenge of complying with legal standards of working hours in live-in care work was to be

⁷ All interviews were conducted in German and translated by the author for this article.

⁸ In Austria, the migrant live-in care work sector was regulated by establishing the self-employment model as the standard model in 2007. As self-employment is exempted from regulations of maximum working hours, this form of regulation made it legal to exceed maximum working hours in live-in care work. Therefore, the regulation mainly served the interests of the agencies and the households of care recipients (Bachinger 2016).

solved by defining live-in care work as self-employment, thus exempting it from working time regulations. As one of the brokers says: *“the problem is the working hours, this problem cannot be solved in domestic care work. We have to adapt the working time regulation to this system. This is what I expect to happen”*. Thus, the agencies aim at a form of regulation and a legal framework, which allow them to continue their business in certainty. Consequently, some of the brokers support a form of regulation according to which legal standards of maximum working hours do not apply to live-in care work.

Different agencies refer to meetings with the Federal Ministry of Health conducted to help them achieve these aims: *“[W]e have several demands we would like to put to the political actors and we have already had the opportunity to talk to Jens Spahn [German Minister of Health] about them, and we are continuing to work on this”*. Another broker also describes the agencies’ connections with different German ministries: *“But, you know, Mr. Spahn said: ‘Guys, I am in favor, no problem. Over there, that’s the Ministry of Labour.’ And then we went across to the Ministry of Labour and they said: ‘All of this is illegal’”*. According to this broker, the Federal Ministry of Health does not oppose the agencies’ demands, but the Federal Ministry of Labour does, because it regards live-in care work as illegal due to the exceedance of working hours. Some of the “pioneer” agencies – which are organized in trade associations – therefore seem to have strong links to the Ministry of Health and are attempting to develop relationships with other ministries and political actors as well.

“Pioneer” agencies have played a particularly important role during the Covid-19 crisis because of their strong ties with the Federal Ministry of Health. As one of the brokers says: *“For instance, the Ministry of Health asked us [a trade association of brokering agencies] [...] and said: ‘We know about the problem of Eastern European live-in carers, that they sometimes cannot cross the border, especially the illegal ones, [...] because they do not have the permit for entry [“Passierschein”]. How may we help you?’”*. According to this broker, the Ministry of Health actively approached the trade association of brokering agencies to offer support. Another broker also highlighted that *“through our communication with the Ministry of Health and the Ministry of the Interior, we managed to secure exceptions for commuters and for workers who play an important role in the preservation of health so that they don’t need to quarantine”*. This broker also mentioned the trade associations’ *“direct line to the Ministry of Health”*. Consequently, during the Covid-19 pandemic, these trade associations of brokering agencies have been in close contact with different German ministries and have successfully championed their cause, for instance in regard to quarantine regulations. The close ties the “pioneer”

agencies had with important political actors, such as the Federal Ministry of Health, thus became more visible and even closer during the Covid-19 crisis.

In short, this analysis of the agencies' strategies, aims, and their role during the Covid-19 pandemic shows that they are important actors in the "gray market" in Germany. Although they only make up a small share of the brokering market, they are very influential actors due to their political lobbying and strong ties to different German ministries. The "pioneer" agencies seek to promote a regulation of the market, which would give them some certainty for the continuation of their business. Moreover, some of the brokers support a form of regulation that might enable them to circumvent the legal regulations on maximum working hours, which is also revealed in the comment by the German Ministry of Labour. During the Covid-19 pandemic, the agencies could rely on their connections with the political sphere and even deepen these ties. With this in mind, the following analysis will be centered on the "pioneer" agencies as influential actors in the German "gray market", with a particular focus on their narratives on working hours, the latter being one of the main challenges in live-in care work.

