

**CONSULTATION SURVEY ON THE OPERATION OF  
ZERO HOURS' CONTRACTS IN JERSEY**

**Introduction**

1. The Jersey Employment Forum has been asked by the Social Security Minister to investigate the operation of zero hours' contracts in Jersey, and to make recommendations for possible changes to the Employment (Jersey) Law 2003 and other measures that the Forum may consider necessary to enhance the protections available to employees; and to clarify the rights and responsibilities that employees and employers currently have under the Law.
2. The Forum has prepared a background paper to accompany this consultation exercise. It can be found here:
3. The Forum invites views from as wide a cross-section of the Jersey community as possible.
4. Personal data provided in response to this consultation will be processed in accordance with our privacy notice, which can be found at:
5. Please submit your responses no later than X July 2022. The Employment Forum will also be engaging with business and trade union organisations to take evidence directly from them.
6. You can submit your responses:
  - Via the online survey at:
  - By email to [E.Forum@gov.je](mailto:E.Forum@gov.je)
  - By post to the Secretary to the Forum, Nic Turner, 19-21 Broad Street, St Helier JE2 3RR
  - By requesting a meeting with the Forum; email [E.Forum@gov.je](mailto:E.Forum@gov.je)

## **Background to the consultation**

7. The term “zero hours’ contract” can be used to describe a range of working relationships, including:
  - A casual employment relationship under which an employee and an employer understand and agree that any work will be occasional and of short duration. Work may be offered as and when it is available
  - A more regular working arrangement where the employee has the employment as their main or only employment, but the hours of work may vary in each week or month and there are no minimum guaranteed working hours
  - An agency work arrangement, where the agency provides the services of the employee to an employer, for the duration of a particular assignment. The assignment may come with a guaranteed number of hours, but there is no ultimate guarantee that the agency will provide the employee with a further assignment
  
8. For the purposes of this review, the Employment Forum wishes to receive views from respondents on the second of these examples. It is this example that arguably raises the most questions about the most appropriate contractual arrangements between an employee and an employer.

## **Employment rights of those employees retained on a zero hours’ contract**

9. Contrary to the view held in some quarters, employees retained on a zero hours’ contract in Jersey enjoy exactly the same employment rights as those on other types of contract. A change in the Employment Law in September 2015 ensured this.
  
10. In a further change, in September 2018, the Employment Law was amended to give all employees, including those on a zero hours’ contract, the “day 1” right to request a change in terms and conditions – including the right to request a permanent contract with fixed hours.
  
11. The following “Day 1” employment rights apply to **all** employees in Jersey, including those on a zero hours’ contract:
  - Statement of initial terms of employment
  - Daily and weekly rest periods
  - Annual paid leave
  - Minimum wage
  - Parental paid and unpaid leave
  - Breastfeeding rights
  
12. After a period of service **all** employees enjoy these additional rights:
  - Minimum period of notice
  - Redundancy payment

- Protection from unfair dismissal (these incorporate some Day 1 rights)

### **The use of zero hours' contracts in Jersey**

13. In Jersey labour market surveys, around 10% of jobs in Jersey are recorded as being filled by employees on a zero hours' contract. In December 2020 this amounted to 5,340 jobs.
14. In recent Jersey Opinions and Lifestyles Survey (JOLS) results (2019), responses indicated that 84% of those employees on a zero hours' contract (approximately 4% of total employees) were very or fairly satisfied. This showed an increase from the previous 2014 survey which indicated a figure of 76%.
15. The survey also indicated both advantages and disadvantages. In the 2019 survey 50% of respondents felt there were fewer employment benefits to be enjoyed with a zero hours' contract, but 80% of respondents highlighted their flexibility to suit individual circumstances
16. The Employment Forum recognises that there are issues, particularly of actual and potential disadvantage, to be addressed in the review. Previous Reports have suggested that employees and employers have not been clear about their rights and responsibilities in employment law terms. This is an issue on which the Forum is particularly keen to gather evidence.

