

Consultation Process on University of Limerick Study on the Prevalence of Zero Hours Contracts among Irish Employers and their impact on Employees

Submission of the Department of Education and Skills December 2015

1. Introduction

The commitment in the Statement of Government Priorities of July 2014 was:

To conduct a study on the prevalence of zero hour contracts among Irish employers and their impact on employees and make policy recommendations to the Government on foot of this.

In the first instance, it is important to distinguish between zero hours contracts and ‘If and When’ contracts which are also mentioned in the University of Limerick study. Zero hours contracts are defined in the study as meaning a situation where a person is not guaranteed hours of work but is contractually required to make themselves available for work with an employer. The study found that zero hours contracts are not extensive in Ireland. Protections for workers on zero hours contracts are contained in the Organisation of Working Time Act 1997. The Act includes the right to compensation if the employer does not require the person to work in a given week where they are required to be available, amounting to pay for 25% of the time they were required to be available or 15 hours, whichever is the lesser. The Act also entitles a worker on a zero hours contract to a minimum of 24 hours notice of their being required to be available for work.

It is acknowledged that workers on zero hours contracts are potentially in a vulnerable position, particularly where those workers are also on lower pay. However, zero hours contracts, which involve a mutuality of obligation on the part of the employer and the employee, are fundamentally different to ‘If and When’ contracts, which involve no obligation on either side – employers are free to offer work as the need arises and workers are free to accept or reject the offer of work as they choose.

2. Findings

The UL study found that zero hours contracts are not extensive in Ireland and are not extensive within the education and training sector. If and When contracts are more common within the sector but are used almost exclusively in situations where front-line substitute teaching or lecturing cover is needed for a teacher or lecturer who goes absent on sick leave or for other unforeseen circumstances. By its very nature, the need for such work cannot be identified by an employer in advance. There are defined, national pay rates for such substitution work, which are aligned to the salaries payable to full-time permanent teachers and lecturers. The rates range from approximately €40 to €80 per hour in the case of teachers. The rate for lecturers is €63 per hour. Commonly, substitution hours are offered in the first instance to existing part-time teachers or lecturers working in the school or institution in question. In this regard, the profile of If and When contract work in the education and training sector is very different to that in the hospitality and retail sectors dealt with in the study, where such contracts are typically seen within the cohort of lower-skilled and lower-paid workers.

3. Measures introduced by the Department of Education and Skills to improve the situation of part-time workers

The Department has made enormous strides in recent years in addressing the issue of casualisation and improving the situation of part-time staff and it is disappointing that this has not been given sufficient recognition in the UL report.

The Department has introduced measures to reduce the level of part-time and fixed-term employment in teaching and lecturing, thereby significantly improving the situation of such staff and maintaining the attractiveness of these professions to graduates.

In teaching, an expert group established under the Haddington Road Agreement (HRA) examined the level of part-time (and fixed-term) employment and made recommendations to reduce the level of such work. The measures which were recommended by the expert group for introduction in the short-term have been implemented by the Department since September 2015. These changes enable part-time teachers to gain additional hours more easily and quickly. Measures to further improve the situation in the medium-term are under consideration by the Department and the teacher unions. A second expert group is currently examining the level of part-time (and fixed-term) employment in lecturing at third level and is due to report shortly.

In addition, the HRA contained provisions to improve the situation of Hourly Paid Assistant Lecturers (HPALs) at third level. HPALs are generally employed on what could be regarded as a casual basis for a low number of hours each week to lecture outside of the typical working day or to deliver specialised courses and are paid per hour of lecturing. Under the HRA, a process was put in place to convert HPALs to the grade of Assistant Lecturer, giving them additional entitlements such as pro-rata pay, paid holidays, paid sick leave, pension entitlements etc.

Related to the HRA, the Minister for Education and Skills has had a considerable interest in the issue of casualisation among the approximately 11,500 Special Needs Assistants employed in the sector. Significant measures were put in place to ensure job security for this cohort of staff and to reduce the level of part-time employment. These measures have already had some success and there will be further improvement over the next 2-3 years. The measures are continually kept under review between the Department, school management bodies and unions.

Another group on low pay are the estimated 8,000 Secretaries and Caretakers employed by schools using grant-funding. Arising from a recent agreed arbitration process, School Secretaries and Caretakers will receive a cumulative pay increase of 10% between 2016 and 2019. In addition, a minimum hourly pay rate of €13 for such staff will be phased in over the period 2016 to 2019. A key provision of the arbitration finding is that the improvements in pay cannot be at the expense of reduced working hours and the Department is committed to implementation of this provision. The Department has agreed to engage further with the union side in 2019 to consider a further agreement to apply from 2020.

4. Risks

The UL study recommended that legislation be enacted to provide that:

- For employees with no guaranteed hours of work, or those on a combination of minimum guaranteed hours and If and When hours, the mean number of hours worked in the previous 6 months will be taken to be the minimum number of hours stipulated in the contract of employment; and
- Where after 6 months an employee is provided with guaranteed minimum hours of work, 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, at a rate of 25% of the additional hours for which they have to be available or 15 hours, whichever is the lesser.

The Department of Education and Skills does not support these recommendations. Under the arrangements currently in place for the awarding of contracts of indefinite duration to teachers and lecturers, hours worked in the year prior to the CID being awarded are included in the CID if they are worked for the entire academic year in question. The Department's view is that this rule balances the objective of increasing the hours of part-time workers with the resource demands on and curricular needs of schools and institutions. If the qualifying period were reduced to 6 months, this balance would be shifted disproportionately and situations would inevitably arise where teachers and lecturers would have contracts for work which is not needed in the system, meaning additional cost and waste of scarce resources.