The agencies' narratives on working hours

The analysis of the brokering agencies' narratives on working hours shows two main results: First, the narratives turn out to be contradictory. On the one hand, the agencies present a clear definition of working time; on the other, they oppose the idea of working hours being intersubjectively measured, instead constructing working hours as a subjective category. Second, this construction of working hours as a subjective category can be regarded as a central legitimation narrative for extensive working hours. Classifying working time as dependent on subjective assessment makes clear rules and regulations on working hours impossible. Moreover, the topic of working hours as a subjective concept is strongly connected to a shift of responsibility toward the live-in care worker who is considered to be in charge of organizing her⁹ working time and finding her own individual work-life balance. These findings are presented along the two central constructions: an (in)separability of working hours and leisure time, and the understanding of leisure time as a subjective need or as a legitimate demand.

First, some brokers assume that working time and leisure time cannot be separated. One of the brokers asks, for instance: "*They live in a shared flat, so when it comes to the preparation of meals or watching television, is it working time or is it not working time?*". The shared living situation is thus used to

⁹ In order to underline the fact that live-in care work is mainly done by women, the female pronoun is used when referring to live-in carers in this article.

make the argument that working time and leisure time overlap and cannot be separated. One of the brokers argues that leisure activities that the live-in carer and care recipient engage in together cannot be regarded as working time. The broker explains: “*Many of them [live-in carers] think that ‘when I am having a cup of coffee with grandma I am working’, which is not the case. Unfortunately, they have to draw a distinction. [...] In my opinion, whether a live-in carer is having a cup of coffee on the terrace on her own or whether grandma is sitting next to her, these situations are similar. But basically, she is not working for me at this point*”. As this quote reveals, in this narrative, leisure activities, such as drinking coffee *with* the care recipient, are not regarded as working time. Consequently, the live-in carer’s continuous attendance and responsiveness—as well as her time on standby – are not considered working time.

Further, the supposed inseparability of working time and leisure time is linked to the difficulty of measuring working time. As one broker says: “*We don’t have a camera, we don’t make video recordings, we don’t have a stopwatch, which is why [...] in this kind of job, we will never know, whether something is actually work or not. It is entangled somehow*”. In this broker’s narrative, the lack of instruments of measurement is used to support the assumption that working time and leisure time are intertwined and inseparable. Commenting on the topic of measuring working time with an App, another broker says: “*Both of them [live-in carer and care recipient] have to agree that what is happening is really working time. It is no help if the live-in carer just presses the button, but doesn’t do anything, and that’s the question here: how do they agree on this?*”. In this understanding, there can be divergent opinions on the question of whether something can be counted as working time or not. Consequently, working time is interpreted as a subjective category, which cannot be precisely or intersubjectively determined and measured.

In contrast, there is also the opposite narrative – partly even heard from the same brokers – that working time and leisure time *can* be clearly separated. In this understanding, when the live-in carer is told to stay in the household and is on standby, it is considered working time: “*Free time, of course, means that she [the live-in carer] is genuinely released from her duties and is not sitting in the room next door on standby [...] and is then interrupted because the care recipient wants something. But there has to be someone else who takes on these tasks during that time*”. Leisure time has to be off duty and the live-in carer being in attendance is regarded as working time. Consequently, the narratives on the supposed (in)separability of working time and leisure time are contradictory.

Second, in some of the brokers’ narratives, leisure time is constructed as an individual preference and need, which different live-in carers fulfill in different

ways. One of the brokers conveys that some live-in carers do not have any interest in leisure time: *“There are live-in carers who attach no value to compensatory time off, because they say ‘my situation is no different from being at home, I don’t feel like an employee, I feel like a family member’”*¹⁰. Moreover, some of the brokers assume that leisure time is a personal need that varies strongly across different live-in carers. It is thus the live-in carer’s job to find her individual balance, as another broker describes: *“How do I feel comfortable? When am I being exploited? Where are my boundaries? When is it normal working time and do I have enough time to relax?”*. According to this broker, the amount of leisure time the live-in carer needs depends on her personal feeling of well-being, her individual balance, and her own specific boundaries; not, for instance, on what the legislation says about maximum working hours. Therefore, leisure time is constructed as an individual preference; the right for leisure time is redefined as a subjective, individual need.

