

## **Study on the Prevalence of Zero Hour Contracts and Low Hour Contracts in the Irish Economy**

### ***A Submission by the Citizens Information Board (January 2016)***

#### **Introduction**

The Citizens Information Board (CIB) welcomes the opportunity to make a submission on the *University of Limerick Study on the Prevalence of Zero Hour Contracts and Low Hour Contracts in the Irish Economy*. The Study provides necessary and useful information on the prevalence of zero hour and low hour contracts in Ireland. The distinction in the study's findings between the use of zero-hours contracts and the use of 'if and when' work offers is very important in that it may be more difficult for workers in the latter situation to know what their employment rights are and to have these enforced.

The commitment by Government to implement the recommendations contained in the report where this is deemed appropriate and feasible following public consultation is welcome.

The requirement for all workers to be fully protected must be balanced with the need to ensure that employers (current and potential) can maintain the momentum in job creation. Ensuring that people with uncertain and/or irregular employment are fully protected is a core consideration as is the need to maintain an appropriate balance between the number of hours worked and rates of pay. The National Minimum Wage is crucial in this regard.

The potential impact on small employers of any changes in employment protection legislation is a consideration as is the need to promote the creation of jobs. In this regard, the Board is aware of concerns expressed by IBEC about the introduction of new legislation relating to zero hour and low hour flexible contracts. This view is based on a perception that the traditional type of employment (a single job with a single employer) is no longer the norm.

About 7% of queries<sup>1</sup> to Citizens Information Services (CISs) and the Citizens Information Phone Service (CIPS) (both of which are funded and supported by the CIB) refer to employment matters. During the first half of 2015, over half (21,050) of employment related queries dealt with by CISs referred to employment rights and conditions. Queries on employment rights and conditions suggest that people who seek information and advice in relation to employment protection matters are generally non-unionised employees, people in low-paid jobs, part-time workers and people working for smaller employers. CISs and CIPS deal on an ongoing and regular basis with people seeking to combine low-income and part-time and/or casual work with social welfare payments to maximise household income as well as people who experience difficulties in transitioning from welfare to part-time work. Feedback from CISs and CIPS, based on the experience of dealing with these queries, provides an insight into some of the systemic difficulties experienced by people in respect of casual and part-time work and bridging the gap between this type of work and welfare.

### **Types of Low Hours Contracts/Arrangements**

The Board notes that the UL study found that classic zero-hours contracts (under which employees are contractually obliged to make themselves available for work with an employer without any guarantee of receiving any) are not extensive in Ireland. We also note the finding that some employers are favouring what are known as “if and when” working arrangements – where there is no contractual obligation on the part of an employer to offer work or on the part of an employee to carry out work – as a way of getting out of existing employment protection legislation.

There is a crucial distinction between the position of workers who have zero hour contracts and those who work on what are termed ‘if and when’ work arrangements. A person with a zero-hours contract has a formal arrangement that requires him/her to be available for a certain number of hours per week, or when required, or a combination of both. Employees on zero-hours contracts are protected by the *Organisation of Working Time Act 1997*.<sup>2</sup>

In contrast, people who have ‘if and when’ work arrangements’ do not have a contractual requirement – there is no obligation on the employer to provide work and, equally, there is no obligation on the employee to accept work. This more casual-type employment may not currently be protected by legislation.

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<sup>1</sup> The national network of CISs and CIPS deal annually with some one million queries from the public.

<sup>2</sup> The Act requires that an employee under a zero-hours contract who works less than 25% of their hours in any week should be compensated. The level of compensation depends on whether the employee got any work or none at all. If the employee got no work, then the compensation should be either for 25% of the possible available hours or for 15 hours, whichever is less. If the employee got some work, they should be compensated to bring them up to 25% of the possible available hours.

## Issues Identified That Need to be Addressed

- People engaged in employment with unpredictable working hours are likely to experience one or more of the following:
  - Unstable income
  - Difficulty in accessing credit
  - A lack of employee input into the scheduling of work hours
  - Employment contracts that do not reflect the reality of hours worked
  - Insufficient notice when called to work
  - Being sent home during a shift
  - A belief among employees that they will be penalised by employers for not accepting work
  - Poorer terms and conditions than other employees in some cases
  - Difficulty in accessing social welfare benefits because of insufficient PRSI contributions
  - Difficulties in getting child care at short notice (most child care services require pre-arranged and defined days/hours)
  
- There is some evidence from CISs and CIPS of confusion among both employers and employees as to the actual rights of the employee engaged in low hours and/or casual work;
  
- Cases are regularly reported by CISs and CIPS where a person protected by employment rights legislation and having a decision made in his/her favour was unable to enforce the decision, e.g., the only option being to seek redress in the courts, a process which is too onerous for many people;
  
- There is a lack of clarity about the employment status of individuals who work exclusively 'if-and-when' hours and, consequently, questions arise on the extent to which they are covered by employment legislation;
  
- Because of the variety of contractual arrangements in place, there is a difficulty in establishing accurately how many people are working on an 'if-and-when' basis that is not fully protected by legislation;
  
- People sometimes report a difficulty in claiming social welfare payments to which they are entitled because their employer is unwilling to sign forms declaring the guaranteed number of hours under their contract .

