

2.10 Deputy G.P. Southern of the Minister for Social Security regarding ...

Does the Minister accept that there is widespread use of zero-hours contracts by employers in attempts to either avoid their legal obligations to employees regarding sickness or holiday pay and notice periods, or to evade head office or regulation of undertakings head count quotas? If so, what action does he propose to improve employee protection and if not, will he investigate the practice and report his findings to the States?

Senator F. du H. Le Gresley (The Minister for Social Security):

The Deputy has recently asked a number of questions on this topic and I will not repeat the detailed information that I have already provided. It is, however, important to repeat that zero-hours contract, when used correctly, form a useful part of modern business practice and provide flexibility to both the business requiring the support and the individual supplying the labour. The Employment Tribunal has indicated that the presence of a zero-hours contract does not diminish an employee's rights under the Employment Law if an employer/employee relationship has been established. It is therefore not possible for employers to avoid their legal obligations in the manner suggested by the question. I believe that the current framework of employment legislation in Jersey provides a reasonable balance between the protection of the employee and the legitimate interests of the employer. The States fund the Jersey Advisory and Conciliation Service, which provides independent advice and support to employees and employers. The Director of J.A.C.S. (Jersey Advisory and Conciliation Service) has recently drawn attention both in the local media and as part of his 2011 Annual Report to the inappropriate uses of zero-hours and that such use does not enable employers to avoid their legal obligations. There is information about the use of zero-hours contracts and a draft terms of employment statement on the J.A.C.S. website. I will keep this topic under review but at present I do not propose to undertake any further specific actions.

2.10.1 Deputy G.P. Southern:

Something else that the Minister is not going to act on. The statement on the website by J.A.C.S. says: "We are concerned that some employers are using zero or variable hour contracts in circumstances that may not be appropriate." What discussions has the Minister had with the Chief Executive Officer of J.A.C.S. and if none, when will he discuss this issue with him?

Senator F. du H. Le Gresley:

I have had 2 meetings with the head of the Jersey Advisory Conciliation Service and at both those meetings the matter of zero-hours contracts was discussed.

2.10.2 Deputy G.P. Southern:

Does the Minister not accept that the problem with his complacent attitude is that by the time this issue comes to a tribunal, the person involved is already unemployed?

Senator F. du H. Le Gresley:

I am not very happy that the Deputy considers my attitude complacent. However, that apart, it is a fact that when a case comes to our tribunal, and there was a recent case on 12th March relevant to zero-hours contracts, but the decision of the Tribunal is as a guidance not only to the staff at J.A.C.S. as to how to advise employers and employees but to all employers. Therefore, the warning is there and if the Deputy is not aware of the recent tribunal case, I will happily provide him with the information.

2.10.3 Deputy R.G. Le Hérisier:

Could the Minister explain why the employer/employee relationship trumps the zero-hours contract in important ways?

Senator F. du H. Le Gresley:

The expression is mutuality of obligation, which I will attempt to explain very briefly. In a zero-hours contract, there should be no obligation on the part of the employer to offer work and no obligation on the worker to accept. In a situation where there is mutuality of obligation, the employment rights depend on whether an employer or employee's relationship is created, which is likely in a situation where the employees would be entitled to the same employment rights as permanent contract employees.

2.10.4 Deputy R.G. Le Hérisser:

Does that mean that when somebody accepts a zero-hours contract, from the moment they accept it the mutuality provision comes into being or how is discretion exercised?

Senator F. du H. Le Gresley:

I think it is important for the Deputy to understand that the majority of zero-hours contracts are for agencies who provide temporary staff to other employers and also for bank staff, nurses teachers et cetera. Primarily, we are seeing zero-hours contracts offered by people who take on temporary workers who then supply them to the main employer. I may have missed the point of the Deputy's question.

2.10.5 Deputy R.G. Le Hérisser:

The Minister has said about temporary workers. Are these temporary workers benefiting from what he calls mutuality?

Senator F. du H. Le Gresley:

No, the point with zero-hours contracts is that it suits some people depending on their time available to work random hours. Certainly, insofar as income support is concerned, we encourage all those who are actively seeking work to take up any form of employment whether zero-hours contracts, part-time contracts or fulltime contracts. The important thing is for people to have a job.

