BARGAINING ON CONTRACT TYPES

Introduction

Different types of temporary, part-time, agency and casual contracts have long been a feature of the labour market alongside permanent, full-time work. However, the drive toward insecure forms of employment has intensified and the emergence of zero hours contracts has been a high profile part of that general pattern over recent years. This guide highlights the case that can be made for preserving secure forms of employment, before going on to set out the most effective ways of representing those engaged on less secure terms.

Damaging impact of insecure contracts for staff

For some staff, a permanent job on full time hours is not suitable for their personal and family circumstances. However, for many others, different forms of employment are taken up out of necessity rather than choice.

As a result, staff will frequently be engaged on the basis of fewer hours than they would like, for a shorter duration than they would like and with inferior entitlement to other terms and conditions.

The negative consequences for workers vary according to the exact type of contract, but in general, less secure forms of employment will tend to mean lower income\(^1\), less certainty over income and the ability to meet expenses, less certainty over hours creating greater disruption to personal lives and a reduced tendency to assert employment rights out of fear of having hours cut or non-renewal of contracts.

While there are specific employment rights attached to some forms of jobs, such as part-time, fixed-term and agency work, employment law principally determines the rights associated with a job on whether it meets the classification of an employee, a worker or self employment.

In what category a particular job falls depends on the extent to which a contract meets legal tests concerning mutuality of obligation, obligations to carry out work personally and an employer’s right of control.

Where a job meets all of these tests, it will be classified as a contract for an employee, whereas failure to meet some of these tests will tend to mean that the job is defined as a contract for a worker. Where an individual does not pass any of the tests, they are likely to be classified as self-employed and will have very few employment rights because they are their own boss.

The way in which it is decided if a job meets these tests is not solely based on what is written in a contract but also according to how the contract operates in practice.

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\(^1\) The Resolution Foundation found that zero hours workers receive £1,000 less a year than similar workers doing similar jobs.
The table below summarises the rights for all workers and the rights to which only employees are entitled.

<table>
<thead>
<tr>
<th>Rights covering all workers</th>
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<tbody>
<tr>
<td>• pay rate at least in line with the National Minimum Wage</td>
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<td>• protections on working hours, breaks and holidays in line with the Working Time Regulations</td>
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<tr>
<td>• equal pay and protection against discrimination in line with Equality Act</td>
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<td>• right not to be refused work because of union membership;</td>
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<td>• right to be accompanied at a disciplinary/grievance hearing;</td>
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<td>• protection against detriment for whistleblowing;</td>
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<td>• protection against detriment and right not to be refused work because of a blacklist</td>
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<td>• protection against unlawful pay deductions;</td>
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<td>• information about pay, notice and holiday entitlement;</td>
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<tr>
<th>Rights covering employees only</th>
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<tr>
<td>• written statement of particulars;</td>
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<td>• statutory minimum notice;</td>
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<td>• protection from unfair dismissal;</td>
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<td>• implied contract terms (such as mutual trust and confidence);</td>
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<td>• time off for union duties and training;</td>
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<td>• time off for union activities;</td>
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<td>• time off for safety reps;</td>
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<td>• time off for public duties;</td>
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<td>• time off for antenatal care;</td>
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<td>• statutory maternity leave;</td>
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<td>• parental and dependency leave;</td>
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<td>• statutory sick pay;</td>
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<td>• right to request flexible working;</td>
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<tr>
<td>• right to request time off for study or training;</td>
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<tr>
<td>• protection in transfers of employment (TUPE);</td>
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<td>• redundancy pay and rights;</td>
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Main Source: Labour Research Department, Contracts of Employment, September 2013

Generally speaking, individuals on indefinite permanent, temporary, fixed-term and part-time jobs are classified as employees. Zero hour, casual and agency jobs are more vulnerable to being classified as workers.

If you have reason to believe that appropriate employment status is not being applied to staff, contact your regional officer for clarification.

**Damaging impact of insecure contracts for employers**

In considering the types of contract to offer in fulfilling services, an employer will inevitably be attracted to look beyond permanent contracts to reduce costs and, particularly where demand for services goes through peaks and troughs, they will often be attracted by types of contract that enable them to cut jobs when demand falls.

