

Dear Mr. David Lockhart

I wish to put forward a submission with regard to the current consultation on the prevalence of Zero Hour Contracts.

I am responding on behalf of Bright Contracts. Bright Contracts (www.brightcontracts.ie) is software that creates contracts of employment and staff policies primarily aimed at Irish SMEs. Bright Contracts is created and supported by Thesaurus Software which provides payroll software. In total we have over 60,000 SME customers in Ireland.

The views below are based on feedback from our team who provide daily employment phone support to our users.

Our General Response

It is our experience and belief that employers in Ireland, particularly small employers, very much rely on flexibility in contracts of employment in order to remain competitive. Without scope for flexibility Irish businesses will struggle to meet their changeable business needs.

However, it is not only employers who benefit from flexible employment contracts. We need look only to our neighbours in the UK to confirm this. The findings of a recent report carried out by the Chartered Institute of Personnel and Development (CIPD) on the use of zero hours contracts in the UK were quite revealing - granted there are some differences between the contract types and employee definitions, however the overall premise is the same. The UK found that **two thirds of workers on zero hour contracts did not want more hours and were satisfied with their working conditions**. Flexibility suits different people for a whole variety of reasons.

Overall we believe that there is an absolute need to retain scope for flexibility in relation to employment contracts. However we agree that uncertainty does exist around the use of “If and When” contracts and casual workers and we welcome developments in this regard.

We have outlined our responses to the report’s findings and recommendations below.

Responses to Reports Findings

Finding

1. Zero hours contracts within the meaning of the Organisation of Working Time Act 1997 (OWTA) are not extensive in Ireland according to our research. There is evidence, however, of so-called If and When contracts. Both types of contract involve non-guaranteed hours of work. The fundamental difference between the two is that individuals with a zero hours contract are contractually required to make themselves available for work with an employer, while individuals with an If and When contract are not contractually required to make themselves available for work with an employer.

Response

Bright Contracts is used across by a wide range of SMEs, from the hospitality sector, to retail, to the care sector and childcare facilities. One of the most frequently asked questions we receive on our helpline is around contract types and what type of contract should be issued to the atypical worker. It is a constant query from employers.

In our experience, we have come across very few users who use/issue Zero Hours Contracts. In most instances where employers require flexibility, they tend towards “if and when” style wording. In this regard I would definitely concur with the report issued by the University of Limerick.

Finding

2. If and When hours arise in different forms in employment contracts. In some contracts, all hours offered to an individual are on an If and When basis. In other contracts, there is a hybrid arrangement whereby employees have some guaranteed hours and any additional hours of work are offered on an If and When basis.

Response

Yes, we see this practice from our users.

Finding

3. Low working hours arise in various employment contracts. An individual working a low number of hours may have either a regular part-time contract with fixed hours or a contract with If and When hours only or a hybrid arrangement whereby employees have some guaranteed hours and any additional hours of work are offered to them on an If and When basis

Response

Yes, we see this practice from our users.

Finding

4. Employer organisations argue that If and When hours and low hours suit employees. Such arrangements, it is claimed, especially suit students, older workers and women with caring responsibilities. Some employer organisations argue that they have difficulty finding employees who want more working hours. A number of employer organisations also argue that providing any work to people reduces the cost to the State of paying unemployment benefit.

Response

Flexibility suits a wide range of people for very many reasons. We see this time and time again, particularly with regard to students, parents (namely mothers) seeking to fit work around childcare arrangements, and older people working. Here we would refer back to the CIPDs findings in the UK, that two thirds of people on casual hours are satisfied with their hours.

Finding

8. Employees with constantly variable working hours are more likely to work nonstandard hours (i.e., evenings, nights, shifts, Saturdays and Sundays) than those with regular hours.

Response

In our experience, yes this is predominantly the case, however the contrary does exist.

Finding

12. In the four sectors studied in this report (retail, hospitality, education and health), If and When hours and low working hours are prevalent in the accommodation/food and retail sectors and in certain occupations in education and health: community care work, so-called 'bank' nursing, general practice nursing, university/institute of technology lecturing, adult education tutoring, school substitution, caretaking, and secretarial and cleaning work.

Response

Bright Contracts has customers in all of the above mentioned sectors and we would wholeheartedly agree with the above finding. From our experience we would also see the use of If and When hours in a range of other sectors including manufacturing and logistics - namely delivery personnel.

Finding

13. The key factors driving the use of If and When contracts are:

- Increasing levels of work during non-standard hours
- A requirement for flexibility in demand-led services
- The absence of an accessible, affordable childcare system
- Current employment legislation
- The particular resourcing models of education and health services

Response

We would agree with the above

Findings

14. The main advantage of If and When contracts to employers is flexibility, which allows them to increase or decrease staff numbers when needed. A second benefit is reduced cost, as organisations only pay people on If and When hours for time actually worked and these individuals may not build up enough service to attain benefits such as sick pay. The main disadvantage to organisations is the administrative burden that arises from having to manage a larger workforce with variable hours.