2.10.6 Deputy T.M. Pitman:

With mutuality, with the best will in the world, does the Minister not agree that developments in business only take place when it is for the benefit of a business? This mushrooming, as we have seen in zero-hours contracts, is that not in itself a concern that should be looked at as Deputy Southern has said, and would it not be wise to have some sort of investigation so we can see why this mushrooming has happened?

Senator F. du H. Le Gresley:

The increase in the use of zero-hours contracts is not a phenomenon limited to Jersey. The same issue has arisen in Guernsey and also in the Isle of Man. I think it is primarily due to the economic climate whereby small employers in particular but some larger employers are reluctant to take on permanent staff because the future is uncertain for many businesses. This is a way of using agency staff to cope with ebbs and flows of work and in the current situation in Jersey my job is to get people back to work and if zero-hours contracts achieve that, then I will support them.

2.10.7 Deputy T.M. Pitman:

I understand where the Minister is coming from. However, is it not half the problem, what he touched on earlier, that people should take any job? Of course, we want people to work but some people are taking these jobs because they are desperate and they are then left with little or no work at all.

Senator F. du H. Le Gresley:

It is a fact that you can have a number of zero-hours contracts because obviously you are on call for when the employer has a need for extra work hours. It is not a fact that a person would just have one zero-hours contract; they could have a number of zero-hours contracts. This happens particularly in the cleaning industry where people will be available to cover holidays, sickness, et cetera.

2.10.8 Deputy M.R. Higgins:

Does the Minister accept that the proliferation of zero-hours contracts is causing other problems? For example, people who are on these contracts have no guarantee of any income, any particular work and therefore cannot obtain bank loans, credit of various sorts and it creates problems elsewhere in our society. Therefore, it is far bigger than just the question of employers and zero-hours contracts. Does he not think that we need to look at this in a whole and make sure that they are not being abused as I believe they are?

Senator F. du H. Le Gresley:

I share some of the Deputy's concerns and obviously, if a person or a family are reliant on just one person on a zero-hours contract, the income coming into the household would and can fluctuate dramatically. If they are on income support, we would expect them to contact us or each time we do a review we would look at the hours that they are doing as an average. I would stress that we must get people into work and if zero-hours contracts achieve more people in work, then I will support it.

2.10.9 Deputy G.C.L. Baudains:

I refer the Minister to part of Deputy Southern's question that I do not recall being answered. That is, does a possibility exist that an employer can in fact evade the regulations or undertakings by the use of zero-hours contracts?

Senator F. du H. Le Gresley:

No.

2.10.10 Senator P.F. Routier:

I would like to ask the Minister if he feels that the use of zero-hours contracts is a very useful mechanism for getting people into work.

Senator F. du H. Le Gresley:

I think the Senator is reaffirming what I have already said. It is a way of finding employment for people and for the benefit of the Members who have spoken in this brief question time, I would remind them of the Chief Minister's response on 1st May to a question from Deputy Southern. He said: "The States of Jersey supports the responsible use of zero-hours contracts in both the public and private sectors as they offer flexible working opportunities that employees appreciate."

2.10.11 Deputy M.R. Higgins:

Can the Minister give absolute assurances that they are not being abused? For example, I notice in the written answer to question 9 it mentions lecturers at Highlands College, 2 out of the 40-odd, on zero-hours contracts. Can he confirm that there are no substantive positions at Highlands College that are on a zero-hours contract rather than just people coming in to do an evening class?

Senator F. du H. Le Gresley:

I am not responsible for the employment of staff at Highlands College and the Deputy is referring to a Chief Minister's response to a question, not my response.

2.10.12 Deputy G.P. Southern:

The Minister persistently and consistently avoids the question which is about the irresponsible use, the inappropriate use of zero-hours contracts. Does the Minister expect that following the highlighting of this practice by the head of J.A.C.S. that these employees who have been hitherto using them irresponsibly and improperly will now fade away of its own accord?

Senator F. du H. Le Gresley:

The Deputy is trying to make great play of a recent annual report, I believe, from the Jersey Advisory Conciliation Service. I would remind him that the same information that he is quoting was on the J.A.C.S. website on 19th December where J.A.C.S.' advice is: "We are concerned that some employees are using zero or variable hours contracts in circumstances that may not be appropriate." This is nothing new and the warnings are out there for employers.