In making the case to an employer to protect secure forms of employment it’s crucial to highlight the need to look beyond short terms cuts in cost from offering insecure contracts and to consider the long term financial consequences alongside the organisation’s ability to deliver quality services.

The possible negative consequences for an employer can be summarised below:

- Reduced ability to attract and retain high quality staff;
- Higher turnover leading to increased recruitment and training costs;
• Higher sickness absence resulting from the anxiety and stress of insecure employment;
• Work that provides less job satisfaction leading to lower productivity;
• Reduction in the continuity and quality of services provided;
• Deterring of whistle-blowing on poor organisational practice (including health and safety issues), due to workers’ fears that they will be victimised by failing to renew contracts or offer hours.

Contract agreements
In order to preserve the most secure forms of employment wherever possible, it may be useful to seek an agreement that prescribes the circumstances when alternatives can be utilised.

Many such agreements begin with a statement setting out a presumption in favour of indefinite contracts. For example, the University of York agreement opens as follows:

The university recognises indefinite contracts as the general form of employment relationship between employers and employees and will appoint new and existing staff to indefinite contracts unless necessary and objective reasons justify alternatives.

This can be accompanied by a joint statement recognising the advantages to both employer and staff of secure forms of employment along the lines of the issues set out above.

West Berkshire Council’s contract agreement then goes on to define the scenarios when temporary contracts may be used as follows:

Reasons for using additional temporary employees could include;
• Short term increases in business activity (e.g. activities that only operate in the summer months)
• To act as cover when permanent staff are away (e.g. maternity leave, sickness absence, secondment)
• During a period of change when the need for a permanent member of staff has not been properly established but there is still work to be done.
• Need for specific skills/expertise for a fixed period of time (e.g. to implement a specific project)

The council also specifies the type of temporary contract according to circumstance as follows:

Generally you should consider using;
• A casual employee when you have immediate, short term, unplanned fluctuations in demand – for example, to cover leave or sickness – and you do not need to rely on a particular individual to be available for the work.
• A fixed term employee where you have work planned for a specific period (e.g. a time-limited project), and you need to rely on the worker to be available personally for the work, but you have time to plan a recruitment process.
• An agency worker where you have planned work, but you need someone to start work immediately (e.g. long term sick leave which must be covered immediately or a project of a very short duration) or someone with specific skills.
The more tightly the circumstances can be prescribed for using alternatives, the greater the value of the agreement in guaranteeing secure employment. However, some agreements go further in committing the employer not to use certain types of contract entirely.

For example, all signatories to UNISON’s Ethical Care Charter commit to end the use of zero hours contracts among home care staff in recognition of the damage that such contracts cause to the standards of home care services.

In the education sector, a vigorous campaign by UNISON with staff, students and the public ended with an agreement to end the use of zero hours contracts at University of Manchester Catering Ltd. The campaign exposed the wastefulness of the previous staffing arrangements, which had led to spending of over £13m spent on agency employees to cover gaps in delivering services.

**Finding alternative ways of providing flexibility**

While an employer may put forward insecure forms of contract as a way of achieving flexibility to meet variations in demand for services or adjust to short term changes in staffing, a variety of solutions may be possible to achieve the same goal at less cost to employment rights.

For example, part-time, fixed term or even agency jobs tend to offer better terms than either zero hours or casual work.

De Montfort University sets out guidance that illustrates this point as follow:

“Before considering an agency worker arrangement, consider whether that is the most suitable option or whether an alternative arrangement, e.g. a temporary or fixed term contract, might be preferable.”

Bolting on flexible arrangements to contracts that guarantee the full range of employment rights is another alternative. Overtime has always been a standard method of meeting increased demand, but equally on-call / standby hours can be added to guaranteed core hours of staff on indefinite contracts. Similarly, shift arrangements, annualised hours\(^2\) and voluntary reduced working time may not be desirable, but they may be preferable to introduction of more insecure forms of employment.

