

ZERO HOURS CONTRACTS

Zero Hours Contracts: the scourge remains

Zero Hours Contracts [ZHCs] remain very much in the news. They are still widely used by large employers, such as McDonalds UK and Sports Direct who maintain that their workers prefer the flexibility of such contracts. The reality for workers is very different. There are also members in Prospect areas who are on ZHCs (including in the public sector)



Linda Sohawon,
Legal officer

In this special update legal officer Linda Sohawon details the present situation with ZHCs, analyses their effects and gives details on how Prospect is campaigning on ZHCs

The Prospect campaign

At Prospect biennial conference in May 2014 delegates condemned the use of ZHCs, recognising the abuses suffered by employees and workers who have no certainty of employment or income and few opportunities to challenge unfairness. Conference motions instructed Prospect to campaign against ZHCs, although it was acknowledged in the debate that there will always be roles, particularly in highly paid professions, where some form of atypical working is acceptable and attractive to workers.

Prospect is continuing to campaign for improved workplace rights for members on ZHCs and in other types of atypical working, such as free-lancers, consultants, casual or sessional workers.

See the Prospect responses to the BIS consultations in December 2013 (bit.ly/1kzYNhU) and October 2014 (bit.ly/1Onellq)



Zero Hours Contracts on the rise?

The ONS statistics published in September 2015 show there has been a rise in the number of workers on ZHCs. It is estimated that 1.5 million contracts do not guarantee a minimum number of hours. People on ZHCs are more likely to be women, in full time education or in young or older age groups. Around 40% of those on ZHCs want more hours, with most wanting them in their current job, rather than a different or additional job.

The Greater London Assembly Labour Group has criticised the Mayor of London for the use of ZHCs at City Hall, and a failure to address the worst abuses in London and the impact of casualisation on its economy. Their report calls for an investigation into abuse, and a new definition of ZHCs, giving greater

security and more predictable incomes. However, pushing employers towards guaranteeing a low number of hours on contracts should be discouraged.

The labour group report recommends:

- ✓ a tightening of the law to define those on ZHCs as employees rather than workers;
- ✓ employers being required to provide a written statement of terms and conditions;
- ✓ better enforcement of workers' rights including the National Minimum Wage .

They also call for the removal of tribunal fees which discourage low income workers from enforcing their rights.

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See our short video (bit.ly/1SraAds) to find out more.

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ZHC Regulations – ban on exclusivity clauses

In response to public outcry in 2014, the Coalition Government gathered evidence from interested parties. The outcome was Regulations issued by the Conservative government in May 2015 to ban the use of exclusivity clauses in ZHCs (see: bit.ly/20wqgst)

The Regulations:

- ✗ Prohibit clauses which prevent workers from working for another employer;
- ✗ Allow anyone treated unfairly and suffering a detriment for doing so can bring an Employment Tribunal claim for compensation;
- ✗ In very serious cases there are potentially civil penalties such as fines to be used against employers;
- ✗ Employers cannot enforce an exclusivity clause against a worker paid less than a certain level of weekly income, calculated by multiplying the agreed number of hours by the national minimum wage. (£6.70 for over 21's from 1 October 2015);
- ✗ The ban on exclusivity clauses will not apply to higher paid workers, where the pay is at least £20.00 per hour for each hour worked.

No advice or guidance to employers is available yet, although the Government is committed to encouraging employers and unions to work together in sector specific areas to agree codes of practice. Prospect believes that the Government has done the bare minimum in response to the worst excesses of ZHCs. For example, we campaigned for workers to be provided with proper notice periods when work is withdrawn so that they can plan their working patterns if they work for more than one contractor. There is still a long way to go in terms of securing employment protection and security of employment for workers in all forms of atypical working.

Lobbying success!



Following lobbying by the TUC and unions, the government has now introduced regulations which protect zero hours contract workers from detriment and dismissal where they don't comply with the exclusivity clause within their contract. The regulations can be found at bit.ly/1SrgT0k

Challenging ZHCs

Prospect is keen to challenge such abuses through negotiation and collective bargaining. And will bring appropriate cases in the employment tribunal. For example, Prospect succeeded at tribunal in establishing employment status for a member on a sessional contract. The employer had denied he was an employee on the basis that he was under no express obligation to attend work and flexibility applied to both sides, but the tribunal did not agree.

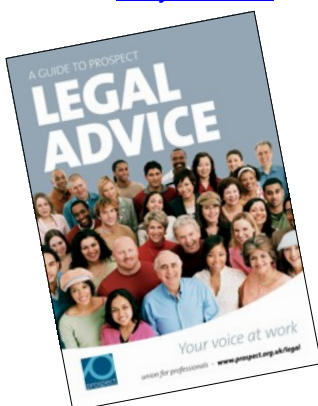
In many work situations, a worker will have some statutory employment rights, even though employers still try to argue that there is no mutuality of obligation because the worker can decide whether to accept offers of work. The reality is very different because if a worker refuses work they are unlikely to be offered work again. It is important to look at the actual work arrangements, including the method of payment, the degree of supervision and control of work, the obligation to off work and to do it, and whether a substitute can be provided.

For determining employment status see the checklist on employment status in Members Guide 27 on Atypical Workers, which can be downloaded from: bit.ly/1MkyZ3e



More information from Prospect Legal:

- ✓ Sign up for automatic email alerts on employment rights at: bit.ly/1iRR3C3
- ✓ Download our existing updates and briefings: bit.ly/emp_law
- ✓ For the latest news follow us on Twitter: [@LegalProspect](https://twitter.com/LegalProspect)
- ✓ See our new guide to Legal Services at: bit.ly/1VilB5P



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LEGALEYE

This is a special edition of our regular e-newsletter LegalEye, which features success stories from around the union as well as highlighting updates and changes relevant to members.

Previous editions can be downloaded from: bit.ly/1Xjuo69