A number of problems with the current legislation identified in the UL research are also reflected in feedback to CIB from CISs and the Citizens Information Phone Service (CIPS).

- (i) While people on zero-hour contracts<sup>3</sup> generally have the same employment law rights as permanent workers, such employees have relatively little certainty regarding their hours of work and income;
- (ii) Section 18 of the *Organisation of Working Time Act* applies to employees on zero-hours contracts whose contracts of employment require the employee to be available to work – however, entitlement under the Act hinges on whether an employer requires a person to be available or whether the contract provides for a set number of hours;
- (iii) The general difficulty that workers have in enforcing their employment protection rights where an employer is recalcitrant almost certainly applies to a greater extent for those in casual or low hours employment.

It is argued by employers that there are benefits for both employers and employees in using zero hour contracts. They are often used in sectors where there are seasonal fluctuations in work, where it is difficult to predict the minimum level of staff required or where the need for urgent cover can arise

In order to address the loopholes contained in the *Organisation of Working Time Act* and to provide additional protections for casual employees, trade unions<sup>4</sup> have called for a number of measures with which the CIB broadly agrees:

- Closing the loophole which allows employers to circumvent the right to compensation provided for in section 18 of the Act;
- Provide a right to request full-time work and allow refusals only where the employer can demonstrate a real need for zero-hours type practices;
- Limit the length of time a post can be filled with workers on zero-hours type arrangements;
- Provide a right for employees to an overtime premium for hours worked in excess of “normal contracted hours”;
- Provide that employees cannot be called into work for excessively short periods such as periods of less than four hours.

### **University of Limerick Study Recommendations**

The CIB broadly agrees broadly with the recommendations contained in the UL Study.

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<sup>3</sup> The term ‘zero hours contract’ refers to someone who is not guaranteed hours of work but who is contractually required to make themselves available for work with an employer.

<sup>4</sup> See, for example, [http://www.ictu.ie/download/pdf/regulating\\_for\\_decent\\_work\\_final.pdf](http://www.ictu.ie/download/pdf/regulating_for_decent_work_final.pdf)

Recommendations 12 relating the Terms of Employment Information Acts 1994-2012, while desirable, would, however, be difficult to implement in practice.

Recommendations 3-4 in relation to repealing Section 18 of the Organisation of Working Time Act 1997 and introducing either a new piece of legislation or a new section into the Organisation of Working Time Act 1997 are important ones which should be considered:

- For employees with no guaranteed hours of work, and for those with a combination of minimum guaranteed hours and If and When hours, the mean number of hours worked in the previous 6 months to be taken to be the minimum number of hours stipulated in the contract of employment.
- The putting in place of a mechanism 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.

We also note, however, that these recommended legislative changes would only be meaningful if commensurate enforcement mechanisms are put in place. The latter would be likely to have significant resource challenges.

We broadly support the Recommendations 5-7:

- The requirement for employers to give individuals at least 72 hours' notice of being called into work and at least 72 hours of cancellation of work except in exceptional circumstances (Recommendation 5).
- A requirement for employers to give notice of cancellation of working hours already agreed to employees (and those with non-guaranteed hours) of not less than 72 hours. (Recommendation 6)
- Provisions for payment for a minimum of 3 continuous working hours (Recommendation 7)

However, we also note that it would be very difficult to implement the 72 hours' requirement in specific industries, e.g., those that weather dependent (building, gardening/landscaping).

Recommendations 8-14 are relatively straightforward and should be implemented without delay, in particular,

- The establishment by the Department of Social Protection of 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.

- The provision of an accessible, regulated and high-quality childcare system that takes into account the needs of people working If and When contracts and low hours.
- A rolling CSO Quarterly National Household Survey Special Module on Non-Standard Employment which would include questions on non-guaranteed hours.

### **Role of Citizens Information Board**

The CIB has liaised with the Department and with the National Employment Rights Authority over the years and would be very happy to collaborate with the Department of Jobs, Enterprise and Innovation and the Workplace Relations Commission in the following areas:

- (i) Maximising the information, advice and advocacy role of CISs and CIPS in respect of employment rights and ensuring efficient referral pathways to the relevant agencies
- (ii) Exploring how the CIB website [www.citizensinformation.ie](http://www.citizensinformation.ie) can play an enhanced role in developing a fully integrated information system on employment rights
- (iii) Integrating information production at a national level to ensure that there is no unnecessary duplication of publications and that there are fully effective website linkages
- (iv) Ensuring that all employers are fully informed about employment protection legislation and their responsibilities accordingly
- (v) Highlighting areas where there is an ongoing issue of lack of compliance
- (vi) Targeting smaller employers through their representative organisations to ensure that they are fully informed on employment rights legislation as it pertains to part-time, low hour and casual workers

**21<sup>st</sup> December 2015**