

Fair Hours of Work

Low Hour Practices Explained

When we talk about 'zero hour' contracts we are generally referring to a cluster of practices that involve the employee having no or very few guaranteed hours of work, leaving the worker vulnerable to having their hours reduced at the whim of their employer.

That means working hours can be subject to variation on a daily or weekly basis. Typically the employee receives very short notice that they are required for work, sometimes less than 24 hours and often by text message.

Zero-hour practices also involve the worker being liable to be sent home from work, unpredictably and at very short notice, for example if business is quiet.

Zero-hour and precarious practices include contracts where an employee is guaranteed a certain number of working hours per week, for example 15, with scope for further working hours should they be offered by the employer.

Typically these terms are framed along the following lines:

'You are required to be available to work an 8 hour week, including Sundays and Public Holidays at the Company's discretion. Rosters shall be established as appropriate.'

'The Company is under no obligation to provide work to you at any time and you are under no obligation to accept any work offered by the Company at any time.'

These contract terms are offered on a take it or leave it basis.

Prevalence of Zero-Hours Contracts in Ireland

The precise number of employees on zero-hour contracts and subject to zero hour practices in Ireland is unknown. While the precise numbers of employers offering zero-hour contracts here is not available, some estimates can be gleaned from statistics compiled by the Central Statistics Office (CSO).

Thus, employees on zero-hour contracts are likely to be a significant component of the group categorised as *underemployed*.

And on that level we have serious cause for concern. Ireland has the highest level of *underemployment* in the EU, bar Spain. A total of 7.4% of employees here report as seeking additional hours; the EU average is 4.4%.

The increase in the numbers of underemployed has been substantial. Since the Q3 2008 (the first year for which Ireland has data), the number of *underemployed* has increased by 50.5%. This compares to a growth of 31.9% across the EU during this period.

It would be wrong to conclude that this is a problem at the fringes of the job market or confined to the low paid sectors. Individuals on zero-hours type contracts work in all sectors and in occupations across the pay and earning spectrum.

Undermining Decent Work

Unfair and zero-hour practices take workers back to a time when they stood at a designated corner in the hope of being selected to work that day. But the modern zero-hour worker waits at home for a text or a call.

In other circumstances workers have their hours reduced, or their shifts cancelled while others are sent home at a moment's notice. As such it is difficult to see how these practices are compatible with human dignity and decent work.

Zero-hour contracts present huge drawbacks in comparison to permanent and regular work. These include:

- The absence of a guaranteed level of earnings makes it difficult for the employee to have any certainty over meeting bills or planning for the future. Research carried out by Mandate in 2013 found that 17% of people living below the poverty line work in precarious jobs with zero-hour type contracts.
- The understatement of hours in contracts means that workers cannot get loans for necessities – it makes renting a home difficult and buying one impossible.
- The need to respond to calls to attend work, frequently at short notice, disrupts life outside of work and places a particular strain on families and in respect of arranging care for children and other dependants.
- The need to be generally available for work when required by the employer hinders the ability of the employee to be able to take up additional employment.
- The variability of earnings removes an employee's eligibility to claim various state benefits. Family Income Supplement can only be claimed if an individual falls below the income ceiling and works for at least 19 hours a week, but whether an individual works these hours can vary from week to week under zero hour practices, creating even greater uncertainty. Similarly, the spread of days over which hours are worked can undermine the ability to receive unemployment payments.
- Uncertainty about hours can lead to fear among staff about complaining or raising issues of concern and act as a deterrent to whistleblowing due to fears those hours will be cut.
- Zero hour practices can be damaging for employers too, as they impair an organisation's ability to attract and hold high quality staff and are associated with lower productivity.

Collective Bargaining as a Response to Zero-Hour Practices

Trade unions in Ireland have responded directly to the problem of zero-hour contracts negotiating collective agreements that address the abuses inherent in these practices.

SIPTU ran a successful campaign in respect of more than 10,000 home helps and secured a collective agreement that guarantees a minimum of seven to ten hours work each week, ending the practice of zero hour contracts in the HSE.

MANDATE has negotiated collective agreements that guarantee minimum hours in the form of 'banded hours' that reflect the employees' actual working hours along with providing mechanisms to allow for an increase in these hours.

'Banded Hours'

These mean that the employee is aware of their minimum guaranteed weekly working hours and the likely maximum number of hours they will be required to work. Banded hours are rostered in accordance with the collective agreement and typically are constructed along the following lines:

Band A	11.5 -14 hours per week
Band B	15-19 hours per week
Band C	20-24 hours per week
Band D	25-30 hours per week
Band E	31 -35 hours per week
Band F	36-37 hours per week

Banded hours also mean that in circumstances where employees consistently work in excess of the upper end of their band they will be considered to have moved up to the relevant band. In practice this means that an employee in Band A will be paid no less than 11.5 hours. If they consistently work for 16 hours a week they will move up to Band B.

The collective agreements set out the exact details of the operation and provide for the treatment of specific business requirement such as the 'trough' month of February.

Banded hour arrangements have been negotiated in outlets such as: Tesco, Penneys and Supervalu.

Collective agreements are the ideal way to negotiate fair conditions of work but not all employers recognise their employees' right to collectively bargain through a trade union. And as the Dunnes Stores dispute demonstrates, there is no effective legal protection for employees when they organise in a trade union to seek to negotiate just and favourable conditions of work.

Existing Protection Insufficient

Protection for employees against excessive use of zero hour practices is afforded under the Organisation of Working Time Acts 1997-2012. The OWT Act (section 18) gives the zero-hour employee an entitlement to receive some compensation in respect of the hours they are not required to work their contracted hours.