Response

We would agree with the above. In our experience the advantages far outweigh any disadvantages. However, a definite issue for employers is trying to categorise the worker into existing employment law definitions particularly with regard to their employment status.

Findings

15. Trade unions and non-governmental organisations (NGOs) argue that there are significant negative implications for individuals working If and When hours. Negative implications include:

- Unpredictable working hours (the number and scheduling of hours)
- Unstable income and difficulties in accessing financial credit

- A lack of employee input into scheduling of work hours
- Difficulties in managing work and family life
- Employment contracts which do not reflect the reality of the number of hours worked
- Insufficient notice when called to work
- Being sent home during a shift
- A belief amongst individuals that they will be penalised by their employer for not accepting work
- Difficulties in accessing a range of social welfare benefits
- Poorer terms and conditions in some cases.

Response

We would generally not agree with the above points, as mentioned above If and When contracts suit a high portion of people. Many employees do willingly enter into these agreements and are prepared and accepting of the variable nature of the work. On our support line, we rarely, if ever, come across disputes or receive queries caused by any of the above.

Finding

17. We find that there is a lack of clarity over the employment status of individuals who work only If and When hours. As there is no mutuality of obligation between an employer and individual with If and When hours (i.e., there is no obligation to provide work or perform work), there is a strong likelihood that individuals in this situation are not defined as employees with a contract of service. Consequently, questions arise on the extent to which they are covered by employment legislation.

Response

Yes we would agree with this issue. This is one of the key issues which we believe should be dealt with in the aftermath of the UL report. There is a lack of clarity around employment status, and huge inconsistencies from company to company on the treatment of the employees. Greater guidance on this is required.

Responses to Reports Recommendations

Recommendation

We recommend that the Terms of Employment Information Acts 1994 to 2012 be amended to require employers to provide the written statement on the terms and conditions of the employment on or by the first day of employees' commencing their employment. This requirement should also apply to people working non-guaranteed hours on the date of first hire.

Response

We believe the current 2 month timeframe is quite lengthy. We would be in favour of reducing this period. Key to any positive employee/employer relationship is to clarify the parameters right from the beginning through the contract. Unfortunately, issuing a contract on day one may be unrealistic particularly for SMEs who don't have in-house HR departments and are often pressed for time with regard to administrative duties. We would suggest that legislation be changed here,

but feel be it should be an achievable timeframe. We suggest that contracts should be issued within 2 weeks of the employee starting.

Recommendation

We recommend that the Terms of Employment Information Acts 1994 to 2012 be amended to require employers to provide a statement of working hours which are a true reflection of the hours required of an employee. This requirement should also apply to people working non-guaranteed hours.

Response

Yes we would agree with the above. In some cases it can be difficult for employers to provide details, but we have come across cases of employers being unnecessarily vague for fear of committing to hours, which is not something we recommend. Hours on the contract should be a true reflection of hours worked and should be regularly reviewed to ensure this.

Recommendation

For employees with no guaranteed hours of work, the mean number of hours worked in the previous 6 months (from the date of first hire or from the date of enacting legislation) will be taken to be the minimum number of hours stipulated in the contract of employment.

Response

We agree with the premise of this recommendation, although for some employers a six month period may not appropriately reflect their workflow pattern. We would suggest that scope be left so it is possible for employers to have longer review periods e.g. 9 /12 months.

Recommendation

For employees with a combination of minimum guaranteed hours and If and When hours, the mean number of hours worked in the previous 6 months (from the date of first hire or from the date of enacting legislation) will be taken to be the minimum number of hours stipulated in the contract of employment.

Response

We agree with the premise of this recommendation, although for some employers a six month period may not appropriately reflect their workflow pattern. We would suggest that scope be left so it is possible for employers to have longer review periods e.g. 9 /12 months.

Recommendation

A mechanism will be put in place whereby, after the minimum number of hours is established, employers and employees can periodically review the pattern of working hours so that the contract accurately reflects the reality of working hours.

Response

We would be in favour of the above recommendation.

Recommendation

Where after 6 months an employee is provided with guaranteed minimum hours of work as per subsection (i) and (ii), but is contractually required to be available for additional hours, the employee should be compensated where they are not required by an employer in a week. The employee should be compensated for 25% of the additional hours for which they have to be available or for 15 hours, whichever is less.

Response

In practice we do not know if this recommendation will be practical for small employers.

Recommendation

We recommend that an employer shall give notice of at least 72 hours to an employee (and those with non-guaranteed hours) of any request to undertake any hours of work, unless there are exceptional and unforeseeable circumstances. If the individual accepts working hours without the minimum notice, the employer will pay them 150% of the rate they would be paid for the period in question.

