



Eastbourne

Zero Hours Contracts

Survey Report
November 2015

Zero Hours Contracts Survey by Citizens Advice Eastbourne, Research and Campaigns team: Alan Bruzon, Sarah Rose, Karen Costello-Mcfeat, Matthew Basford, Geoff Ferguson, Rosalind Bedford. Thanks to Adrian Carter of Warrens Solicitors .

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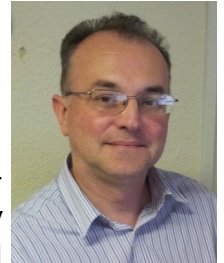
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Forward by Alan Bruzon, CEO, Citizens Advice

Eastbourne



In the summer of 2015 Citizens Advice Eastbourne carried out a survey of clients working on zero hours contracts to find out about the impact on their day to day lives. Over the past 10 years these contracts have become more and more prevalent in the job market, to the point where they have become the expected norm for a majority of people working in lower paid jobs.

Previously, people would work as employees of a company and have a contract stating the number of hours they would work each week. These hours were guaranteed to be paid, even though there would be scope for some variation. All the associated rights such as sick pay, annual leave, notice periods, redundancy, maternity and paternity rights would be respected.

With this traditional form of employment contract, people could plan for the future, get a mortgage and know how they could support themselves and their families.

Zero hours contracts have always existed but until recently they were rarely used, only in particular circumstances. They would apply to jobs which were unpredictable and infrequent, such as a consultancy project which happened once or twice a year for a few hours. The worker would not be obliged to accept the work offered and the employer was not obliged to give any other employment rights. This arrangement was understood and agreeable to both parties.

In recent years, zero hours contracts have become the norm for a large proportion of jobs and this has taken away many of the rights people would have expected, creating a climate of insecurity around work. People have difficulty claiming benefits like tax credits and housing benefit because their hours may change regularly. Employers don't always offer sick pay or annual leave and with seasonal variations staff don't always know whether they will have any work, making it very difficult to plan for the future.

The cynical view of this would be that employers prefer using zero hours contracts because it makes things much simpler when they do not have to offer all employment rights. It saves them money too. If this is the case, it gives unscrupulous employers more power to exploit their staff and adds to insecurity in the workplace. Some clients who come to Citizens Advice say they worry about upsetting their boss because they won't get offered more work which means they are cautious about asking for their rights in the work place like their rights to sick pay, maternity pay or raise health and safety concerns.

We know of one client who became pregnant and when she told her employer they said they wouldn't offer her any more work until after the baby was born – no maternity pay, nothing. Whatever happened to women's equal rights in the workplace?

We were also surprised by how prevalent the use of these contracts had become amongst high street chains, who many would assume follow a best practice approach to their staff. How much of this is being dictated to them by head office we don't know and we will be looking into this further.

You can read more about the findings of our survey on page 7, compiled by Sarah Rose, volunteer.

Whilst the use of zero hours contracts has increased, many employers may not be aware that they may not comply with employment law. It is the nature of the working relationship

itself which determines the type of contract which exists – not necessarily what is written on paper. This would mean that a lot of people currently on zero hours contracts could challenge these at an employment tribunal which would most likely find they qualify for full employment rights – rights which they are most likely not being given. Our survey has highlighted that both staff and employers are unaware of this fact and the reality is that, since the introduction of fees, it is less likely that people will apply to employment tribunal to get their rights enforced. You can read about the legality of zero hours contracts on page 10 written by Adrian Carter, a local solicitor.

The survey has shown the negative impact zero hours contracts have on people and we have come up with a series of recommendations for employers in Eastbourne. We think people need the stability and security provided by a job with full employment rights and ultimately this is better for employers too. We have come up with a pledge, which we are asking Eastbourne employers to sign, saying they won't use zero hours contracts routinely and will give the full employment rights people are entitled to as part of being a good employer. We are hopeful that many employers in the town will sign up to this pledge and improve the lives of their staff, including many low paid workers in the care industry, hotels and restaurants, hospitals and shops which are such an essential part of our town. Eastbourne is proud of being a popular tourist attraction and the people employed to keep this running should be valued and rewarded.