### **The definition and use of zero hours' contracts in other jurisdictions**

17. In **Ireland**, zero hours' contracts are prohibited in most situations, but with some exceptions:
  - Work of a genuinely casual nature (which must be agreed as such by both employee and employer)
  - Work undertaken in emergency situations
  - Short-term work to cover routine absences
18. The definition of a zero hours' contract in Ireland is one where the employee is available for work, but the hours of work are not specified under the employment contract. A zero-hours contract requires the employee to be available for a certain number of hours per week, or when required, or both.
19. Legislation in Ireland also introduced the concept of "banded hours" which more accurately and fairly reflect the reality of the working hours of an employee. Legislation provides for three "bands": 1-10 hours; 11-24 hours; 25-34 hours; and 35 hours or more.
20. In **New Zealand**, the definition of a zero hours' contract is one in which an employee must be available for whatever hours of work an employer offers them, whenever it is offered and there are no guaranteed hours of work.
21. Zero hours' contracts framed in such terms are no longer permitted under New Zealand employment law.

22. In **Germany**, an employer and employee must agree the duration of daily and weekly working hours. If the duration of the working week is not fixed by both parties, 10 working hours per week are deemed to be agreed. If the duration of daily working hours is not fixed, then the employer is bound to call the employee for at least 3 consecutive hours per day.

### **Summary**

23. Respondents will see that there are different legal approaches in different jurisdictions. Some agreements are regulated by legislation. Governments have tended to provide a legal definition of a zero hours' contract in order to ban certain types of employment practice.

24. The Forum recognises that careful consideration needs to be paid to achieve the right balance between the requirements of an employer to ensure that the needs of the business are matched by the availability of employees, with the rights of an employee not to suffer any detriment by being engaged on a particular type of contract of employment, and to be treated fairly by an employer.

## CONSULTATION SURVEY

1. Are you completing this survey as:

Employer

Employee

Employer or Business organisation

Trade Union or employee organisation

Other

2. Sector

What sector best describes your business or job:

Hospitality

Finance/Legal

Wholesale and Retail

Agriculture

Manufacturing

Construction

Public service

3. Business size

How many people are employed in your organisation?

Under 5

5 to 9

10-19

20 -49

50+

Employment law options

Please give your opinions about these topics. If you have specific examples or experience, please provide details.

## **Some background**

The Employment Forum has been asked to consider

- The definition of a zero hours' contract
- The prevention of employers requiring employees on a zero hours' contract to always be available for work
- A ban on exclusivity clauses
- A right for employees on zero hours' contracts, who in practice work regular hours, to switch to a contract which reflects the normal hours worked
- A right to reasonable notice of a work schedule
- A right to compensation for shift cancellation without reasonable notice
- Other measures to be identified as part of the review

In Jersey, unlike the UK, all those who work are classed as “employees”, and are entitled to the same level of employment rights and protections, regardless of the type of contract they are employed on. By contrast, the UK government distinguishes between “employees” and “workers” with each group enjoying different levels of employment protection. In general, in the UK, those employed on a zero hours' contract are likely to be classed as “workers” and enjoy fewer employment protections.

The Employment Forum recognises, however, that the enhanced status that employees on a zero hours' contract have in Jersey – as compared to the UK – does not mean that they may not be vulnerable to abuse and exploitation.

## **Difficulties which may be faced by those employed on a zero hours' contract**

The following are some examples of difficulties which a zero hours' contract employee may face:

- Absence of a guaranteed income may cause difficulties in obtaining accommodation or loans, or prevent effective budgeting and financial planning
- An employee on a zero hours' contract dependent on an employer providing them with work may place them in a precarious position and feeling vulnerable to unfair treatment or unreasonable demands
- The possibility of being called into work at short notice may make it difficult to undertake work for another employer. While an employee may have the right to refuse an offer of work, they may worry that, if they do so, it could lead to less work being offered in the future

## **Please give your views on:**

### **1) A ban on exclusivity clauses**

As part of its agreement to Proposition P.32/2021, the States Assembly voted to ban exclusivity clauses in zero hours' contracts. The effect of an exclusivity clause is to prevent an employee from being employed by another employer, regardless of whether the first employer has any work to offer to the employee.

On 27<sup>th</sup> May 2022, an amendment to the Employment Law came into force. The amendment makes an exclusivity clause in a zero hours' contract unenforceable. This means that if an employer tries to restrict an employee on a zero hours' contract from taking work elsewhere, the employee has a legal right to challenge that restriction.

The Employment Forum would be grateful for your views about the use of exclusivity clauses in Jersey and whether further protections should be considered.

