

***ZERO HOUR
CONTRACTS
GUIDE***

For further information please contact JACS on 730503

ZERO HOUR CONTRACTS - INTRODUCTION

Some businesses are using zero hour contracts in circumstances that may not be appropriate and they may, therefore, be susceptible to successful Tribunal claims.

Zero hours contracts are arrangements where people agree to be available for work as and when required but no particular number of hours or times of work are specified. These contracts are appropriate for Temporary Staff Agencies that supply temporary staff to other organisations but where there is no guarantee that work will be available.

They are also useful when a business needs a bank of 'casual staff' who are available to be called upon to meet workload peaks or to cover for permanent staff who are sick or on holiday. It must be remembered, however, that in a zero hours contract there should be no obligation on the part of the business to offer work and no obligation on the individual to accept.

JACS believe that problems arise when businesses use zero hour contracts for work that is regular because it is believed that it protects the business from claims of unfair dismissal, the need to give notice or, in future, from the obligation to make redundancy payments.

The question arises as to whether an employer/employee relationship is created but, in JACS view, it is probable that a relationship does exist where a mutuality of obligation arises i.e. there is an expectation by the business that the individual will be available for work and by the individual that work will be offered. In such circumstances, JACS believe that such individuals may be entitled to the same employment rights as 'permanent contract' employees.

Situations also occur where an individual works regular hours on a zero hours contract for a prolonged period of time (e.g. a regular 35 hours per week) and the business then decides to reduce the hours to, say, 14 per week. Over time the 35 hours per week has become an "implied term of contract" and if the business wants to significantly change those hours, the normal procedure for agreeing a contractual change would apply.

While it is for the Employment Tribunal to determine the facts in any such case, JACS would caution businesses to be careful that they use zero hour contracts appropriately.

The following pages sets out guidance to assist in preventing such misunderstanding and/misuse from arising and to help improve transparency regarding zero-hours contract terms and rights.

ZERO HOUR CONTRACTS - GUIDANCE

What are they?

If you look through the legislation you will not see the term 'zero hours' used or defined; however the term is understood to be a contract between an individual and a business to undertake work when it is offered, and equally an understanding that no work may be offered. Furthermore the individual is not under any obligation to accept any hours even when offered them. This is because there is a lack of **mutuality of obligation** between the two parties.

It is crucial that both parties understand the nature of such contracts and that there is a different relationship between the two parties than with other individuals on other types of contract (i.e. fixed term or permanent).

What is 'Mutuality of Obligation'?

For the majority of employees there is a need to secure a guaranteed level of income which comes with the guaranteed number or hours or amount of work that the (majority of) employers need in order to operate the business – this is fundamental to employment. In order for both the employer and the employee to have this guarantee there is a mutuality of obligation – the employer must provide the work/hours and the employee must do the work/hours.

This mutuality of obligation is removed when a zero hours contract is in place, as the work is offered and accepted on a casual/ad hoc or 'as and when' basis.

When may zero hours actually mean 'zero hours'?

Zero hours should be used when there is a requirement for a flexible workforce to be available. On occasion, businesses may offer work to individuals but there may also be weeks or months where no work is offered at all. Below are a few examples, bearing in mind this is not an exhaustive list:

- A banquet requiring additional staff to wait on the guests;
- Ill health at the hospital means that nurses need to be contacted from 'the Bank' at short notice;
- A farmer needs some additional pickers to harvest crops;
- A school requires invigilators to sit in on a couple of exams;

What are the benefits of zero hour contracts?

Businesses:

- Pool of individuals to call upon if business demands rise;
- No ongoing 'employment relationship' outside of the accepted hours/work.
- Cost effective as individuals are paid only for the hours worked;
- Allows flexibility when scheduling work.

Individuals:

- Offers flexible working around other commitments eg a student or a carer;
- Provides work/skills experience;
- No ongoing commitment to attend for work;
- Additional income stream if employee already has a job elsewhere.