This construction of leisure time as an individual preference is strongly connected to a shift of responsibility toward the live-in care worker to balance her own leisure time and working hours. This is also evident when it comes to the question of breaching leisure time arrangements. Most brokers assume that the live-in carer should help the care recipient during her leisure time. While some brokers argue that a carer helping the care recipient in their free time can only be justified in the case of an emergency, others think that providing this kind of help is a given, as long as it does not happen daily. One broker draws this distinction: *“If this happens every day, it is a fundamental problem. I think if it happens every now and then and she [the live-in carer] doesn’t have a problem with it, it goes without saying that she should help the client and not refuse”*. In this narrative, the responsibility to accept or not accept the breach of working hour arrangements is clearly placed on the live-in carer. Consequently, it is also considered the live-in carer’s responsibility to observe the fulfilment of working hour arrangements. However, the broker deprives the live-in care worker of the right to refuse by constructing her support as self-evident. Moreover, it becomes clear that the distinction between leisure and working time will disappear, if helping during leisure time is regarded a matter of course.

Within the agencies’ narratives, there is also a contradictory understanding of leisure time: leisure time is considered both a necessity and a legitimate demand. As one broker highlights: *“It is very important, within this schedule, that there is also this one day when she [the live-in carer] is completely off work [...]. Then it is like you [live-in carer] can do whatever you want. You*

¹⁰ The construction of live-in care workers as “fictive kin” has already been the focus of empirical research (Krawietz 2014; Weicht 2010). This concept will be reconstructed in detail in the next part of this paper (see page 8ff.).

can leave the house for the whole day”¹¹. In this perspective, leisure time is a legitimate demand, which is supported by the brokering agencies, as another broker underlines: “[T]his is what they claim and what justifiably so. And if the conditions are not fulfilled, that means trouble”. On the other hand, according to some brokers, continuous attendance is an essential component of live-in care work, which is why, they say it cannot be changed. This possibly contradicts the idea of leisure time as a legitimate demand. Moreover, several brokers regard the live-in care worker as a substitute for the medical alert service (“Hausnotruf”), which also reflects the expectation of continuous attendance. Consequently, despite deeming leisure time to be a justifiable claim, the expectation of continuous attendance is still evident in the brokers’ narratives.

To sum up, it is clear that the agencies’ narratives on working time are contradictory: While on the one hand, the agencies refer to the topic of working hours and leisure time as objective terms, which can be determined intersubjectively; on the other hand, they assume that working hours and leisure time are subjective concepts, which differ depending on the individual’s perspective, assessment, or personal needs.

Further, the construction of working hours and leisure time as subjective concepts can be regarded as an important legitimation narrative for extensive working hours. The present study shows that this shift toward subjective concepts works on two different levels: First, the definition of what can be classified as working time is regarded as a subjective assessment because working time and leisure time are considered intertwined and inseparable. Second, the amount of leisure time is regarded as a subjective need, which purportedly differs across live-in care workers. Therefore, the definition of working hours and the right to leisure time are redefined as subjective assessments and individual preferences. This can be regarded as a strong legitimation narrative for extensive working hours because a subjective assessment cannot function as a solid base for clear rules and regulations on working hours. If what can be categorized as working time depends on a subjective assessment, it becomes impossible to apply rules and regulations on working hours. Moreover, this is strongly connected to a shift of responsibility toward the live-in carer, since she is in charge of defining her own needs and finding her personal balance. In these narratives, various different interpellations are evident. These will be elaborated on in the following.

¹¹ The brokering agencies vary considerably regarding the amount of leisure time they consider acceptable. However, most of our interviewees deemed one day or two half days off per week to be an appropriate amount of leisure time for live-in carers, which they support.

Working time as a subjective category in a theoretical context

The analysis shows that even though some brokers assume a clear separation between working hours and leisure time, and indicate that leisure time has to be completely off duty, there are also contradictory narratives among the same brokers. As described, the agencies also tend to frame the topic of working hours as a subjective category. Working hours are thus not referred to as an intersubjectively measurable concept, but rather as a subjective phenomenon, leaving scope for divergent opinions. In the following, these findings are linked to different theoretical approaches. First, it is argued that the construction of working time as a subjective category is strongly related to the historical perspective on care work as a female, unpaid, seemingly unproductive “labor of love” (Bock – Duden 2007 [1980]), which is not considered to be work, and the construction of the live-in care worker as “fictive kin” (Weicht 2010). Second, the construction of working time as a subjective category and the shift of responsibility is connected to an interpellation of the live-in carer as a “manager of the self” (Bröckling 2016). Both understandings of work and interpellations of the live-in carer prevent clear working hour arrangements, and consequently also decent working conditions.

