

STATES OF JERSEY



ZERO-HOURS CONTRACTS: REGULATION

**Lodged au Greffe on 27th August 2013
by Deputy G.P. Southern of St. Helier**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to request the Chief Minister to work with the Minister for Social Security to –

- (a) investigate the extent to which zero-hours contracts are used across the various sectors of the economy;
- (b) examine the impact of these contracts on employers and employees;
- (c) work with the Jersey Advisory and Conciliation Service (JACS) to create a regulatory system to control this employment practice; and
- (d) prepare and lodge such draft legislation as is necessary to implement part (c) above for approval by the States.

DEPUTY G.P. SOUTHERN OF ST. HELIER

REPORT

In June of this year, JACS expressed the following concerns about zero-hours contracts –

“We are concerned that some employers are using zero-hour contracts in circumstances that may not be appropriate and they may, therefore, be susceptible to successful Tribunal claims.”

JACS is clear that there are circumstances where zero-hours contracts are appropriately used for genuinely temporary jobs, such as supply teachers and “bank” nurses –

“Zero-hour 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 employees to other organisations but where there is no guarantee that work will be available.

They are also useful when an employer needs a bank of 'casual workers' 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-hour contract there should be no obligation on the part of the employer to offer work and no obligation on the worker to accept.”

They go on to point out that there are circumstances in which inappropriate use is made of these contracts and offer words of caution to employers –

“Where we think problems do arise is when an employer uses zero-hour contracts for work that is regular because the employer believes it protects them 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 our view, it is probable that a relationship does exist where a mutuality of obligation arises i.e. there is an expectation by the employer that the individual will be available for work and by the individual that work will be offered. In such circumstances we believe that such employees would be entitled to the same employment rights as 'permanent contract' employees.

Situations also occur where an employee works regular hours on a zero-hours contract for a prolonged period of time (e.g. a regular 35 hours per week) and the employer 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 employer 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, we caution employers to be careful that they use zero-hour contracts appropriately.”

Concern has been expressed in the UK about the increasing use of these contracts in many areas of the economy. For example, in social care there is widespread use –

“ A flurry of recent reports have made clear that recent changes in employment practices are undermining safe and effective care outside hospitals. In particular, according to Skills for Care, 307,000 social care workers are now employed on zero-hours contracts under which staff have no guaranteed hours (or income) and travel time is unpaid.

This accounts for one in five of all professionals in this sector and the numbers are growing rapidly”.

According to the UK Office for National Statistics, nearly one in four large companies used zero-hours contracts in 2011 – double the number in 2004.

But the Resolution Foundation says it is likely that official estimates of 200,000 zero-hours workers are too low, especially after the study, cited above, found that there are some 300,000 care workers alone on the controversial contracts.

Taking that into account, the total number of workers who have little idea of what work they will get and how much money they might earn from one week to the next could be more than half a million.

The extent to which zero-hours contracts have become the business norm is underlined by Sports Direct, where 20,000 of the 23,000 staff are on zero-hours deals.

The financial benefits, at least in the short term, are significant enough for many other big high street names – including MacDonald’s, clothing chain Abercrombie & Fitch and cinema chain Cineworld – to adopt similar contracts. Even shop staff at Buckingham Palace are on the same deal.

Whilst there may be short-term gains for employers, there are none for their employees:

With no holiday or sick pay often, and any waiting time spent at home rather than at work, firms need only pay for the time workers actually spend on the job.

At best workers can expect a monthly rota outlining their potential earnings 4 weeks ahead. Many may have to earn a certain amount to meet fixed monthly outgoings, but are regularly banned from taking other jobs without permission.

Often they get only a weekly schedule. At worst they can be called to work at a moment’s notice and sent home when they are no longer needed.

Complaints from workers typically focus on the way variable hours jobs make it difficult to claim benefits such as jobseeker’s allowance. The Minister for Social Security suggested that variations in earnings should be reported on a 5 week basis to ensure that income support is set at the correct level. Imagine trying to live off half-pay (or less) for 5 weeks before seeking additional income support. Worse still, imagine declaring that your income had improved, only to have your income support reduced and any “overpayment” claimed back by social security at a rate of up to £21 weekly. Are these jobs worth having? One has to ask.

Worse still, family life for those on zero-hours takes a back seat –

“By working on zero contract hours you are incapable of organising a functioning family life. Your ability to keep your promise to be at your children’s school production or watch your nine-year-old son’s first football game becomes secondary to your employer’s whims.”

The Minister for Social Security stated in May 2012 –

“I will keep this topic under review but at present I do not propose to undertake any further specific actions”.

In June 2013 the Chief Minister went a little further when he stated –

“The Minister for Social Security has committed to keep the issue of zero-hours contracts under review, which seems to be appropriate, including an investigation of the extent to which these contracts are used.”