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\(^2\) Under annualised hours an agreement is made establishing a degree of flexibility in how a set total number of annual hours is worked over a year.
Bassetlaw District Council sets out guidance that illustrates this point as follow:

“Consider whether there are alternative ways of meeting the short-term need for staff that:

(a) Preserve employment of existing staff (eg are there any staff in the redeployment pool who have the knowledge, skills and abilities to do the work and for whom it would be a suitable temporary redeployment?)

OR

(b) Offer greater opportunity for getting the best person for the job by offering direct employment (consider urgency, length of appointment balanced against time it will take to recruit etc).

OR

(c) Are more productive and cost-effective (eg could you offer the work to existing part-time employees who already undertake the same or very similar duties? If so is this more productive and cost-effective?)

Equality dimension

The marked tendency for the less secure forms of employment to be filled by women, as well as other groups defined as having protected characteristics, means that equality legislation can offer a useful means to make an employer assess the impact of wholesale changes to contract arrangements.

The Public Sector Equality Duty requires public authorities in England, Wales and Scotland to promote equality of opportunity and eliminate discrimination for service users and staff (in Northern Ireland equality legislation falls under Section 75 and Schedule 9 of the Northern Ireland Act 1998).

The general duty of the Public Sector Equality Duty does not impose a legal requirement to conduct equality impact assessments. However, equality impact assessments remain the most reliable way of demonstrating that equality issues have been given due regard prior to changes such as the widespread introduction of insecure forms of contracts. In addition, the specific duties that apply to listed bodies are more prescriptive in requiring published analysis of the impact of a policy on equality.

Part-time staff

With nearly half of UNISON's members working on a part-time basis, the protection of employment rights for part-time workers is a key issue for the union.

In England, Scotland and Wales, the rights of part-time workers are protected under the Part Time Workers (Prevention of Less Favourable Treatment) Regulations enacted in 2000, while the same protections apply in Northern Ireland under equivalent legislation.

Under these regulations, part time staff are guaranteed that, on a pro-rata basis (ie the fraction of full time hours worked by a part-time worker), they receive the same entitlement as full time staff in relation to pay, holiday entitlement (including bank and public holidays), bonus payments, shift allowances, unsocial hours payments, pension, sick leave and pay, as

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1 The majority of those on a zero hours contract (55%) are female and 36% are aged 16-24 (Source: TUC)
well as enjoying exactly the same rights to maternity, adoption, paternity and shared parental leave and pay.

Some benefits are “indivisible” ie they cannot be calculated on a pro-rata basis. In this case, a part-time member of staff must receive the benefit in full. Examples of such benefits are a company car, access to car parking, health insurance, childcare provision, gym membership or travel loans.

In addition, part-time staff cannot be singled out in the process of selecting staff for redundancy and both training and communication events should be scheduled to allow the participation of part-time staff.

The regulations apply to each separate employment condition or workplace benefit, so an employer cannot argue that inferior conditions in one area are balanced by better terms in other.

The only basis for an employer to deny equal treatment is where they can argue that unequal terms achieve a “legitimate business objective.” Under this exemption, it can sometimes be argued that a benefit would be disproportionately costly eg healthcare insurance for a part-time worker on a few hours work a week.

In addition, entitlement to the same overtime rates will usually not commence until a part-time worker has reached the qualifying number of hours demanded of a full time worker.

In order to make a valid comparison with the rates enjoyed by a full time worker, the comparison will usually have to be with a full-timer on the same type of contract, carrying out the same or broadly same work and ideally working in the same establishment (though a different part of the same organisation can be valid).

The part-time worker regulations can cover a large range of employment arrangements, including casual, bank, homeworker, zero hours, term time and job sharing contracts, since they apply to workers as well as employees, with only the self employed lying outside the scope of the regulations.

In the event that a worker believes that they are being treated less favourably, they can make a written request for an explanation of their treatment from the employer, who is then required to provide a written answer within 21 days.

The Association of Colleges part-time working agreement with recognised unions [here](#) provides an example of how part-time rights can be spelt out and enhanced within an organisation.
Agency workers

Rights after 12 weeks
Temporary agency workers are entitled to the same “basic” terms and conditions as if they had been employed directly by an organisation once they have completed a 12-week qualifying period.

