

Zero Hours Contracts Bill

CONTENTS

- 1 Zero hours contract
- 2 Contract information
- 3 Equal treatment
- 4 Reasonable notice
- 5 Requests for fixed and regular employment
- 6 Fixed and regular employment
- 7 Prohibition of exclusivity clauses
- 8 Detriment
- 9 Unfair dismissal
- 10 Continuously employed
- 11 Interpretation
- 12 Short title

A
B I L L

TO

Limit the use of zero hours contracts; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Zero hours contract

- (1) A zero hours contract is a contract or arrangement for the provision of labour, which—
- (a) fails to specify guaranteed working hours, or
 - (b) specifies guaranteed working hours but the worker is required or expected to be available for work for a period that exceeds by 20% the guaranteed working hours in the contract or arrangement. 5
- (2) Subsection (1) shall not apply in relation to any hours which are regarded by both parties to the contract as overtime hours, provided the worker is paid a premium of at least 50% the hourly rate under a contract of employment. 10

2 Contract information

- (1) Employers shall be required to give notice in writing of the minimum hours of their workers' employment.
- (2) The notice shall be given before the commencement of the contract. If it is given orally, it must be given in writing within seven days from the commencement of the contract. 15
- (3) The requirement under this section is without prejudice to the obligations of employers in respect of employees under section 1 of the Employment Rights Act 1996 (written particulars of employment).
- (4) A worker who does not receive a notice under subsection (1) shall be regarded for the purposes of this Act as if he or she were a zero hours contract worker. 20
- (5) In complying with the duty under section 1 of the Employment Rights Act 1996, an employer may refer to any document issued under subsection (1).

3 Equal treatment

- (1) Employers shall be required to treat zero hours contract workers on the same basis as comparable workers engaged by their employer on fixed and regular working hours contracts.
- (2) The requirement of equal treatment shall be an implied term of any contract between a zero hours contract worker and his or her employer, and the implied term shall apply to all matters relating to terms and conditions of employment. 5
- (3) A comparable worker is a worker selected by the zero hours contract worker on the grounds that the worker in question is engaged on the same or broadly similar work having regard, where relevant, to whether the worker selected has a similar level of qualification and skills. 10
- (4) For the avoidance of doubt, subsection (2) applies to the overtime rates payable when the worker exceeds the minimum hours of work under the terms of his or her contract.
- (5) Subsection (2) shall not apply to the allocation of working time. 15

4 Reasonable notice

- (1) Employers shall be required to give zero hours contract workers reasonable notice of—
 - (a) any request or requirement to undertake a period of employment; and
 - (b) any cancellation of a period of employment already agreed. 20
- (2) A period of notice shall not be reasonable if given less than 72 hours before the period of employment referred to in subsection (1).
- (3) If a zero hours contract worker accepts employment offered contrary to the requirements of subsections (1) and (2), the employer shall be required to pay the zero hours contract worker at a rate of 150% of the rate they would normally be paid for the period in question. 25
- (4) An employer who has cancelled a period of employment of a zero hours contract worker contrary to the requirements of subsections (1) and (2) shall be required to pay their zero hours contract worker for the period of employment in question, even though no work has been done. 30
- (5) For the purposes of subsection (4), the amount of payment shall be made up of—
 - (a) the payment the zero hours contract worker would normally be paid by his or her employer for the period in question; and
 - (b) a sum equivalent to any other monetary loss incurred as a result of the cancellation. 35

5 Requests for fixed and regular employment

- (1) There shall be a duty on employers to consider at any time a request by a zero hours contract worker for fixed and regular working hours unless a request has been made in the previous 12 weeks. 40
- (2) An employer to whom a request under subsection (1) is made shall deal with the application within five working days.

- (3) In considering a request, the employer shall give overriding consideration to the interest of the worker in having fixed and regular working hours.
- (4) An application by a worker under this section shall be refused only where there are compelling business reasons to do so.
- (5) The employer's desire to use zero hours contracts is not a compelling business reason for using such contracts. 5
- (6) An application shall be treated as having been refused if the provisions of subsection (2) have not been complied with.
- (7) A zero hours contract worker whose request under subsection (1) has been refused may make an application to an employment tribunal. 10
- (8) An employment tribunal shall not consider a complaint under this section unless it is presented –
- (a) before the end of the period of three months commencing five days after the application for fixed and regular employment was made, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months. 15
- (9) Where an employment tribunal finds a complaint under subsection (7) well-founded it shall make a declaration to that effect and may –
- (a) make an order for reconsideration of the application, or 20
 - (b) make an order that the application has been successful and make an award of compensation to be paid by the employer to the worker.
- (10) The amount of compensation under subsection (9) shall be such amount, not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances. 25
- (11) For the purposes of subsection (10), the permitted maximum is such number of weeks' pay as the Secretary of State may specify by regulations.