## **2) What constitutes a “zero hours contract”?**

The definition of a zero hours' contract used in the exclusivity ban is taken from the Control of Housing and Work Order 2013, which is, itself, under review at present.

This definition is: *“zero hours contract” means a contract of employment where the employee may work for the employer from time to time but there is no minimum requirement for the employee to do any work for the employer.*”

There are obvious limitations in a legal definition that only applies when no hours at all are guaranteed. By guaranteeing just one hour of work, employers can easily avoid such legislation.

Other jurisdictions have focused on the fact that work offered by an employer may be variable or unpredictable.

Is it therefore at all helpful to refer to a “zero hours' contract” in employment legislation? Should the approach be instead to ensure that all contracts of employment contain essential elements, backed up by employment rights and tailored to the type of employment and its regularity (or otherwise)?

## **3) Availability of the employee for work**

One of the key themes around availability is the precarious nature of certain types of employment and the pressure on an employee to be available for work, for fear that future work may not be offered.

The Forum is interested in understanding whether protections can be put in place which give the employee a right not to be put at a disadvantage if they refuse work at a given time. How would the rights of the employer and employee be balanced in that situation? Can the employee be protected from future disadvantage if they choose to refuse work at a certain time? (for example, fewer shifts allocated in future weeks)? Should the employer have any right to expect any employee to work outside of hours that are explicitly included in a contract of employment?

## **4) A right to reasonable notice of a work schedule**

By their very nature, zero hours' contracts may typically be used for “short notice” work requirements. Should there be a requirement on the part of the employer to provide a minimum period of notice before the employee undertakes work which may fall outside the terms of their contract? Should this right apply to all employees?

## **5) A right to compensation for shift cancellation or curtailment without reasonable notice**

Employees on a zero hours' contract may be particularly vulnerable to having their shifts cancelled or cut short with very little, or without, notice.

In such a situation, should employees be entitled to a payment in lieu? Should any new legislation focus on alleviating the lack of certainty about the work that would be available to any employee in advance, and not just on whether this is a zero hours' contract issue?

**6) A right for zero hours employees, who in practice work regular hours, to switch to a contract which reflect the actual hours worked**

The Employment Law already allows an employee to request a variation to their working pattern, and an employer cannot refuse, save in certain specific circumstances. In future, should the circumstances in which the employer can refuse a request be further restricted?

Should an employee have the right, not just to request a variation, but be entitled to one, if they work “standard” hours over a qualifying period?

Should this entitlement not be restricted just to those employees on a zero hours’ contract, but be a more general right to seek a variation which recognises the actual employment hours over a qualifying period?

A key question which the Forum would like to understand is whether zero hours’ contracts are being used inappropriately in Jersey where employees already have a regular working pattern. Why are employers using zero hours’ contracts in such a situation?

**7) Other measures to be identified as part of the review**

What other areas of the Employment Law do you consider may need strengthening in terms of variable or insecure types of employment?



## **Section 1 – the use of zero hours’ contracts**

### **QUESTIONS FOR EMPLOYERS**

#### **Question 1**

Do you use zero hours’ contracts in your business? If so, for what purposes?

**Answer**

**Yes      No**

Please explain your response

#### **Question 2**

Have you ever offered employment on a zero hours’ basis which included an exclusivity clause? If so, for what reason?

**Answer**

**Yes      No**

Please explain your response

#### **Question 3**

Are you aware whether any of the staff you employ on a zero hours’ contract also work for another employer?

**Answer**

**Yes      No**

Please explain your response

#### **Question 4**

How many hours – on average – do you offer employees on a zero hours’ contract in a week or month?

**Answer**

#### **Question 5**

Do you let your zero hours’ contract employees have a say in how many hours or at what times they work?

**Answer**

**Yes      No**

Please explain your response

**Question 6**

What is your policy if a zero hours' contract employee declines the hours of work you offer?

**Answer**

**Question 7**

Do you employ any people on a zero hours' contract who work a regular pattern of hours? If so, typically how many hours per week will employees in that position work? Why do you employ those individuals on a zero hours' contractual basis?

**Answer**

**Yes    No**

Please explain your response

**Question 8**

How much notice do you give to an employee if their working hours are to decrease or fall to zero?

**Answer**

**Question 9**

If you offer additional hours of work, how much notice do you give the employee?