The main terms and conditions included and excluded at the end of the 12-week period are set out below:

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<tr>
<th>Included</th>
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<tr>
<td>• Basic pay</td>
<td>• Occupational sick pay</td>
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<tr>
<td>• Overtime pay where qualifying hours threshold met</td>
<td>• Occupational maternity / paternity / adoption shared parental pay</td>
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<tr>
<td>• Unsocial hours allowances</td>
<td>• Occupational pension scheme</td>
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<tr>
<td>• Shift allowances</td>
<td>• Redundancy pay</td>
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<tr>
<td>• Bonuses and commission based on individual performance</td>
<td>• Bonuses based on company performance or longevity of service</td>
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<tr>
<td>• Paid time off for ante natal appointments</td>
<td>• Benefits in kind eg private medical insurance</td>
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<td>• Working time</td>
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<td>• Rest periods and breaks</td>
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<td>• Annual leave</td>
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<td>• Monetary vouchers of fixed value</td>
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Rights after day one
The regulations also require the hiring organisation to ensure that, from day one of an assignment, agency workers are treated “no less favourably” in relation to access to collective facilities and amenities (covering crèches, canteens, staff common rooms, toilets/shower, transport services, prayer rooms).

From day one, agency workers are entitled to information about any relevant job vacancies within the hiring organisation in the same way as non-agency workers. The employer can choose how to advertise the vacancies, but the agency worker should know where and how to find the information. [Despite this duty to inform, recent tribunal decisions have indicated that, following a restructuring, agency workers have a right to be informed of vacant posts in the permanent workforce of an end-user undertaking, but not any further right to have preference over existing direct employees]

Valid comparisons for enforcement of rights
The comparable terms and conditions to be enforced after 12 weeks have to be those of an employee conducting the same or broadly similar work and working in the same workplace (where this condition can’t be met, another workplace owned by the hirer can be used).

Where an agency worker is employed in a workplace containing both TUPE transferred staff and new recruits, they are only liable to take up terms in line with new recruits.

Legislation
For England, Scotland and Wales, the 2010 Agency Regulations are set out here and the 2011 amendments are here
The Agency Workers (Northern Ireland) Regulations 2011 are set out here
The regulations do not allow enforcement of equal terms in the other direction – ie directly employed staff bringing their terms in line with agency workers.

**Avoidance**

The “Swedish Derogation” is the popular name for a clause in the regulations that allows an employer to legally avoid the requirement for equal pay where an agency worker is on a permanent contract of employment with an agency and they are paid between assignments.

This clause only applies to pay and not to the other key dimensions of equal conditions - annual leave, breaks, shift patterns etc.

An estimated one in six agency workers are affected by the derogation and the practice has been found to be particularly widespread wherever temporary agency staff are used on a long term basis or in large numbers. For instance, call centres frequently utilise agency staff where the derogation criteria apply.

However, the regulations do contain provisions for preventing certain types of avoidance.

The regulations apply to temporary work agencies which supply workers to work temporarily under the supervision and direction of the hirer. In some cases, “umbrella companies” have been set up that act as an intermediary for supplying worker to the hirer. However, the regulations do not allow the fact that the company is not the official supplier of the workers to exempt umbrella companies from the regulations.

In calculating the 12-week qualifying period, the qualifying period only ends if an agency worker starts a new and “substantially different” assignment with the hirer or there is a break of more than six weeks between assignments for a reason not covered below.

The qualifying period pauses if absence is due to sick leave (for up to 28 weeks), annual leave, jury service, pre-planned workplace closure, industrial action or any break of less than six weeks.

The qualifying period continues accumulating over the period for which an assignment was expected to last when an absence is due to maternity, adoption, maternity support (usually referred to as paternity) or shared parental leave.

An agency worker qualifies for equal treatment if rotated in more than two different roles or they have been hired on more than two assignments.

**Bargaining for enforcement and improvements**

Press the employer to ensure that notification of day one rights is included in the induction information provided to agency workers.