6 Fixed and regular employment

- (1) There shall be a duty on employers who have continuously employed a zero hours contract worker for a period of 12 weeks to offer the zero hours contract worker fixed and regular working hours contract from the date commencing 12 weeks from his or her first engagement with his or her employer. 30
- (2) Where a zero hours contract worker has not been continuously employed for a period of 12 weeks, there shall be a duty on employers to offer a fixed and regular working hours contract to any such zero hours contract worker who has been employed in at least 12 of the preceding 26 weeks (the reference period). 35
- (3) Where a zero hours contract worker has accepted the offer of employment within the terms of this section, the employer will be required to offer the zero hours contract worker terms and conditions of employment which – 40
- (a) relating to pay, are not less favourable than the highest hourly rate received during the period of continuous employment or the reference period referred to above;
 - (b) a minimum period of hours equivalent to the number of hours worked in the week in the period of continuous employment or in the reference 45

- period (as the case may be) which was the week in which the worker was engaged for the longest number of hours in the period in question;
- (c) relating to all other terms and conditions of employment are equal to those of a comparable worker.
- (4) A comparable worker for the purposes of subsection (3) is a worker selected by the zero hours contract worker on the ground that the worker in question is engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification and skills. 5
- (5) If an employer has not offered a zero hours contract worker a fixed and regular contract under this section the zero hours contract worker may make an application to an employment tribunal, at any time after the expiry of the periods referred to in subsections (1) and (2). 10
- (6) Where an employment tribunal finds a complaint under subsection (5) well-founded it shall make a declaration to that effect and shall make an order – 15
- (a) that the applicant is employed on a fixed and regular working hours contract, and
- (b) that the minimum terms of the contract are, in the absence of agreement between the parties, those provided in subsection (3).
- (7) Any terms and conditions of employment which are the subject of an order under subsection (6) may be varied only with the consent of the parties, and only after notice of the variation has been given to the employment tribunal which made the order. 20
- (8) For the purposes of subsection (9), the permitted maximum is such number of weeks' pay as the Secretary of State may specify by regulations.
- (9) Where an order is made under subsection (6), the tribunal may also make an award of compensation to be paid by the employer to the applicant. 25
- (10) The amount of compensation shall be such amount, not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances.
- 7 Prohibition of exclusivity clauses** 30
- (1) Any term or understanding, written or oral, of a contract or engagement (whether express or implied, and whether formal or informal) that requires a zero hours contract worker to work exclusively for one employer shall be void.
- (2) The provisions of subsection (1) shall not apply where the employer can demonstrate a compelling business reason, such as confidentiality or the protection of trade secrets, to justify a contractual requirement that the zero hours contract worker shall work exclusively for the employer in question. 35
- 8 Detriment**
- (1) It shall be unlawful for an employer to subject a zero hours contract worker to a detriment by any act or any deliberate failure to act on the ground that the zero hours contract worker – 40
- (a) is or has been a zero hours contract worker, or
- (b) made (or proposed to make) a request for –
- (i) information under section 2,

- (ii) equal treatment under section 3, or
 - (iii) fixed and regular working hours under section 5.
- (2) It shall be unlawful for an employer to subject a zero hours contract worker to a detriment by any act or any deliberate failure to act on the grounds that the zero hours contract worker refused a request or requirement to undertake a period of employment in breach by the employer of the requirements of section 4. 5
- (3) It shall be unlawful for an employer to subject a zero hours contract worker to a detriment by any act or any deliberate failure to act on the ground that the zero hours contract worker is engaged by another employer. 10
- (4) The provisions of sub-section (3) shall not apply where –
 - (a) the employer can demonstrate a compelling business reason, including but not limited to confidentiality or the protection of trade secrets, to justify a contractual requirement that the zero hours contract worker shall work exclusively for the employer in question; and 15
 - (b) the employer establishes that the action taken against the zero hours contract worker was necessary and proportionate, and in accordance with equity and the substantial merits of the case.
- (5) This section shall not apply in relation to dismissal where the zero hours contract worker is an employee. 20
- (6) A zero hours contract worker may present a complaint to an employment tribunal that he or she has been subjected to a detriment in contravention of subsections (1), (2) or (3).
- (7) An application to an employment tribunal under subsection (6) shall be dealt with under sections 48 and 49 of the Employment Rights Act 1996, as if the complaint had been made under section 48(1) of the Employment Rights Act 1996. 25
- (8) For the purposes of subsection (7), the words “worker” and “employer” as they appear in sections 48 and 49 of the Employment Rights Act 1996 shall be construed in accordance with the provisions of this Act in relation to an application to an employment tribunal under subsection (6). 30