"The way you treat your employees is the way they will treat your customers".

Richard Branson

Contracts of Employment

by Karen Costello-McFeat



We all know that good employer/staff relations create substantial mutual benefits. Employees who feel a sense of well-being in the workplace are likely to: perform better, take fewer days off and have a greater sense of loyalty towards their company.

Our research at Citizens' Advice and feedback from individuals lead us to conclude that when used indiscriminately zero-hour contracts tend to reduce a worker's sense of well-being; instead creating a mood of insecurity and stress.

Consequently, we would urge employers not to use these contracts except in the rare instances for which they were intended.

When they are used, we would request that employers adhere to the following guidelines as specified by the Chartered Institute of Personnel and Development (CIPD)

- To only use these contracts when their flexibility benefits both employer and employee
- To first consider alternative options
- When using zero hours contracts to ensure that the employee is aware of his/her status and given a written contract specifying terms and conditions
- Where these contracts have been used, to review them annually
- To give training to line-managers
- To ensure that employees are given comparable rates of pay to those not on zero-hour contracts

In addition, it would be desirable that zero-hour contract workers be given adequate notice of work and reimbursed for expenses incurred where work is cancelled.

Of course, each employer must select the best contract option for their business, but much research has shown that what is good for staff is good for bosses. Who would not wish to be known as a good employer - attracting and retaining the best candidates - and boosting their local reputation?

We sincerely hope employers will follow these guidelines and sign the pledge.

Contracts of Employment – The Pledge

I agree not to use zero-hours contracts routinely and only to use them when they correctly reflect the nature of employment.

When issuing contracts of employment I will consider other options first such as permanent and fixed term contracts with a specified number of hours per week.

I agree that zero-hours contracts should only be used where the working hours are unpredictable and irregular, for example, emergency cover, ad hoc pieces of work or one-off projects such as consultancy.

I will provide all staff with a written statement of their terms and conditions of employment as soon as possible which conforms to the ACAS guidelines.

Signed _____

Organisation _____

Job Title _____

Date _____

When completed please send to:

Eastbourne Citizens Advice Bureau

Unit 6 Highlight House, 8 St Leonards Road, Eastbourne, BN21 3UH

Or scan and email to : pledge@eastbournecab.co.uk

Zero Hours Contract Survey by Sarah Rose



An online survey was designed and promoted to collect further evidence about the issues people experience on zero hours or variable hours contracts. It was aimed at those who live and work in the Eastbourne area. Below is a summary of the evidence collected.

27 responses collected so far: 24 from participants who live in Eastbourne, 18 who work in Eastbourne.

15 responses related to working in Health & Care. Other sectors or types of work covered are as follows:

Administration	Hospitality & Catering (3 responses)	
Retail	Security	Education
Cleaning	Leisure	

Not all participants named employers and others put a type of employer instead. Those listed include small and large-scale employers and some national companies in the hospitality and leisure sectors.

The majority were able to work for another employer, two responded that permission was needed and three said they were not able to work for anyone else. In one case, training certificates are withheld by employer so indirectly affecting an employee's ability to find a second job.

The section about rights was not completed in every case but the responses revealed that a few get holiday pay but no sick and others get neither. Only three replied they had knowledge of or access to their employment rights, one commenting there was 'lots of jargon'.

When asked about hours, there was considerable variation. One participant reported working between 11 and 52 hours a week for a period of 7 months and felt it would be difficult to get a second job with such unpredictable hours. The same participant commented on the impact saying it caused emotional breakdown and financial difficulty.