Highlight to the employer the importance of systematic processes in place for monitoring the 12-week qualification period and ensuring that equal rights are triggered on completion.

Take advantage of rights under the regulations for trade unions to receive information on the deployment of agency workers, including roles and locations, for collective bargaining on behalf of agency workers.

[In addition, employers now need to disclose agency worker information during statutory consultations under TUPE and collective redundancy regulations]
The regulations are a statutory minimum requirement for the equal treatment of agency workers and an estimated half of all agency workers are excluded from equal rights because of the 12-week qualification period. However, agreements can establish entitlement to equal treatment at a much earlier stage. For example, Salford University sets out in its managers’ guidance the following terms:

Agency workers should be paid no less than the hourly/daily equivalent of the bottom of the grade for the role. The university have taken the decision to make this effective from day 1 of the assignment although this is not a legal right until the 12 week qualifying period has been completed.

Monitor the employer’s practices to ensure that there is no pattern of deliberate avoidance of the rules concerning the 12-week qualifying period, such as rotating agency workers between assignments so that they do not build up qualifying service or making minor changes to the responsibilities of agency workers in an attempt to “zero the clock” on their qualifying period.

Involvement in job specification procedures can also ensure that an employer does not define “unique” jobs for agency workers that then present difficulties in enforcing equal treatment because of a lack of comparable roles.

Further info

More information on the Agency Workers Directive and the full scope of the regulations is covered in the Department of Business, Innovation and Skills guidance. More detailed bargaining advice can be found in the TUC guide.

Fixed-Term Workers

As a result of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations in England, Scotland and Wales, alongside fixed-term employee legislation in Northern Ireland, temporary workers have to be treated no less favourably than similar permanent staff.

Scope

The regulations define a fixed-term worker as someone “having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task or the occurrence of a specific event.”

The regulations apply to “employees” rather than “workers,” while agency temps and apprentices are also excluded.

Bargaining agreements can prescribe more tightly the circumstances when fixed-term contracts should be utilised. For instance Bangor University specifically states that “fixed-term/temporary contracts should not be used to create a ‘trial period’ in order to evaluate the applicant’s suitability for the post.”

Rights

Unless the employer can provide an “objective justification,” the regulations:

- Make it unlawful for an employer to treat a fixed-term employee less favourably than a permanent employee (this includes the right not to be treated less favourably in relation to receiving training or the opportunity to secure any permanent position);
- Set a four year limit on the extent to which fixed-term contracts can be successively renewed without becoming a permanent (there is no limit on the length of a first fixed-term contract).

The terms and conditions that can be enforced are those of a permanent employee who does the same or similar work for the same employer in the same establishment (or in a different establishment if there is no permanent comparator in the same establishment).

The time limit on successive fixed term contracts before an employee becomes permanent can be bargained down from the statutory four years, a maximum number of contracts can be established and limits can be set on the duration of single contracts. For instance, the University Aberdeen has an agreement that “fixed-term contracts will normally only be used for one-off, non-recurring appointments for a period of less than nine months in duration.”

**Exclusions**

Unlike protections for part-time staff, the fixed-term regulations state that a “package approach” to comparing terms and conditions should be used rather than a term-by-term approach. This means that the entire employment package of a fixed-term employee can be compared with that of a permanent employee rather than comparing each individual aspect of their terms and conditions.

Employers may be able to argue, therefore, that worse conditions in one area can be “objectively justified” because taken as whole, a fixed-term employee’s employment package is no less favourable than that of a permanent employee. However, this does not stop branches from seeking an agreement from an employer that will provide equal terms and conditions on a term by term basis.

Objective justification for not including a specific aspect of a benefit package in a fixed-term workers terms and conditions may be considered reasonable where it’s not practical or unreasonably expensive, such as denying access to a long-term loan scheme or a car lease scheme to someone on a short-term-contract.

If a fixed term employee believes that they are being treated less favourably, they have the right, on request, to receive from the employer a written statement giving their reason within 21 days of the request.