What are the negatives of zero hour contracts?

Businesses:

- The work becomes more regular and therefore the written contract no longer reflects the working practice – mutuality of obligation has now crept in.
- Lack of exclusivity, therefore individuals may decline the hours offered;
- Lack of understanding of the **Relationship** between the two parties.

Individuals:

- Work is offered on too short notice to be able to accept the hours;
- The contract only exists when work is undertaken and therefore some employment rights may not accrue;
- Lack of benefits that may be offered to regular employees;
- Lack of regular income;

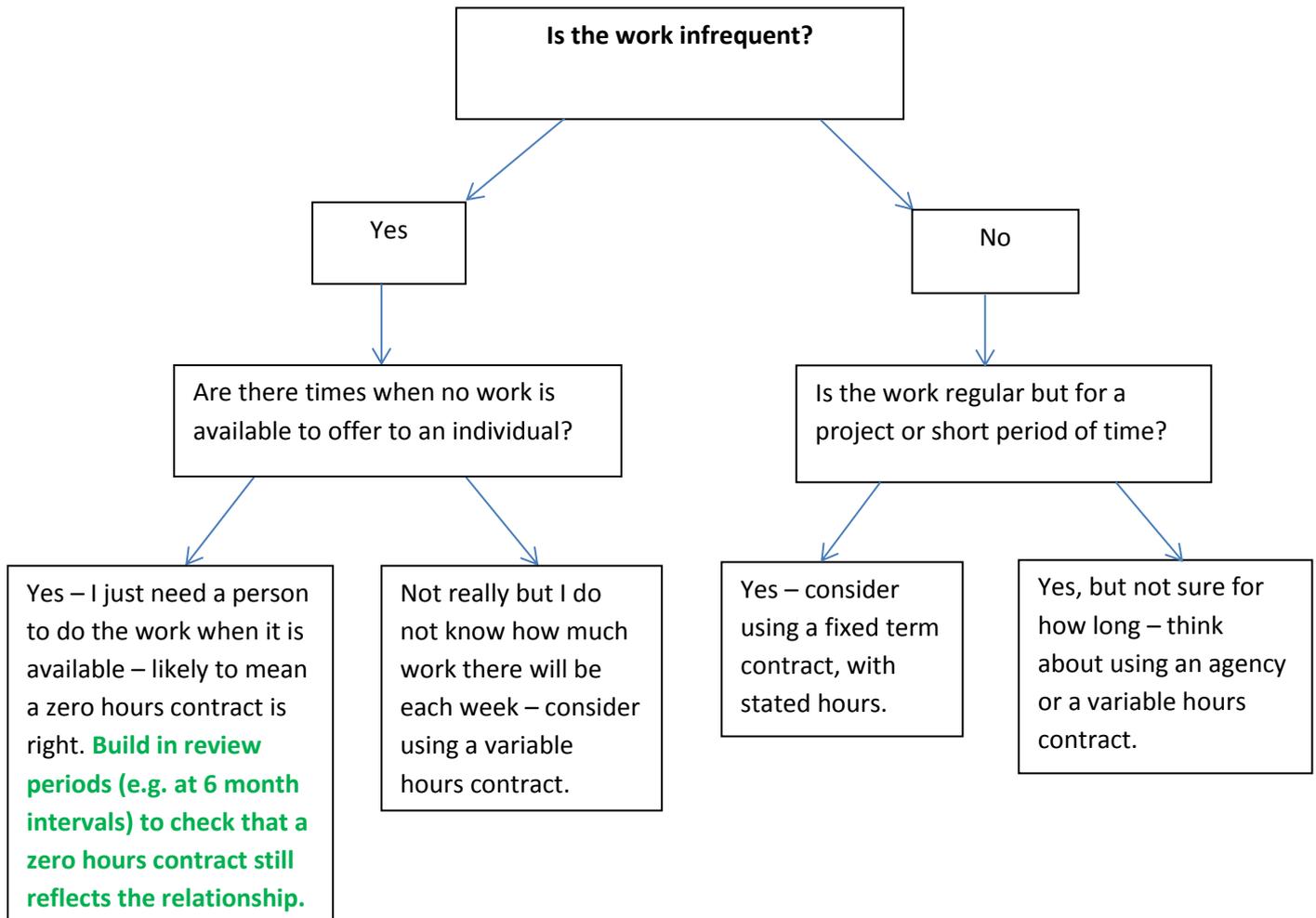
The Relationship ...