Returning to the first dimension of these understandings of work, a supposed inseparability of working and leisure time can be identified as a common motif – also historically – in debates on working hours in domestic work in general (Scheiwe 2015)¹². Moreover, some brokers construct the live-in carer’s continuous attendance and her shared activities *with* the care recipient as free time. This redefinition of attendance¹³ and relational work as leisure time can be traced back to historical debates on whether care work and housework can be classified as work (for instance, Federici 1975). Historically, housework and care work as an unpaid, female “labor of love” (Bock – Duden 2007 [1980]), were not considered work, but rather a manifestation of female nature. These notions are still evident in ideals of the “caring housewife” or the “caring mother”, but also in the realm of paid care work. One of the brokers makes the assumption that a live-in carer, who considers herself a family member, does not demand leisure time. The live-in carer is thus constructed as “fictive kin” (Krawietz 2014; Satola 2015; Weicht 2010). As a result of this

¹² The difficulty of separating and measuring working time and leisure time does not apply to domestic work exclusively, however. The delimitation of work is a phenomenon in other forms of labor (such as working from home) as well. The supposed inseparability is thus socially constructed and an effect of a lack of rules and clear boundaries from the employer. Therefore, in live-in care work – as in other forms of labor – clear rules and arrangements are key to mitigate this problem of delimitation (Scheiwe 2015).

¹³ According to a verdict delivered by the European Court of Justice in 2000, standby time counts as working time as well (Scheiwe 2014: 66-68); consequently, the live-in carer’s continuous attendance and standby time count as working time. Moreover, the recent verdict by the Labor Court Brandenburg underlines that standby time counts as payable working time as well (see also <https://openjur.de/u/2303053.html>)

construction, agencies can apply the same normative duties to live-in carers as those carried out by family members caring for relatives (Krawietz 2014). Migrant care work therefore replaces a nostalgic, idealized notion of the traditional female role in family care work (Weicht 2010). Consequently, live-in carers are considered “part of the family and not [...] as workers or employees” (ibid: 33). They are in fact constructed as the opposite of professional care workers (ibid.: 41). The effect of this construction is an increased risk of exploitation, because it is more difficult for the live-in care worker to see herself as an employee and stand up for her (labor) rights when she is treated as a family member (Schilliger – Schiling 2017). Similar tendencies can be observed in au pair work, as these arrangements share characteristics with feminized domestic care work. Au pair work is also often characterized by a lack of clear working hours and an expectation of around-the-clock availability (Hess 2005: 178f.). Moreover, Hess (2005: 181; author’s translation) identifies the unclear relationship between “member of the family” and “worker” as a structurally defining ambiguity of au pair work. As in live-in care work, the perception of the au pair as a family member increases exploitability because the employment relationship is no longer considered (ibid.)¹⁴. Consequently, in both forms of feminized domestic care work, the historical construction of housework as natural, unpaid, seemingly unproductive “non-work” is evident.

Second, in the construction of working hours as a subjective category, a further, contradictory interpellation of the live-in carer is visible: “the entrepreneurial self” (Bröckling 2016). Bröckling’s figure of the “entrepreneurial self” describes “a multitude of contemporary technologies of self and social technologies of [...] society, whose common aim is to organize life around the entrepreneurial model of behaviour” (ibid: 21). Consequently, important characteristics of this figure are self-responsibility, self-initiative, flexibility, and self-optimization. Some of these calls for self-management can also be identified in the agencies’ narratives. Specifically, the demand that, when it comes to working time, the carer find her own balance with which she feels comfortable can be interpreted as a form of “self-government”. In this context, Bröckling analyzes an example from self-help literature: “She must work untiringly for the firm while also taking care of her limited reserves. The programmes glide seamlessly between a grammar of severity and a grammar of care” (ibid.: 34). Therefore, balancing and managing her own resources can also be regarded as part of “working of the self” (ibid.: 35). Moreover, the construction of leisure time as a subjective category leads to a shift of responsibility toward the live-in carer when it comes to observing the working