Another, a care worker, said working between 12 and 20 plus hours a week meant she was unable to get a mortgage and had to find a guarantor in order to rent as well as struggling to pay bills. There were some positive comments from a language teacher regarding the rest breaks and someone else said a zero hours contract suited his/her needs and has worked for employers who have respected employment rights and good practice. Other comments included:

- emotional breakdown
- debt
- feeling no one can help
- couldn't get a mortgage
- had to find guarantor to rent
- struggle to pay bills
- trouble finding accommodation
- paying bills
- should be given 1 week's notice of hours
- no guaranteed hours
- hard to predict earnings
- lack of financial stability
- juggling family life
- can be laid off half day when whole day promised
- contracts have suited/preferred
- holiday but not sick, absence agreed only if covered
- no paid holiday or sick
- get rest breaks/time off but no paid holidays or sick leave
- can't plan, different amounts coming in every month so stress with monthly bills
- not knowing from week to week, biggest problem is travel between calls

CASE Studies

Client was employed by a new Care Company in March 2015 and was told this would be a zero hours contract. Client has paid £48 for a DBS certificate. It should only take 4 weeks for work to start but over 2 months has passed and no work has been offered to her. She has completed a number of online training packs for which she should receive certificates but was told she will not be given these as she has not worked any hours. Client has not been offered any hours or any pay.

Client feels that she has been taken advantage of or that it may be a scam.

Client is a single parent with 2 young children. She is Bulgarian and has been in the country for nearly a year. She is on a zero hours contract working in a sandwich shop. She did not realise this was the case as she had regularly worked 20 hours a week. She did not have a written contract, just a letter which said she would be given a written contract after a 3 month probationary period. It was only after reading this letter that the adviser was able to realise that the client had a zero hours contract.

A customer complained because she misheard his sandwich order. She was initially told that she should not worry about this and that she should not have been left alone as she was not properly trained yet. However, when she came into work her name was not on the rota for the following week. She was told that she was to have a 'last chance' assessment in a few days' time.

She felt she had not had a chance to defend herself or been told what she had done wrong and what needs to be improved. She did not expect to be paid as no work was offered and is unsure whether or not she had been dismissed. This uncertainty has created complexities for assessing benefit entitlements as she has to decide whether to apply for Jobseeker's Allowance or stay on her current tax credits.

Client suffers from rheumatoid arthritis and has problems walking which has resulted in a knee replacement. Client applied for Employment & Support Allowance (ESA), which was refused. With the help of the local MP this was successfully appealed and she received ESA which ended after one year. Because the client's partner works on a zero hours contract (normally over 24 hours per week) they are not eligible for ESA as a couple but the working hours are unpredictable.

Client injured their Achilles tendon in a fall on her way to work in March 2015. It has not healed properly giving her pain when standing for any length of time. She needs to stand for long periods in her work at Dominos. Although her doctor signed her off for several weeks, Dominos were very reluctant to pay her any sick pay. She returned to work, gradually building up her hours and then found her leg was very painful again and she has reduced her hours to 2 or 3 days a week.

The impact of being on a zero hour contract is that she feels that she cannot take time off work - despite her painful leg - because Dominos are unlikely to pay her.

Client said that her working schedule is only issued to her on a Friday for the following week, Monday - Sunday. As a result, she cannot plan her week ahead. On some occasions she has not received her schedule until the Monday morning. She also said that often, her working schedule is outside of the times she has indicated she is willing to work. She is only paid for the time she is with clients (her work involves outreach work to clients' homes) and not for her travelling time. This means she can be away from home from 7am to 9/10pm but only be paid for 6-7 hours.

Legal Opinion – Adrian Carter, Solicitor, Warrens

In 2014 we contacted Adrian Carter to ask for a legal opinion on zero hours contracts issued to staff who worked on Eastbourne Pier. This is an extract from his response which explains clearly the legal validity of these contracts:



These employees have been working on average an ordinary 35 hour working week for some years. Zero hours workers have the same rights as regular workers although they may have breaks in their contracts that affect rights that are crucial from time to time. As noted in the ACAS website, it is important that both the employer and worker are aware of the fact that a zero hours contract can make the relationship between them different to other employment contracts. This is due to the worker being a “worker” rather than an “employee” so that many rights that normally attach to employee status such as the right not to be unfairly dismissed, maternity rights, redundancy rights and rights under TUPE 2006 do not attach.

