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Your essential guide to

# Zero Hours Contracts

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# Zero Hours Contracts



## What is a zero hours contract?

A zero hours contract is one of several types of contract used to confirm the terms and conditions which apply to the working relationship between an individual and his/her employer.

Currently, there is no legal definition of a zero hours contract. Generally, [the essence of a zero hours contract](#) is that there is no guarantee that any hours of work will be provided to the individual, hence the term 'zero hours'. Additionally, the individual is not obliged to accept any of the work offered to him/her by the employer.

These contracts are perfectly legal where they are freely entered into.

## In which industries are zero hours contract common?

Zero hours contracts are used across the economy but they are most common in the hotel, catering and leisure industries.

A recent study by the Chartered Institute for Personnel & Development (CIPD) in conjunction with YouGov also indicates that 35% of education employers and 27% of healthcare employers engage people on zero hours contracts.

According to the study, the use of this type of contract is equally split across the different geographical areas in the country.

There are varying opinions on the number of people currently engaged on a zero hours contract. Reported figures range from 200,000 to 1 million.

## What are the advantages to a zero hours contract?

From the employer's perspective, there are many advantages of engaging people on zero hours contracts.

**Flexibility:** Zero hours contracts allow employers to engage people with utmost flexibility. It provides a pool of people who the employer can call upon only when they are needed. Work can be allocated exactly to the demands on the business when there are unexpected or last minute events or temporary staff shortages.

**Supporting expansion plans:** Where employers want to expand their business but are not sure that there will be a consistent permanent demand for a new service, zero hours contracts provide them with the opportunity to match supply with demand. This offers limited risk of employing full time staff who are then surplus to requirements.

**Retention of skills:** If a member of staff retires or partially retires, a zero hours contract will enable the employer and the individual to maintain an agreement where work can be offered when it is available but with no continuing obligation.

**Familiarity with the company:** [Zero hours contracts](#) allow for work to be done by people who already know how the company operates rather than filling gaps with a string of agency workers who are new to the company each time.

Zero hours contracts can also be favourable to the worker themselves when compared with a permanent employment contract for various reasons.

**Flexibility:** Individuals have a say in when they work and when they do not work because they have the opportunity to turn work down when offered. These contracts provide flexibility when the individual has other commitments or interests that they need to balance with their work.

**Ability to enter the labour market:** Young people, particularly students, can use zero hours contracts as a way of partly entering the labour market to gain skills and experience whilst still studying. It can help them 'get their foot in the door' of their chosen career without making a permanent commitment.

**Flexible retirement plans:** Zero hours contracts allow those who plan to retire a way of still keeping in touch with their profession but as a non-permanent commitment. They are then able to keep up to date with professional developments and continue to earn money but with less time commitment than previously.

## What is the employment status of someone on a zero hours contract?

Generally, there are three main categories of employment status which define the employment rights that an individual has: employee; worker and self-employed. In most cases, people engaged on zero hours contracts will fall into the category of 'worker'. This is dictated by the fact that there is an absence of the obligation on the employer to provide work to the individual, and the individual's obligation to accept work when it is offered.

However, an individual's employment status is not a fixed concept - it can change over time because it is influenced by how the working relationship is operated on a day to day basis. The day to day working relationship must reflect the terms of the written contract in order for status to remain as it was intended.

## What rights does someone on a zero hours contract have?

Zero hours contracts have received significant press coverage in recent months – what's it all about?

## What is an exclusivity clause?

In circumstances when status changes, it follows that the employment rights for that individual also change.

Ultimately, an employment tribunal will decide on the individual's status via an examination of the facts.

On the basis that engagement on a zero hours contract means that someone falls into the category of 'worker', they do not have as many employment rights as an 'employee'.

A 'worker' is entitled to the following:

- ▶ National Minimum Wage;
- ▶ Protection from unlawful deductions;
- ▶ Minimum paid annual leave and rest breaks;
- ▶ Part time proportional contractual rights;
- ▶ Protection from discrimination;
- ▶ Protection when a public disclosure is made;
- ▶ Statutory Sick Pay/Statutory Maternity Pay etc provided qualifying criteria are met;
- ▶ Protection regarding trade union membership, non-membership, activities & unlawful inducements

[Zero hours contracts have been criticised](#) on the grounds that they do not offer sufficient financial stability to individuals and that there is not enough transparency in their use. The Government is concerned that employers who use zero hours contracts do not always fulfil or understand their responsibilities and that individuals are not always clear on the terms, conditions and consequences of a zero hours contract.

Another concern is the inclusion within a zero hours contract of an exclusivity clause which, some feel, represents an unfair restriction on the individual.

When a zero hours contract includes an exclusivity clause, it means that the individual is prevented from working for someone else. This is the case even if the employer does not guarantee any work and provides no work.

The Government believes that the use of exclusivity clauses is wrong because it effectively acts as a restraint on the individual's freedom to work, therefore restricting their ability to earn money.

## What are the Government's plans for the future of zero hours contracts?

A public consultation was undertaken which asked for views on various different aspects of [zero hours contracts](#), including the use of exclusivity clauses. In answer to the question of whether the Government should ban exclusivity clauses, 83% of respondents said yes.

The Government has taken the decision to ban exclusivity clauses. This will be done in the Small Business, Enterprise and Employment Bill.

A statutory definition of a zero hours contract will be created, as well as a code of practice on the fair use of these contracts. It is likely that the code of practice will cover the following issues:

- ▶ When it is/is not appropriate to use a zero hours contract;
- ▶ Whether and how to promote clarity of terms;
- ▶ Rights and responsibilities of the individual and the employer and how to calculate accrued benefits such as annual leave where appropriate;
- ▶ Best practice in allocating work; and
- ▶ Recommended practice around notice of hours of work or cancellation of work.



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