Equally, at the four year point, fixed-term employees have the right to receive from their employer a written statement, either confirming that their contract is to be regarded as permanent, or giving reasons why it continues as a fixed-term contract.

**Termination**

On conclusion of a fixed term contract, the termination is classed in law as a dismissal, which means that such employees have the right not to be unfairly dismissed, the right to a written statement of reasons for dismissal and the right to statutory redundancy payments.

Expiry of a contract because the work has come to a conclusion is liable to be considered a fair reason for dismissal, but if a contract could have been renewed there may be scope for challenging.
Bargaining can establish procedures that provide protection for fixed term-workers and maximise opportunities for continuing employment. For instance, Bangor University has a clause as follows:

Up to four months before the expiry of a fixed-term contract, all alternative options should be considered e.g. alternative funding arrangements, renewal, use of bridging funds, retraining and redeployment.

Up to three months before the expiry date, consultation should take place with the postholder on the prospects of alternative options. The postholder may be accompanied by a trade union representative at any discussions about his/her post.

**Summary and monitoring**

The example below from the De Montfort University fixed term employee agreement provides an example of how basic rights can be summarised:

Where staff are placed on a fixed-term contract in accordance they shall be treated no less favourably than comparable staff on permanent contracts.

In particular, fixed-term staff will:

- Have equivalent terms and conditions of employment to colleagues on comparable permanent contracts including pay, absence provisions and pensions.
- Be provided with a suitable working environment.
- Have the same opportunity as other staff to access services to develop their career such as staff development, training, appraisal and careers advice.
- Be provided with information on, and the opportunity to apply for, permanent positions.
- Be able to access facilities such as libraries and intranet services.
- On request, be provided with a written statement within 21 days explaining any differences in their employment arrangements from those of comparable permanent employees on a ‘term by term’ basis.
- After four years service be provided with confirmation that the post is now permanent, except as provided below.
- On request, at any time, be provided with the objective justification for the post to be on a fixed-term basis.

The university also makes a commitment to provide the information necessary to monitor the use of fixed-term contracts and provide justifications for use, as follows

The university will provide the recognised union with the department, job category, start date and length of contract of all fixed-term appointments made under these guidelines. This information will normally be provided within one month of and under no circumstances later than three months, from the offer of appointment being made. This will include details of the reason(s) which justifies/justify the appointment being made on a fixed term basis should the recognised union request it in any specific case.
Zero hours and casual contracts

Zero hours and casual contracts represent the most insecure forms of employment. Under such arrangements the employer has no obligation to provide any work but calls on the worker as and when they need work covered and pays only for the hours worked.

Zero hours contracts often carry a slightly greater commitment from the worker to make themselves available for work than casual arrangements, though they can frequently both in theory allow the worker to turn down hours offered.

Passing the test for “employee” rights

The lack of requirements on both sides means that these contracts are vulnerable to failing the “mutuality of obligation” test that determines whether they carry the rights of an employee. However, whether a specific contract fails or passes the test depends on the exact terms of the contract.

The House of Commons Note on Zero Hours Contracts states that “notwithstanding the intentions of the draftsman, the case law indicates that, if the day-to-day reality of the work suggests a relationship of employment, the contract will be one of employment.” It then goes on to assert that “when deciding whether a zero hours contract constitutes a contract of employment, conferring employee status, the wording of the contract will not be determinative of whether there is, in practice, a mutuality of obligation. The tribunal will look closely at the reality of the agreement. If the reality is that there is a pattern of regular work which is regularly accepted, the tribunal may deem the contract to be one of employment.”

Such an approach was illustrated by the case of Wilson v Circular Distributors Ltd. Mr Wilson worked as a relief manager when required by an employer but his contract also provided that “there is no payment when work is not available”. The employer argued (and the employment tribunal agreed) that this meant this was not an employment relationship. However, the employment appeal tribunal (EAT) in Scotland found that the employer had an obligation to provide work when it was available and the employee had an obligation to undertake this work. As there was mutuality of obligation, the contract was one of employment and Mr Wilson had the right to claim unfair constructive dismissal.