However, we need to decide whether or not these are employees by the nature of the employment and its reality in accordance with s.230 of the Employment Rights Act 1996, even though it may be styled as a zero hours contract agreement. The first thing to note is that the contract of employment is styled as such and the employee is termed as such. The words employee, employer and employment appear throughout the agreement. From all the evidence available, it seems that this is an ordinary employment contract, and even an employment contract in name. The only thing that makes it a zero hours contract is the statement that it confers no right to a certain number of hours. Doug Pyper and Fergal McGuinness make it clear in their paper for the Business and Transport Economics and statistics Section lodged in the House of Commons library with the heading “The Reality of the Agreement”, which I note as follows:

“Most of the factors point to the Claimants in this case being employees under s.230(1). The only issue pursued on behalf of the Second Respondent is that of lack of neutrality of obligation. I am satisfied that there was sufficient mutuality of obligation for the claims to be employees. Once the rota was prepared, they were required to work and the employer was required to provide that work. They were subject to control and discipline; they had to provide personal services; they were provided with uniforms and equipment; they were paid on a PAYE basis; they had all worked regularly over a number of years and had only taken time off for holidays, sickness and when suspended, for which they had received payment. It was not established that there were gaps in the continuity of the employment. The Claimant required regular work and this was provided by the First Respondent.

I am satisfied that the documents did not reflect the true agreement between the parties and that four essential contractual terms were agreed 1) that the claimants would perform services for the First respondent 2) That the Claimants would be paid for that work, 3) That the Claimants were obliged to carry out the work offered to them, and the First respondent undertook to offer the work, and 4) That the Claimants must personally do the work and could not provide a substitute to do so”.

The contract in hand appears to comply with those criteria and the effect of clause 3 combined with clause 19 is to bind the employer and employee together in a contract of mutuality.

I have little doubt, although others may disagree, that this is not a zero hours contract in substance, but a contract of employment conferring full employment status and rights on the employee.

Latest Update on zero hours contracts

In October 2015, the Government issued updated guidance on Zero Hours Contracts which helps clarify matters. The full document can be found here:

www.gov.uk/government/publications/zero-hours-contracts-guidance-for-employers/zero-hours-contracts-guidance-for-employers

Key points include:

- Everyone employed on a zero hours contract is entitled to statutory employment rights. There are no exceptions
- Any individual on a zero hours contract who is a 'worker' will be entitled to at least the National Minimum Wage, paid annual leave, rest breaks and protection from discrimination.
- Zero hours contracts allow flexibility for both employers and individuals. However, they should not be considered as an alternative to proper business planning and should not be used as a permanent arrangement if it is not justifiable
- Zero hours contracts might not be appropriate if the job offered will mean the individual will work regular hours over a continuous period of time. For example, if an individual is asked to work from 9am to 1pm, Monday to Wednesday for a 12 month period, it may be more appropriate to offer that worker a permanent part time contract or even a fixed term contract
- Zero hours contracts do not allow employers to avoid their responsibilities. All staff, regardless of their contract, are entitled to employment rights and should be treated fairly and within the law
- Employers should consider whether a zero hours contract is the best type of contract for their business need depending on the nature of the work to be offered and the specific circumstances. Depending on the business need, alternatives might include: offering overtime to permanent staff to ensure experienced staff deal with temporary fluctuations in demand
- recruiting a part time employee or someone on a fixed term contract if regular hours need to be worked to adapt to a change in the business needs offering annualised hours contracts if peaks in demand are known across a year using agency staff can be a quicker and easier way to hire someone if staff are needed temporarily or at short notice
- Contracts should be clear and transparent so the individual can understand their rights and what the implications of such a contract means to them
- Cancelling work at late notice, or when the individual turns up at the place of work, is unacceptable unless truly unavoidable
- The Small Business, Enterprise and Employment Act prohibits the use of exclusivity clauses or terms in any zero hours contract. This means an employer cannot stop an individual from looking for work or accepting work from another employer

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