The study also made the following recommendations:

- 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.
- 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.
- 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.

The Department does not support these recommendations. If they were implemented, the cost of substitution arrangements in schools and third-level institutions would in effect become unsustainable. In the schools sector for example each of the 3,300 primary schools and 735 post primary schools are individual employers who require substitute teachers to cover for other teachers on unforeseen short term absences such as illness, bereavement leave, force majeure leave etc. In some instances the same teacher may provide substitution cover for a number of schools in a locality depending on their availability. The expenditure on substitution in post-primary schools in 2014 was in the order of €40 million, not taking into

account the cost of substitution in third-level institutions. While it is not possible without detailed analysis to precisely calculate the cost to the Exchequer of the measures recommended in the study, it is inevitable that substitution costs would increase significantly if the recommendations were implemented, at enormous cost and waste to the Exchequer.

In a circumstance where employers are not permitted to incur such additional expenditure, schools and third-level institutions would have to cease employing substitute staff. This would have serious adverse consequences for the education of students. In schools, classes would simply not be taught when a teacher is absent at short notice. In third level, the increased expenditure on substitution would inevitably take resources from elsewhere, leading to the closure of programmes. Ironically, one of the side effects would be that valuable substitution work would then be closed off to part-time teachers and lecturers.

There are instances of structured part-time low hours contracts in use in the education and training sector. However, unlike how they are portrayed in the study, these are not zero hours contracts or If and When contracts. Teachers may be employed on low hours part-time contracts in schools where for example the curricular demand for their particular subject is low. However, this only happens where the legitimate curricular needs of the school demand. Where it occurs, the teacher's work pattern is defined in advance through the structured, planned timetable for the school year and the teacher is paid at the defined national pay rates for such work outlined above i.e. in a range from approximately €40 to €80 per hour. The system encourages schools to offer additional hours to such part-time teachers where possible.

In adult education and at third level, tutors and lecturers may be employed on low hours part-time contracts where they are delivering a specialised course or module, where there is low student demand for a particular course, or where the individual is an industry expert employed full-time outside of the sector and is delivering tuition/lecturing in the evenings or at weekends. In such cases it must be borne in mind that the rates for such work are in the region of €60 per hour and in many cases the work is offered to existing part-time staff in an effort to improve their incomes.

Part-time hours and substitution arrangements will continue to be an important feature of the education and training sector in enabling flexibility to maximise curriculum choice at second level and to respond flexibly to student demand for specialist course and module provision in higher and further education. Measures that unduly curtail the flexibility of management to offer part-time and substitute hours would therefore be damaging to the sector.

On the other hand, some of the other recommendations made in the study appear valuable, particularly from the perspective of the employee. These recommendations merit further consideration, subject to consultations to establish their direct effects on sectors, particularly those recommendations which:

- seek the provision of earlier and clearer statements of working hours, terms and conditions to employees;
- call for the establishment of an interdepartmental working group to allow for greater cooperation on policies affecting working hours;

- provide that the legal position of people on If and When contracts be examined with a view to providing clarity on their employment status.

The Department notes the recommendations made in the study which relate to the development of a policy for a high-quality childcare system, the establishment of a consultation system by the Department of Social Protection on social welfare issues and the adaptation of the Central Statistics Office Quarterly National Household Survey. The Department's view is that these recommendations should be analysed further and would be guided by the views of the Departments and agencies responsible for the provision of these services in this regard.

Other recommendations in the study flow from the recommendations set out above. The Department would welcome the opportunity to explore such recommendations in a further consultation process should the need arise.

5. Conclusions and Policy Steps

Given the wide variety of employment practices within the sector (and across sectors), it is not possible in the Department's view to have one universal approach to the issues or to legislate for all circumstances. This Department would support measures to increase the stability and certainty of employment for workers on zero-hours contracts and to improve the situation of low-paid workers. However, our view is that such measures are inappropriate and unnecessary in the context of 'If and When' contracts, particularly for staff on relatively high pay rates such as teachers and lecturers. In that regard, the Department of Education and Skills would have serious difficulty in implementing some of the recommendations of the report as currently framed (in particular those relating to guaranteed minimum notice periods and minimum continuous hours) because of their potentially damaging effects for the sector in terms of costs as well as management flexibility and system responsiveness.

Accordingly, in this Department's view, if the Department of Jobs, Enterprise and Innovation are considering taking measures based on the UL report, the following policy steps are needed:

- i. Distinguish between practices affecting low-paid workers and those involving more highly-paid staff;
- ii. Prioritise measures aimed at improving the situation of lower-paid workers;
- iii. Recognise that the education and training sector has the lowest level of variable hours of the sectors examined in the study;
- iv. Acknowledge the significant measures put in place in the education and training sector to address issues around part-time working;
- v. Acknowledge the significant risks to the education and training sector of a one size fits all approach.

The first priority should be to consider, in consultation with Government colleagues and key stakeholders across the sectors, measures that can address issues affecting the lowest paid and most vulnerable workers. Further and more thorough consultation could then take place with key stakeholders in sectors to consider and evaluate further measures that might be appropriate, having regard to the service and Exchequer risks involved and in light of experience of the measures already taken in the education and training sector.

This submission generally reflects the views of management within the education and training sector, but individual management representative bodies may also make submissions independently as part of the consultation process.