

# Whitepaper – Zero Hour Employment Contracts

Historically, zero hours contracts began on the high street in sectors such as fast food and retail, but are now found in all walks of working life from security and cleaning to health and Police services.

A zero-hour contract (or zero-hours employment contract) is a type of contract under which an employer does not guarantee the employee a fixed number of hours of work per week. Rather, the employee is expected to be available or on-call and receive payment only for hours actually worked. Under the terms of such contracts, employers can legitimately vary shifts each week, give extra hours in busy times and reduce or cut shifts to zero when business is quiet. The publication or notification of work rosters/shifts are a common feature of such arrangements.

Practically speaking this can cause significant difficulties for employees. For example, if an employee is trying to raise a young family and needs a stable income, hours on such arrangements can legally be cut down to zero without any notice.

However, from an employee's perspective zero-hour contracts do have some advantages, particularly where an employee wants to combine work with studying or childcare, allowing the ability for parents to juggle work and domestic matters around more easily. Indeed, the flexibility zero-hour contracts offer suit many people who want occasional earnings.

Despite the fact that an employer is not obliged to provide any particular amount of work under these contracts, a usual feature of zero-hour contracts is that the employee is required to accept it when it is offered. If this is the case, despite the gaps between assignments and reduction in hours at quieter times, there is arguably a continuing employment relationship, which means the employee's continuity of service is preserved.

This would arguably not be the case with contracts in which an employee is genuinely free to accept or decline work which is offered, commonly referred to as 'bank' or casual contracts which are popular in the care sector.

Employers should also be aware that if a pattern of work develops over time for an employee on a zero-hour contract (for example, if an employee has always worked 16 hours per week for a number of years) then the terms of the contract may be changed by custom and practice and to offer fewer than 16 hours' work may amount to a breach of contract.

Employees who are employed on zero-hour contracts are legally entitled to a minimum of 5.6 weeks of annual leave per year in the same way as any other employee. This should be calculated on a pro-rata basis depending on the amount of work they actually undertake. Holiday pay for employees whose hours of work vary should be calculated based on an average of the preceding 12 weeks, this will be increased to an average of 52 weeks from April 2020.

## What is the Impact of Zero Hours Contracts in the Workplace?

There is much debate about the use of zero-hour contracts nationally and over the political divide and the use of these contracts has been heavily criticised in terms of their disadvantages to employees who have a weaker bargaining position when negotiating the terms of their employment.

Following significant media coverage concerning zero-hour contracts and their apparent abuse by some employers, the government launched a consultation in December 2013 focusing on the use of exclusivity clauses and the lack of transparency in zero-hour arrangements. Coming out of this, the Small Business, Enterprise and Employment Act 2015 made exclusivity clauses in zero-hour contracts unenforceable, which means that employers who engage employees on zero-hour contracts cannot now prevent them from also working elsewhere.

These regulations have also introduced a remedy for which an employee whose employer seeks to enforce an unlawful exclusivity clause, by providing that:

- Employees under a zero hours' contract who are dismissed primarily for the reason that they have breached an exclusivity clause in their zero hours' contract are now entitled to bring a claim for automatic unfair dismissal. The requirement of having two years' continuous service, which is usually necessary to bring an unfair dismissal claim, is not applied in such circumstances.
- Additionally, both employees and workers on zero hours' contracts now have the ability to seek a declaration and to claim compensation for any detriment suffered because they were working for another employer in breach of an exclusivity clause, for example, being treated less favourably than a colleague or having shifts withheld.

Breach of either of the above entitle the individual to "just and equitable" compensation, subject, in the case of a dismissal, to the usual limits in unfair dismissal cases.

### The Future

Controversy and media coverage continues. An independent review of modern working practices (the Taylor review) was published in 2017 and the Government responded in February 2018. Although the review was primarily concerned with employment status and improved rights for casual workers, one of the recommendations was that individuals working under zero hours contracts who have been in post for 12 months should have the right to request a contract that guarantees hours which reflect hours actually worked. This is being considered and may change how we use zero hours arrangements in the future.

**This information is provided for general reference purposes only. If you have a specific enquiry relating to this topic please contact Wirehouse on:**

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