

Zero-hours contracts: many questions

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Businesses are increasingly using non-standard contracts to add more flexibility to their workforce. But, with recent regulations seeking to make sure zero-hours contracts are fair, what do businesses need to look out for?

A zero-hours contract is used to describe casual working arrangements between an employer and an individual. Generally, the hours to be worked are left (deliberately) undefined. An employer is under no obligation to provide any work and will pay only for work undertaken.

How do zero-hours contracts apply to workers and employees?

Such contracts are used for people classed as both 'workers' and 'employees'. However, there has been debate over whether zero-hours contracts may exploit workers. So, to explore how the contracts can be used fairly, it's worth explaining the difference between the two. Both categories are entitled to:

- **the national minimum wage**
- **paid annual leave and rest breaks**
- **protection from discrimination**

Employees are also entitled to employment rights such as statutory sick pay and family friendly rights such as statutory maternity and paternity leave and pay. Perhaps crucial for most employees is the right not to be unfairly dismissed.

Workers do not have these rights – but could gain them if the way their employer treats them enhances their status to that of an employee. This could include being provided

“ZERO-HOURS EMPLOYEES AND WORKERS HAVE THE RIGHT NOT TO BE DISCRIMINATED AGAINST FOR TAKING OTHER WORK”

with regular working hours or carrying out a disciplinary procedure in respect of the worker. For this reason, zero-hours contracts are often used to maintain the worker's employment status.

Why are zero-hours contracts seen as exploitative?

When it comes to zero-hours contracts, debates over exploitation usually focus on those which include a clause preventing workers from accepting work from anyone else during the life of the contract. What's more, many workers are unaware of their statutory rights under the contract. This has understandably attracted much criticism.

To make things fairer for workers, in January 2016, The Employment Rights Act 1996 was amended to render exclusivity clauses unenforceable. In addition, the Exclusivity Terms in zero-hours Contracts (Redress) Regulations 2015 has provided individuals with a remedy against employers who seek to include an exclusivity clause in a contract:

- zero-hours employees and workers have the right not to be discriminated against for taking other work;
- zero-hours employees have the right not to be unfairly dismissed if they don't comply with an exclusivity clause.

But despite these steps, zero-hours contracts remain under scrutiny. For example, a [report published by the Resolution Foundation at the end of 2016](#) suggests that workers on zero-hours contracts are £1,000 a year worse off than employees doing the same work. It estimated that zero-hours workers suffer a pay penalty of 6.6% which, when working 21 hours per week, amounts to £1,000 per year.

Are there any benefits?

The use of zero-hours contracts can benefit both parties if used fairly. They can provide a flexible workforce to meet a temporary or changeable need for staff and are particularly popular in the retail and hospitality industries. Public and voluntary sector organisations also make use of them. From a worker's perspective, they can provide much needed flexibility. They are recognised as giving work opportunities to young and older people that might not otherwise exist.

How might zero-hours contracts be used in the future?

[The Business, Energy and Industrial Strategy Committee](#) has launched an inquiry focusing on the changing nature of work, as well as the status and rights of agency workers, the self-employed, and those working in the gig economy. It will also consider the balance of benefits between workers and employers, flexible contracts and zero-hour contracts, to explore what regulations might be needed in the future.

“FROM A WORKER’S PERSPECTIVE,
ZERO-HOURS CONTRACTS CAN
PROVIDE MUCH NEEDED FLEXIBILITY”

In short...

- Zero-hours contracts can be used for employees and workers, but both have different rights
- Government regulations have cracked down on exclusivity clauses to counter exploitation
- The use of zero-hours and flexible contracts is likely to continue to rise

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