Concern that arrangements will not lead to an employment relationship can play a part in leading employers to specify limits to the use of such contracts.

West Berkshire Council has a policy in place that “no casual worker may be engaged and paid for more than 21 consecutive months,” while Liverpool University specifies that the use of a casual worker is only appropriate when required for less than eight weeks.

Bargaining for improved rights and limited use

Where it is not possible to establish employment rights because a role fails to fulfil the test for “mutuality of obligation,” it can still be possible to persuade an employer that there are issues of fairness to be addressed and weave improved rights for casual or zero hours staff into agreements over the course of negotiations.

Following this strategy, a UNISON branch at an NHS ambulance trust achieved agreement clauses for zero hours staff that enabled them to benefit from the same incremental progression and unsocial hours payments as permanent staff, along with the right to follow established grievance and disciplinary procedures. The impact of zero hours was also
limited by an agreement that a minimum core element of every shift would be covered by permanent staff.

Home care is an area of public services where zero hours contracts have made the greatest inroads. UNISON's 2012 study of the sector showed the consequences in terms of declining continuity of care as zero hours contracts began to make shifts much more variable and reduce the chances that carers would visit the same homes. The last minute scheduling arrangements that tend to be inherent in a zero hours system also created breakdowns in services that left carers struggling to deal with the consequences and apologising to the people they care for and their families.

Therefore, as part of UNISON’s campaign in the sector, the Ethical Care Charter includes a commitment to eradicate zero hours contracts in recognition that they are not a suitable form of employment for delivering quality services.

Wirral Council signed up to the charter for its domiciliary and reablement services after it recognised that its former service was based on a low cost, zero hours model that delivered inadequate quality of service as well as recruitment and retention problems.

In London, Islington and Southwark Councils signed up, prompting Southwark Council cabinet member Catherine McDonald to acknowledge that it had been “utterly unfair that those who provide crucial home-caring services to our most vulnerable people are often forced on to zero hours contracts, meaning no guarantee of work or pay.” Similarly, MiHomeCare in Southwark branch manager Fay Howell stated that the changes to working conditions would “help to ensure quality care for service users and career development for support workers,” along with improved “recruitment and retention, leading to a more stable workforce.”

In practice, many authorities have moved toward insisting that staff are offered a permanent contract rather than enforcing an outright ban on the use of zero hours. However, the charter has now been extended to Renfrewshire, Reading, Lancashire, Milton Keynes, Leeds, Camden, Tower Hamlets, Cheshire West and Chester, Redcar & Cleveland, Cumbria, Sefton, Nottingham City, Greenwich, Brighton & Hove.

**Legislative changes and guidance**

Legislation came into force as part of the Small Business, Enterprise and Employment Act 2015 which prevents employers from using exclusivity clauses in zero hours contracts to prevent workers from seeking work from other employers.

Further protections under The Exclusivity Terms in Zero Hour Contracts (Redress) Regulations 2015 were introduced from January 2016. They include the right for zero hours workers not to suffer a detriment if they work under another contract or if they are dismissed for breaching an exclusivity term of a zero hours contract. There is no qualifying period to bring such an unfair dismissal claim.
Though lacking any legislative bite, the government has also published [advice on zero hours contracts](#) that may be worth highlighting to employers. The advice clearly states that zero hours contracts should not be used as a substitute for permanent contracts of employment, especially if an employee is expected to work regular hours over a continuous period of time. It also emphasises that zero hours contracts are rarely appropriate for employing workers to run the core business of the organisation.

The Northern Ireland Employment Bill is currently waiting for Royal Assent later this year. Due to the abuse and misuse of zero hours contracts an amendment was added to the Bill to ensure that employers were no longer able to abuse the use of zero hours contracts. The new regulations have yet to be published but it is anticipated they will give the Department for Employment and Learning the power to make regulations to stop abuse arising from the use of zero-hours contracts.

**The right to request less flexible working**

In July 2014, the Employment Relations Minister clarified that, where a zero hours worker can demonstrate mutuality of obligation and therefore is classified as an employee, they have the right to request flexible working from their employer on completion of 26 continuous weeks of service. This could include requesting less flexibility rather than more.