**Answer**

**Question 10**

Are you aware that employees on zero hours' contracts have the same rights under Jersey employment law as all other employees? How do you ensure that an employee is aware of their employment rights?

**Answer**

Please explain your response

**Question 11**

When you recruit for a job on a zero hours' contract basis, do you make clear the implications of this type of contract? At what stage do you make it clear that there is no guarantee of a minimum number of hours of work?

**Answer**

Please explain your response

**Question 12**

In your workplace, do you provide ZH employees and other employees the same pay and conditions? If not, please explain any differences

**Answer**

Please explain your response

**Section 1 – the use of zero hours' contracts****QUESTIONS FOR EMPLOYEES****Question 13**

Have you ever accepted employment on a zero hours' contract that contains an exclusivity clause? What was the reason your employer gave for including an exclusivity clause in the contract?

**Answer**

**Yes      No**

Please explain your response

**Question 14**

If you are employed on a zero hours' contract, are you employed by more than one employer or on more than one contract?

**Answer**

**Yes      No**

If yes, choose one option:

Full time job with zero hours job on top

Part time job with zero hours job on top

No permanent job but more than one zero hours job

Other – please explain

**Question 15**

If you are employed on a zero hours' contract, has that affected your ability to maintain a good work/life balance? Was this a factor in your decision to seek/accept employment under a zero hours' contract? Has employment on a zero hours' contract affected your ability to budget effectively for you/your household?

**Answer**

**Yes No**

Please explain your response

**Question 16**

How many hours – on average – do you work in a week or a month under a zero hours' contract?

**Answer****Question 17**

Do you have a say in how many hours per week or per month, or when, you will work?

**Answer**

**Yes No**

Please explain your response

**Question 18**

Would you like to work more hours than your employer currently offers you? If not, why not?

**Answer**

**Yes No**

Please explain your response

**Question 19**

Do you work – or have you ever worked - a pattern of regular hours while employed on a zero hours' contract? If so, how many hours a week on average, and over what period of time?

**Answer**

**Yes No**

Please explain your response

**Question 20**

If you work a regular pattern of hours under a zero hours' contract, how much notice does your employer give you if the number of hours decrease or fall to zero?

**Answer**

**Question 21**

If your employer offers you additional hours of work, how much notice do you receive?

**Answer**

**Question 22**

Do you have a choice about whether to accept or decline the hours your employer offers you?

**Answer**

**Yes No**

Please explain your response

**Question 23**

If you had no choice to accept or decline, why did you accept the hours offered?

**Answer**

Please explain your response

**Question 24**

If you did decline hours of work offered, was there any change in the hours of work offered subsequently? Please choose one of the following options:

No change

Employer shifted work pattern to suit my personal situation

Employer offered less hours going forward

Employer did not consider me for a permanent role

Other – please explain

Please explain your response

**Question 25**

Do you know that employees on zero hours' contracts have the same employment rights as all other employees?

**Answer**

**Yes      No**

**Question 26**

If you are an employee on a zero hours' contract do you understand what rights you are entitled to? How did you find out about them? Did your employer explain them to you?

**Answer**

**Yes      No**

Please explain your response

**Question 27**

In your workplace, do you think that zero hours' employees and other employees get the same pay and conditions? If not, please explain any differences you are aware of:

**Section 2 – Transparency in the use of zero hours' contracts – for all respondents**

**Question 28**

If you have previously looked for information, advice or guidance on zero hours' contracts:

- (a) Where did you find it?
- (b) How helpful was it in terms of explaining the position in relation to zero hours' contracts?
- (c) How could access to the information have been improved?

**Answer**

**Question 29**

Do you think that providing model clauses for zero hours' contracts would help employers to draw up zero hours' contracts and enable employers to better understand their employment obligations? If you answer yes, what should the key elements of model clauses be?

**Answer**

**Yes      No**

Please explain your response

**Question 30**

Do you think that the existing provisions of the Jersey Employment Law, combined with a greater transparency about the terms of zero hours' contracts, is the best way of ensuring that employees on zero hours' contracts can make informed choices about whether a zero hours' contract is right for them?

**Answer**

**Yes      No**

Please explain your response

**Question 31**

Do you think there is more that employers can do to inform employees on zero hours' contracts about their rights and terms and conditions?

**Answer**

**Yes      No**

Please explain your response