9 Unfair dismissal

- (1) The dismissal of an employee shall be unfair for the purposes of the Employment Rights Act 1996 if the reason or principal reason for the dismissal is that the employee – 35
 - (a) is or has been a zero hours contract worker, or
 - (b) made (or proposed to make) a request for –
 - (i) information under section 2,
 - (ii) equal treatment under section 3, or
 - (iii) fixed and regular working hours under section 5. 40
- (2) The dismissal of an employee shall be unfair if the employee is a zero hours contract workers and the reason or part of the reason for the dismissal is that the employee refused a request or requirement to undertake a period of employment in breach by the employer of the requirements of section 4.

- (3) The dismissal of an employee shall be unfair if the employee is a zero hours contract worker and the reason or part of the reason for the dismissal is that the employee is or has been or intends to be engaged by another employer.
- (4) The provisions of subsection (3) shall not apply where—
- (a) the employer can demonstrate a compelling business reason, such as confidentiality or the protection of trade secrets, to justify a contractual requirement that the zero hours contract worker shall work exclusively for the employer in question; and 5
 - (b) the employer establishes that the dismissal was necessary and proportionate, and in accordance with equity and the substantial merits of the case. 10
- (5) For the avoidance of doubt a zero hours contract worker who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment shall be treated as an employee for the purposes of Parts X (unfair dismissal) and XI (redundancy) of the Employment Rights Act 1996. 15
- (6) For the purposes of subsection (4), employee shall have the same meaning as in section 230 of the Employment Rights Act 1996.

10 Continuously employed

- (1) References in this Act to a period of continuous employment are to a period computed in accordance with Chapter XIV of the Employment Rights Act 1996. 20
- (2) This is subject to the proviso that the words “employee” and “employer” as they appear in Part XIV of the Employment Rights Act 1996 are substituted by the words “worker” and “employer”, as these terms are defined in this Act.
- (3) In section 212 of the Employment Rights Act 1996 (weeks counted in computing period), after subsection (4) insert— 25
- “(5) In the case of an employee who is engaged by an employer on a zero hours contract or contracts, any week in which work is performed shall count in computing the worker’s period of employment.
 - (6) In the case of an employee who is engaged by an employer on a zero hours contract or contracts, any week in which work is not provided by the employer shall be treated as a week falling within subsection (3)(c). 30
 - (7) For the purposes of subsections (5) and (6), the terms worker and zero hours contract have the same meaning as in the Zero Hours Contracts Act 2014.” 35

11 Interpretation

- (1) A person is employed for the purposes of this Act if he or she is engaged by another to provide labour and is not genuinely operating a business on his or her own account.
- (2) For the avoidance of doubt, a zero hours contract worker shall be regarded as being employed by an employer on days on which— 40
- (a) he or she works for that employer, and
 - (b) he or she does not work for that employer.

- (3) It shall be for the respondent to show in any legal proceedings that the applicant is not employed.
- (4) A person is an employer for the purposes of this Act if he or she engages another to provide labour, and the person engaged is not genuinely operating a business on his or her own account. 5
- (5) A fixed and regular working hours contract is a contract that specifies working hours, and does not require the worker to be available for work for a period that exceeds by 20% the minimum hours specified in the contract.
- (6) A worker is a person who is employed.

12 Short title

10

This Act shall be known as the Zero Hours Contracts Act 2014.

Zero Hours Contracts Bill

A

B I L L

To limit the use of zero hours contracts; and for connected purposes.

*Presented by Ian Mearns,
supported by
Grahame M. Morris, Ian Lavery,
Pat Glass, Steve Rotheram,
Mrs Emma Lewell-Buck, Andy McDonald,
Kelvin Hopkins, Katy Clark,
John Cryer, Jim Sheridan,
Mr Dennis Skinner and Mr Ronnie Campbell.*

*Ordered, by The House of Commons,
to be Printed, 2 July 2014.*

© Parliamentary copyright House of Commons 2014

*This publication may be reproduced under the terms of the Open Parliament Licence, which is published at
www.parliament.uk/site-information/copyright.*

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx

Bill 23

(xxxxxx)

55/4

xxxbarxxx