¹⁴ However, Hess (2005: 180f.) shows that the au pairs’ desire to be “part of the family” can also be regarded as a subversive rejection of the role of a servant that they fear being allocated.

time arrangements in the contract. Therefore, according to some brokers, it is the live-in carer's responsibility to decide whether or not to accept breaches of working hour limits. Consequently, the live-in carer is treated as the self-responsible "manager" of the household who is self-reliant and responsible for observing her working hours (see also Schwiter et al. 2014). However, in the brokers' narratives the live-in carer is deprived of the right to defend her rights, because her support for the care recipient during leisure time is regarded as self-evident. The brokers' narratives are therefore contradictory, as the live-in carer is treated as a self-responsible "manager" and as a submissive worker at the same time (see also *ibid.*).

Contextualizing the findings of the analysis within a theoretical context affords us two additional insights: First, working time as a subjective category is related to a historical construction of care work as a feminized "labor of love" (Bock – Duden 2007 [1980]). The live-in carer is thus constructed as "fictive kin" (Weicht 2010). Second, working time as a subjective category is related to an interpellation of the live-in carer as a "manager of the self" and a perception of live-in care work as self-organized, highly flexible labor. Although these constructions and interpellations – as a submissive, caring family member and as a self-reliant manager – are contradictory, both permit a legitimization of extensive working hours. This is, on the one hand, because the live-in carer is regarded as a family member, and on the other, because it is her responsibility to observe her own working hours in accordance with her own personal balance. Consequently, neither understandings of work nor interpellations of the live-in carer enable decent working conditions.

Conclusion

In this paper, agencies are identified as key actors in the "gray market" of live-in care arrangements, especially when it comes to working conditions. Drawing on the focus of existing research on the narratives of brokering agencies, this paper centered on "pioneer" brokering agencies in Germany and their narratives on working hours. These agencies were identified as "pioneer" agencies due to their proactive critical stance on the unclear situation in the "gray market" and their active engagement in shaping the market through political lobbying or by virtue of their size.

The analysis reveals that the agencies' narratives on working hours are contradictory: On the one hand, some of the "pioneer" brokers acknowledge a clear separability of working hours and leisure time and convey that leisure time needs to be off duty, which is in line with the given labor law. On the other hand, even "pioneer" agencies highlight an inseparability of working and leisure time and regard working time as undeterminable and unmeasurable, and therefore as something one can have different opinions on. Moreover, they

construct leisure time as an individual preference and subjective need, varying considerably across different live-in carers. It has also been argued that the shift in perception of working hours, from a right to a subjective assessment, legitimizes avoiding clear rules, because it prevents the creation of a solid base for rules and supposes an inevitable lack of clarity in the definition of working hours. These findings show contradictory constructions: live-in care work is regarded as a feminized “labor of love” (Bock – Duden 2007 [1980]) and the live-in carer as “fictive kin” (Weicht 2010); at the same time, there is the interpellation of the live-in carer as a “manager of the self” (Bröckling 2016) and the understanding of live-in care work as self-organized, highly flexible labor.

In the German “gray market”, brokering agencies are influential actors when it comes to working conditions. The “pioneer” agencies, in particular, play an important role – among other things through political lobbying – in shaping this market. The present article reveals that even the “pioneer” agencies’ convey contradictory narratives on working time, including the construction of working time as a subjective category. This article therefore supports the assumption that self-regulation does not automatically lead to decent care work for live-in carers but needs to be accompanied, for instance, by efforts on the part of the government (see also Fudge 2011; Leiber et al. 2019; Lobel 2001). If working hours are constructed as subjective categories, the options open to live-in carers for oversight, measurement, and complaint will most likely remain limited.

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