Response

We feel this is an inappropriate measure. Many casual staff are engaged in order to provide cover at short notice. Key to the success, or even survival, of many small businesses in Ireland is their ability to be flexible in meeting demands. Imposing a 72 hour notice period will remove this flexibility from many firms. In addition, we would certainly have customers who could not afford to pay a rate of 150% if they could not meet this 72 hour deadline. Many customers would do without the staff rather than pay this rate, therefore there is a further detrimental effect on:

- A. Employment as work would not be offered
- B. The productivity of Irish businesses who cannot afford to bring in required staff

In sympathy for the reasoning behind this recommendation, we would accept a recommendation similar to the following: employers must give 24 hours notice to an employee. If the individual accepts working hours without the minimum notice, the employer will pay them 125% of the rate they would be paid for the period in question

Recommendation

We recommend that an employer shall give notice of cancellation of working hours already agreed to employees (and those with non-guaranteed hours) of not less than 72 hours. Employees who do not receive the minimum notice shall be entitled to be paid their normal rate of pay for the period of employment scheduled.

Response

Again we feel that a 72 hour period will not be practical for many Irish SMEs. We would suggest that employers give as much notice as reasonably possibly if cancelling previously agreed hours. In the case where hours are cancelled giving less than 24 hours notice then the employee should receive 50% of their normal rate of pay.

Recommendation

We recommend that there shall be a minimum period of 3 continuous working hours where an employee is required to report for work. Should the period be less than 3 hours, for any reason, the employee shall be entitled to 3 hours' remuneration at the normal rate of pay

Response

We strongly believe that many small businesses will struggle with having to pay for hours not worked, it is for this very reason that employers are opting away from zero hour's contracts. Ideally we would not like to see this point included.

However, we would like further clarity on this point. What is the period over which the 3 continuous hours must be provided? Is this weekly, monthly, per pay period? Depending on different business requirements, business may not be able to commit to this on a regular basis. If this recommendation is included, could this be averaged out over an extended period of time?

Recommendation

We recommend that employer organisations and trade unions which conclude a sectoral collective agreement can opt out of the legislative provisions included in recommendations 4-7 above, and that they can develop regulations customised to their sector. Parties to a sectoral collective agreement should be substantially representative of the employers' and workers' class, type or group to which the agreement applies.

Response

We would be happy with the above recommendation.

Recommendation

When negotiating at sectoral level, we recommend that employer organisations and trade unions examine examples of good practice which can provide flexibility for employers and more stable working conditions for employees, such as annualised hours and banded hours agreements

Response

We would be happy with the above recommendation

Recommendation

We recommend that the Government examine further the legal position of people on If and When contracts with a view to providing clarity on their employment status.

Response

We are strongly in favour of the above point. Clarity needs to be given on employment status and at what point a casual worker should be considered an employee. Guidance on Mutuality of Obligation could also be provided.

Perhaps we could also take lessons from the UK where there are three employment categories: employee, worker, self-employed. Currently in Ireland we don't distinguish between an employee and a worker. Generally, in the UK where there is no mutuality of obligation the individual is considered a worker rather than an employee. Differentiating between an employee

and a worker would mean that worker (casual workers) receive basic rights but not all rights as accrued by employees.

Recommendation

We recommend that the Department of Social Protection put in place a system that provides for consultation with employer organisations, trade unions and NGOs, with a view to examining social welfare issues as they affect people on If and When contracts and low hours.

Response

We do not have issue with the above proposal.

Recommendation

We recommend that the Government develop a policy for an accessible, regulated and high-quality childcare system that takes into account the needs of people working If and When contracts and low hours.

Response

We would strongly agree with the above recommendation. A well developed childcare system would increase the flexibility, availability, strength and productivity of our workforce considerably.

Recommendation

We recommend that the Government establish an interdepartmental working group to allow for greater cooperation between government departments on policies which affect patterns of working hours.

Response

We would not have issue with the above proposal.

Recommendation

We recommend that the Central Statistics Office have a rolling Quarterly National Household Survey special Module on Non-Standard Employment which would include questions on non-guaranteed hours.

Response

We would not have issue with the above proposal.

Conclusion

In our view, casual contracts should exist where an employer can argue and show that there is a reasonable, justifiable explanation for the existence of a casual contract e.g. to cover fluctuating work levels or provide staff cover. Where such a contract is in existing it should be regularly reviewed to ensure it reflects the reality.

In our opinion small Irish businesses depend on having flexibility in order to remain successful and in many cases, in order to remain in business. It is also our experience that for the most part

employees on If and When contracts and low hours have willingly entered into the agreement and are satisfied with their conditions. It is for these two reasons that we would generally be opposed to recommendations 4 to 7.

From our experience it is the uncertainty around the employment status of these workers that is most concerning. Guidance on this will be key.