Businesses need to review the terms set out in zero hour contracts on a regular basis to ensure that the working arrangements in practice are as flexible and irregular as the statement within the document itself indicates. There may be other types of contract that meet the needs of the business better, eg a flexible hours contract or a contract for annualized hours. If the business requires an individual to attend work more regularly over a period of time, a fixed-term contract may be worth considering. Whilst the determination of the status of an individual rests with the Tribunal, if it is challenged, the more regularly the individual works and is expected to attend the workplace, the more likely it is that the relationship has changed and is now operating on an employer and employee basis.

Caution ...

Currently when using zero hour contracts, many employment rights would only accrue when the individual is actually undertaking work for the business. Businesses that require a flexible workforce and do not intend to create an employment relationship should ensure that an 'umbrella contract' is not in place so that service does not build up when an individual is not working. Temp Agencies may wish to look at their documentation to ensure that any pre-assignment documents contain a statement advising that the documents do not themselves create an employment contract between the two parties and explaining whether the 'assignment contract' counts towards continuous service. Other businesses should also consider including such a statement in the written terms (zero hour contract) presented to individuals when they first start undertaking any work (see JACS model document).

Questions to ask before using zero hours contracts:



ZERO HOUR CONTRACTS – TEMPLATE

ZERO HOURS WRITTEN STATEMENT

Between:

(The Company)

And

(Name and address of individual)

Date:

Nature of Engagement:

This document sets out the terms and conditions of your working with us. . Work may be offered to you on an “ad hoc” basis and, subject to 15 below, you are free to accept or decline such offers. We are under no obligation to offer you work or re-engagement and this statement in itself does not constitute a Contract of Employment, but explains the terms that will apply should work be offered to you.

Any amendments or additions to this statement (other than as to rate of pay) will be issued to you as a supplemental document. Engagements may be offered to you on an hourly basis or such longer period as may be required. . When you have agreed to attend work and are unable to do so, you are required to notify us immediately, as detailed in 6 below.

1. Job Title and Location

You will work as a Zero Hours xxx or in such role as may be agreed between us from time to time. Your normal place of work will be XXXX but you may be required to work from such place or places in Jersey as the Company shall reasonably require.

2. Commencement Date for the purposes of continuous employment

This zero hours contract will commence (or commenced) on (date)

3. Remuneration Hours of Work and duties

- a) You will be paid only for hours worked. Your normal hourly rate will be £xx.xx or such other rate as may be specified from time to time in writing. Payment will be made weekly/monthly (on X day/date) in arrears by cheque/bank transfer subject to deduction of Social Security contributions and Income Tax.

- b) Your hours of work are conditional on various business requirements. There may be times when no work is available for you and the Company has no duty to provide you with any work at such times. However when there is work available the Company will do its best to offer work to you and will endeavour to provide you with as much notice as possible of any hours you will be required to work. Where you accept an offer of work you will devote your whole time, attention and abilities to those duties allocated to you during those hours you are required to work by the Company.

(Add sub clause c) below, if required)

- c) Your duties are set out in a separate non-contractual document (job description) but the Company may in its discretion require you to undertake any duties it considers appropriate to your skills, and with appropriate training as is considered necessary.

4. Deductions

The Company has the right to deduct from your pay any sums which you may owe the Company including any overpayments or loans made to you by the Company.