The minister went on to say that under flexible working arrangements, “individuals on zero hours contracts, and who are employees, can request a change in their contracts which could also include a request to move to a fixed hours contract....”

This means that there is a right for employees to request a *less* flexible work pattern and ask their employer to move them to fixed hours. However, employers can refuse the request if they can put forward a “sound business reason” for doing so.
Recruitment and Organising

Gathering information

The first step in effective organising of staff on the types of contract outlined in this guide is to establish such basic points as numbers, their location in the organisation and the roles they fulfill. Where UNISON is recognised for collective bargaining by the employer, the general duty to disclose such information in line with the ACAS code on disclosure of information to trade unions for collective bargaining purposes should be sufficient.

To maintain an up-to-date picture, it’s also useful to establish arrangements for the union branch to receive regular reports on the number and location of staff broken down by contract type.

In the event of an employer refusing to provide such information, it is possible to challenge the refusal through the Central Arbitration Committee. Freedom of Information (FoI) requests also offer an alternative in the public sector where an employer is obstructive and have the advantage of requiring a response from the employer within 20 working days. For advice on lodging FoI requests, including a model letter to send to the employer, click here

General principles

1. Constructing a claim - Consult workers on different forms of contract over what issues are important to them for the union to pursue. Good practice is to start with an open meeting for members and non-members where the workforce is briefed about the current situation and potential improvements. The decisions about what claim should be put to the employers should then be made in a meeting open to members only.

2. Mobilising the membership - Members and non members need to see that the union has been instrumental in achieving the claim. Members should be asked to support the claim by, for instance, signing a petition, wearing a badge or taking some other action. In this way, workers are empowered by showing that they can change things through joining together in the union, rather than simply being recipients of services.

3. Recognising wins - Too often we undermine our achievements and fail to point out that, without UNISON and more importantly our members, any improvements would not have been won.

UNISON’s full set of advice and guidance on recruitment work, including material on spotting future activists and supporting new activists, selling benefits, starting conisations with non-members and getting members to recruit, can be found here

Specific considerations

The erratic hours of workers on some of the contracts outlined in this guide can pose organising difficulties in terms of getting together a group of workers in a single workplace at the same time. Therefore, it may be necessary to utilise social media, email and texting networks for distributing information and gathering feedback as a supplement to more traditional ways of organising. This can also be a factor in seeking agreement with the employer for access to staff as a consistent part of induction programmes.

Workers on these contracts may have second and even third jobs – often these will be in other areas where the union organises, but may not be covered by your branch. Try to find
out and record the details of any further jobs - if they’re not covered by your branch let the regional office know.

The benefits of membership can be tied to enforcing the rights specific to particular contract types and it can be worth stressing that union strength is even more important because more limited legislative rights leave such workers more vulnerable to attack by employers. Many workers on the most insecure forms of contract will face financial insecurity, so the services of the “There for You” UNISON Welfare charity, along with the array of discounts available to members and reduced subscriptions for low income workers, are worth stressing as benefits of membership.

UNISON’s Learning and Organising Services (LAOS) provide support and training for members and activists on the issues set out in this guide. Workshops are available to help members on insecure forms of contract know their rights, as well as deal with the all too frequent consequences of such contracts, such as managing budgets on a low income and dealing with debt - [https://issuu.com/thedesigndesignmill/docs/unison_unl_money](https://issuu.com/thedesigndesignmill/docs/unison_unl_money) For activists, employment contracts are a key part of bargaining and negotiating courses and legal courses provide knowledge of all the detail necessary to ensure rights are enforced. Branches should contact LAOS on [learningandorganising@unison.co.uk](mailto:learningandorganising@unison.co.uk) or speak to your regional education organiser for more information.

The UNISON agreements library contains a variety of agreements reached with public service employers on the types of contract outlined in this guide. UNISON staff have access to this database and if branches wish to check for the availability of a particular agreement, please contact the Bargaining Support Group on [bsg@unison.co.uk](mailto:bsg@unison.co.uk)