And a possible mechanism to allow investigation of the extent of the use of zero-hours may also have been identified in answer to questions in the States –

“4.18.6 Deputy G.P. Southern:

Will the Minister encourage his Minister for Social Security to examine whether a simple addition of one further question to the Manpower Survey which takes place twice yearly would solve the problem of assessing how extensive this practice is?

Senator I.J. Gorst:

..... the Deputy makes a very good suggestion and the Social Survey is a very good way of gathering information right across the community and helps to inform government policy.

Deputy G.P. Southern:

Point of correction: not the Social Survey, but the Manpower Survey.

Senator I.J. Gorst:

The same principles apply.”

Largely as a result of questions in the States, we know that the States as an employer makes great use of zero-hours contracts in a wide range of circumstances, not all of which are advantageous to the employee. The breakdown of zero-hours contracts in Education, Sport and Culture, for example, is as follows –

<i>Job Type</i>	<i>Number</i>
Civil Servant non-teaching supply (includes primary and secondary Teaching Assistant, Lunch Supervision, Special Needs Key Worker, Library Assistant, administration and secretarial cover)	172
Manual Worker non-teaching supply (includes relief cleaners, caretakers and Leisure Assistants)	26
Teaching supply primary and secondary	126
Sessional Youth Workers	63
Visiting Lecturers and Adult Education	195

The first thing to note is that these workers, some of whom, like teaching assistants, work regular hours during term-time are, in the words of the Minister: “*not included in the FTE or headcount figures as work is not guaranteed*”. Are zero-hours contracts just a means to keep headcount down in the public sector? Does the same rationale apply to the private sector?

Are the earnings of teaching assistants on zero-hours contracts pensionable, and is there sick pay attached? Certainly, the Minister for Social Security is avoiding the employer’s pension contributions to PECRS when he uses 27 agency workers on zero-hours contracts in his Job Zone, when he states –

“The Department does also engage Recruitment Agencies to supply temporary staff to work in the Department. These temporary staff are not employed by the Department – they are employed directly by the Recruitment Agencies.Recruitment Agencies do though typically use zero-hour contracts for the staff they supply to the Department.”

So that’s 27 staff presumably not on the FTE headcount. He continues –

“Temporary staff are used in the Department to cover short-term fluctuations in workloads or where permanent funding is uncertain.”;

except that funding has always been found in the budget for job-finding initiatives over the past 3 years. Some of these agency staff have been working full-time regular hours for the past 18 months. Why are they not employed on proper temporary contracts?

“Employment agencies who supply temporary workers to the States of Jersey typically charge an additional cost over and above the agreed hourly salary to cover: employer’s Social Security contributions; rolled-up holiday pay; their own administrative overheads. In contrast, directly employed workers incur employment costs through the employer’s contribution to the occupational pension scheme and employer’s Social Security contributions as well as indirect administrative costs associated with employment.

This means that the costs for temporary agency workers and for States of Jersey employees are fairly evenly balanced.”

So there you have it. Agency workers are cost-neutral for the Social Security Department and the Department saves on PECRS contributions. The employees however lose their Pensions.

The 545 Health and Social Services Department employees currently on zero-hours contracts, which reveals the extent of the reliance on zero-hours work, is broken down as follows –

Ambulance	2
Civil Servants	58
Nursing	432
Residential Child Care Officers (RCCOs)	53

The 545 staff are not employed through agencies, they are all on States of Jersey zero-hours contracts of employment. What does a States of Jersey zero-hours contract include or omit?

We are told that “*A portion of these staff (57%) also have a substantive role at Health and Social Services for which they have a permanent or temporary contract of employment.*” How do these additional hours fit in with the shift patterns and overtime rates of those on permanent contracts? Where does the balance of benefit lie between employer and employee?

As we can see, there are a number of questions which remain unanswered over the use of zero-hours contracts in the public sector. We know far less about their use in the private sector. I am aware anecdotally of problems in maintaining income for employees in several retail outlets who rely on zero-hours. Equally I know of many who find the demands of work and benefits make it impossible to maintain a decent lifestyle on zero-hours at or close to the minimum wage. I hear anecdotally also that even some of the banks maintain full-time employees who have worked regular hours in the same job on zero-hours contracts.

This proposition effectively asks the Chief Minister to do more than investigate the extent of the use (and abuse) of zero-hours contracts, and their impact on employers and employees and to report back with his findings. It requests him to consider the question of whether regulation is needed, and if so, to bring such regulations.

Unlike many of my propositions, it does not contain a timescale, since I understand that to get a full picture which is statistically significant, may take some time. I would however expect the Minister, should he accept this proposition, to inform members how long he would need.

It is directed at the Chief Minister, since some of the work will need to be done with the involvement of the Statistics Unit and the Population Office and co-ordinated with the Social Security Department and others.

Financial and manpower implications

I believe this work can be contained within departmental resources, therefore there are no additional financial or manpower implications for the States arising from this proposition.