5. Holiday Entitlement

Your entitlement to holidays and holiday pay is governed by the following provisions:-

During each full year of service your holiday entitlement (in addition to public holidays that fall on normal working days see JACS guidance note 2) is 10 days (or include your own higher entitlement) with full pay. In recognition of the fact that you will work variable hours, the Company will pay you on each pay day an additional sum equivalent to 4% of pay (to be increased if entitlement is above the 2 week minimum) for each hour worked, based on the hourly rate as set out in 3 above, as amended from time to time, representing your holiday pay. No further sums will be paid to you when you take holiday.

6. Absence for any cause including sickness and injury (or insert your own terms)

In the event of your being absent for any reason on days that you have accepted work, you must advise your manager by 9.00am (or other time as required) on the first day of absence, giving reasons for your absence and its likely duration, you are not entitled to receive any company sick pay.

7. Grievance Procedure (or insert your own terms)

The Company has a grievance procedure through which you can seek redress for grievances. .

An individual who has a grievance relating to their employment or engagement should raise the matter with their X or, if the grievance is directly associated with their X , with their manager.

If the matter is not then resolved to the individual's satisfaction, they may refer the matter to a more senior manager who was not involved in the first grievance discussion. Reference must be made in writing, and set out full details of the grievance and why the individual is dissatisfied with the decision.

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The decision of the senior manager shall be final.

The grievance procedure is not to be used to challenge a disciplinary decision.

8. Disciplinary Rules and Procedure (or insert your own terms)

The Company's disciplinary procedure is set out in the Staff Handbook (or is in accordance with the [JACS](#) model procedure, or insert your own terms). Appeals against any disciplinary decision must be made in writing within 7 days of the date of the written disciplinary decision, giving reasons for the appeal.

9. Pension Scheme (or insert your own terms)

There is no Company Pension Scheme and you are advised to make your own provision.

10. Redundancy

There is no provision for any redundancy payment other than as provided for under legislation.

11. Maternity (or insert your own terms)

There is no provision for any maternity leave or payment, other than as provided for under legislation.

12. Confidentiality and obligations (delete this clause if not required or insert your own terms)

a. You may not disclose any trade secrets or other information of a confidential nature relating to the Company or any of its associated companies or their business or in respect of which the Company owes an obligation of confidence to any third party during or after working for the business except in the proper course of your work or as required by law.

b. You must not remove any documents, or tangible items which belong to the Company or which contain any confidential information from the Company's premises at any time without proper advanced authorisation.

c. You must return to the Company upon request and, in any event, upon the termination these terms, all documents and tangible items which belong to the Company or which contain or refer to any confidential information which are in your possession or under your control.

d. You must, if requested by the Company, delete all confidential information from any reusable material and destroy all other documents and tangible items which contain or refer to any confidential information and which are in your possession or under your control.

13. Health and Safety (or insert your own terms)

The Company will take all reasonably practicable steps to ensure your health, safety and welfare while at work. Under the Health and Safety at Work (Jersey) Law each individual has a legal responsibility for their own welfare and for the health and safety of others. Any queries you may have relating to health and safety matters should be raised in the first instance with your Manager.

You must comply with the Company's Health and Safety Procedures for the time being in force and with the Health and Safety Policy Statement. (Employers with 5 or more staff must have a written [policy statement](#)).

14. General (add any special provisions here, e.g. uniform, or delete clause if not required)

15. Termination of Service (or insert your own terms)

The Company may terminate these written terms immediately without notice if you refuse to attend work after 3 or more successive requests by the Company or you are not available for work for 1 month or more, unless the Company gives its prior written approval or there are exceptional circumstances.

In all other circumstances, termination of these terms shall be in accordance with the provisions of the relevant law.

16. Collective Agreements (or insert your own terms)

No collective agreements affect these terms and conditions.

17. Amendments

The Company may from time to time review these terms and conditions.

Signed by the Company Date / /

I confirm my understanding and agreement of this zero hours contract.

Signed by the Individual Date / /