The entitlement is calculated on the basis of 25 % of the 'contract hours' or 15 hours, whichever is less. The entitlement only applies to the hours that the employee was required to be available for work.

Examples of the legislation in practice

'Mary' works for a financial services firm. Her contract states that her 'normal working week is 09.00 to 17.00 or as and when the employer requires.' Last week Mary was only called into work for one day (7.5 hours). The legislation provides that she is entitled to be paid as if she worked 25% (or 15 hours whichever is the lesser) of her contract hours (39) so she is entitled to be paid for 9.75 hours.

'John' works for a builders' suppliers. His terms and conditions of employment state that his normal hours of work are from 10.00 until 13.00, five days a week i.e. a total of 15 hours a week. John was sent home early, at 11.00 on Thursday and Friday meaning that he only worked 11 hours. As John worked more than 25% of the contracted hours he has no further entitlement.

Of course an equal sharing of risk would suggest that the zero-hour employee would be compensated for at least half of the time they were contracted to be available for work.

The reality is that the terms in zero-hour employment contracts are more likely to create problems for the workers than solve them. A good example is short-hour terms in zero-hour contracts.

To avail of the compensatory payment, the zero-hour employee must establish the 'floor payment' by reference to the number of hours that the employee may be required to work in a week.

However terms in zero-hour contracts can understate these hours by providing a minimum number of hours, for example 8 hours a week. Typically the short-hour contract provides that additional hours may be available, but the employee is not 'required' to work the additional hours, nor is he/she required to be available to work these hours: *"You have the right to refuse or accept these hours. You are not expected to be on call for work and will not be paid an allowance for same. The refusal of hours on your behalf will have no negative consequence on hours being offered to you in the future."*

The problem with this contract term is that it creates a false basis for calculating the floor payment.

In a case that may have been somewhat over-interpreted in terms of its intended implications, the Labour Court determined [No.DWT981 (WTC/98/1)] that the floor payment "should be calculated by reference to the number of hours which the employee may be required to work in a week and not to the number of hours over which they are required to be available to undertake that work."

This case involved the Marine Port & General Workers Union. The union argued on behalf of members that the 'floor payment' should be calculated by reference to the number of hours over which the employees were required to make themselves available. The union claimed this was a period from 7.00 to 24.00, Monday to Friday (a total of 85 hours). On that basis their claim was for a floor payment of 15 hours.

However the Labour Court referred to the contract (collective agreement) providing for 'normal working hours' from 08.00 to 17.00 for a five day week (a total of 39 hours). The labour court held on this basis that the floor payment of 9.75 hours applied.

Fair Notice

Amending the legislation to provide that floor payment can be calculated by reference to the hours' stated in the employment contract /written statement or by using an average across a six month reference period - **whichever is greater** – would be an improvement but more is needed. It is not fair that workers are vulnerable to having their hours and pay cut from 30 to 15 overnight.

Inadequate notice is also part of the zero-hour story. Section 17 of the Organisation of Working Time Act, sets out the requirements regarding notification to the employee of the times at which he/she will be required to work during the week.

Generally, an employee is entitled to 24 hours' notice of his/her roster for the week, although section 17(4) allows for changes as a result of unforeseen circumstances.

Although 24 hours is hardly fair notice, many zero-hour employees are denied even this. Congress is calling for a notice period of a month.

In addition a more 'stepped back' reduction in hours, established on a genuine business need basis, rather than the whim of the employer, must be legislated for.

Zero-hour employees in Ireland are at a further disadvantage as they do not benefit from a legal entitlement to an overtime pay premium in respect of hours worked in excess of their 'normal hours'.

If employees were legally entitled to an overtime premium, for example an entitlement to be paid at a rate of time and a half, in respect of the hours worked in excess of the hours stated in the contract, the practice of understating hours could be addressed.

Limiting the extent to which an employer can rely on zero-hours contracts - such as setting a limit on the proportion of the workforce that can be employed on zero-hours - could send a clear message that zero-hour contracts are not an acceptable business model.

Likewise limiting the period of time that a post could be filled (for example six months) on zero-hour contracts could also send out a strong message.

Employees should be entitled to full time work where it is available. Providing a right to zero-hour (and other part-time) employees to request full time work and placing a corresponding obligation on the employer to seriously consider such a request is critical. Refusal of the request should only occur where there are objectively justified reasons.

A close examination of the Part Time Work Directive (Council Directive 97/81/EC of 15 December 1997, concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC) suggests that such a measure is necessary to implement, in full, that directive's requirements.

Key Congress Demands

1. Provide a right to request full-time work and a corresponding obligation on employers to seriously consider the request; allow refusals only where the employer can objectively demonstrate the need for zero-hours type practices;
2. Provide a right to negotiate for fair working hours, including 'banded hours';
3. Limit the proportion of the workforce that can be employed on zero-hour type practices;
4. Limit the length of time a post can be filled with workers on zero-hours type arrangements;
5. Provide a right for employees to an overtime premium (e.g. time and a half) for hours worked in excess of the 'normal hours' in the employment contract/written statement;
6. Ban the practice of calling workers into work but then sending them home and provide that employees cannot be called into work for excessively short periods, such as periods of less than four hours;
7. Increase the notice period before hours can be reduced;
8. Limit the amount of hours that can be reduced, for example a maximum of 5 hours and for rosters to at least a week – only for unforeseen circumstances should shorter notice of working time apply;
9. Protect employees from penalisation for example, having their hours cut – "being zeroed down" when they stand up for their rights including organising in a trade union;
10. Provide that 'normal working hours' are established on the basis of the hours in the contract, or an average of those worked over the past six months – whichever is greater.