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## **Private & Confidential**

Mr David Lockhart  
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Department of Jobs, Enterprise  
and Innovation  
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RG/REC/RIC2/1

Richard Grogan

**Re: Consultation document – University of Limerick Study on the Prevalence of Zero Hour Contracts and Low Hour Contracts in the Irish Economy.**

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Dear Mr Lockhart,

I was delighted to take part in the study. As a Solicitor who is in practice in the area of Employment Law I believe that it is important that I would have done so. In relation to the recommendations I would raise the following matters:

1. I do not agree with the recommendation. I believe that the current provision that it would be provided within two months of commencement is sufficient. I believe that there would be practical difficulties for employers having to provide a written statement of the Terms and Conditions of Employment on the first day of employment. Often the content of Section 3 Terms of Employment (Information) Act 1994-2012 are incorporated into a full contract.

Richard Grogan, BCL, AITL, TEP, Principal. Ruth Lynch, B.A., LL.B. Associate.  
Michelle Moran B.A., LL.B. Associate



Rather I would propose that you might consider, taking into account the fact that the Act have been amended by other legislation and there is no consolidated legislation, that there would a statutory form detailing the matters set out in Section 3 Terms of Employment (Information) Act 1994-2012 which would be required to be furnished to the employee on commencement and that this would apply to people working non-guaranteed hours of work.

2. I agree with recommendation 2.
3. I agree with recommendation 3.
4. I agree with recommendation 4.
5. I do not agree with the 72 hour notice. I do agree with the provision of payment of a higher rate where the relevant notice is not provided. If such a provision is to be introduced I believe that an amendment will need to be made to Section 17 of the Organisation of the Working Time Act 1997 to strengthen the provisions relating to the retention of records. In my experience in employment cases there are rarely records of notifications even where only 24 hour notice is required. On a practical level I can see significant disputes arising which will result in claims to the WRC as to whether the relevant 72 hour notice has been given or not and how this is going to be determined. Without specific legislation confirming that Section 25 of the Organisation of Working Time Act will apply and it will be a matter for the employer to produce the relevant records to prove same I can see these being the subject of substantial litigation with the employer's saying they gave the notice and the employee saying that they did not receive the notice.
6. I agree with the provisions of recommendation 6.
7. I agree with the recommendation in paragraph 7.
8. I agree with the recommendation in paragraph 8.
9. I agree with the recommendation in paragraph 9.
10. I agree with the recommendation in paragraph 10.
11. I agree with the recommendation in paragraph 11.
12. I agree with the recommendation in paragraph 12.
13. I agree with the recommendation in paragraph 13.
14. I agree with the recommendation in paragraph 14.

The matters not covered in the recommendations that you are seeking submissions on a significant issue which is arising in many cases and which is highlighted by the WRC is that very often employees do not know the proper name of their employer.

I would ask Minister considering any amended legislation that the following would be addressed:

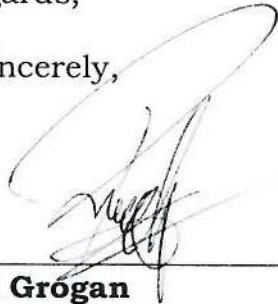
1. That the penalty of four weeks wages as a maximum is unlikely to have a deterrent effect or promote compliance. I would propose that there would be a criminal offence not to provide the document within the time specified by the legislation.
2. I would propose that the penalty for failing to provide the document would be increased to a maximum of 26 weeks wages.
3. I would propose that the Minister would specify that failure to advise of any of the matters contained in Section 3 of the Terms of Employment (Information) Act, as amended, would automatically nullify any restrictive covenants restricting the employee.
4. Exclusivity clauses would be deemed illegal and unenforceable save and except where the employee works a minimum number of hours, for example 30 hours per week, at a rate equal to above the Living Wage of €11.50 per hour or such increased or decreased figure as would be determine by the Minister from time to time taking into account changes in the Living Wage.
5. Where an employer attempts to specify that an individual is a self-employed individual or in any proceedings for the WRC or the Labour Court so pleads and it is determined by an Adjudicator of the WRC or the Labour Court on Appeal that the compensation awarded in such cases would be a minimum of six months and a maximum of twelve months. In addition there would be a criminal offence punishable by law. I appreciate that minimum awards are something that maybe objected to but I have a fear that some employers will seek to attempt to categorise employees as self-employed, when they are not self-employed individuals to avoid the legislation. In addition such categorisation of individuals can result in substantial loss of Tax Revenue to the State. I would propose in cases of doubt where an individual employer or company proposes to take on an individual who is be categorised as self-employed that the employer shall be entitled to get an advance ruling from the Revenue and where an individual or company makes such an application and is successful and provided full disclosure has been made then the enhanced penalties would not apply subject to the condition that in any proceedings if an employer is

seeking to rely on Revenue ruling employer would have to produce before an Adjudicator or the Labour Court copies of all documentation and correspondence sent to the Revenue. If an Adjudicator or the Labour Court subsequently on full examination determines that the individual was an employee and not a self-employed individual provided the documentation furnished to the Revenue was in material compliance with the actual activities of the employee subsequently found to be an employee then the increased penalties would not apply but otherwise they would. I would propose this provision would only apply in cases where the employee will earn less than the Living Wages determined from time to time and was working on average in the preceding twelve months less than a minimum of thirty hours per week.

I support the approach by the Minister to deal with Zero Hour Contracts but I do have a concern that unless the ancillary issues are put in place that we would simply have a situation of employers seeking to categorise individuals as self-employed so as to avoid the new legislation with no effective remedy to counteract same.

Kind regards,

Yours sincerely,



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