

Zero hours contracts: guidance for employers

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What are zero hours contracts?

‘Zero hours contract’ is a non-legal term used to describe many different types of casual agreements between an employer and an individual.

Generally speaking, a zero hours contract is one in which the employer does not guarantee the individual any hours of work. The employer offers the individual work when it arises, and the individual can either accept the work offered, or decide not to take up the offer of work on that occasion.

Regardless of how many hours are actually offered, the employer must pay at least the National Minimum Wage.

This guidance does not cover those who are genuinely self-employed and undertake work on a zero hours arrangement. For example, a self-employed plumber might take up work offered on a zero hours basis from a number of regular clients, but he remains self-employed.

Employment rights

Everyone employed on a zero hours contract is entitled to statutory employment rights. There are no exceptions.

A person will benefit from the employment rights associated with their employment status and individuals on a zero hours contract will either have the employment status of a 'worker' or an 'employee'.

Any individual on a zero hours contract who is a 'worker' will be entitled to at least the National Minimum Wage, paid annual leave, rest breaks and protection from discrimination. To find more information on employment statuses and all the rights associated with them, see the employment status guidance at <https://www.gov.uk/employment-status/overview> .

Appropriate use

Zero hours contracts are useful where work demands are irregular or where there is not a constant demand for staff. Zero hours contracts can also provide a level of flexibility for the individual, which allows them to work around other commitments such as study or childcare.

Some types of work are driven by external factors that are out of the employer's control and this can happen in a range of sectors including, for example, hospitality, leisure and catering.

The following are all examples of when a zero hours contract might be appropriate, but it is not an exhaustive list. There are also other employment choices available to employers in these situations.

New businesses

When a new business starts up it might need to build up a customer base to undertake work so, at first, they may need to employ people on zero hours contracts in addition to any permanent staff to manage fluctuating and unpredictable demands.

Seasonal work

Seasonal work or peaks in demand, where it is known that for short periods of time additional staff are needed to manage surges in demand such as retail sales at Christmas time or providing a cleaning service for example, following a festival or a New Year celebration.

Unexpected sickness

Employers may need to be ready to cover periods of unexpected staff sickness and be able to call on experienced staff, for example, a pharmacist in a chemist or a lifeguard at a leisure centre.

Special events

A wedding venue, restaurant or a bar may need to be able to call on trained and experienced staff when a wedding or function is booked.

Testing a service

A company may be considering testing a new service they are thinking about providing, but need to hire staff on an ad hoc basis before they can make a decision about rolling out the service.

Inappropriate use

Zero hours contracts allow flexibility for both employers and individuals. However, they should not be considered as an alternative to proper business planning and should not be used as a permanent arrangement if it is not justifiable.

Zero hours contracts might not be appropriate if the job offered will mean the individual will work regular hours over a continuous period of time. For example, if an individual is asked to work from 9am to 1pm, Monday to Wednesday for a 12 month period, it may be more appropriate to offer that worker a permanent part time contract or even a fixed term contract.

Zero hours contracts do not allow employers to avoid their responsibilities. All staff, regardless of their contract, are entitled to employment rights and should be treated fairly and within the law.

Zero hours contracts are rarely appropriate to run the core business, but might be useful for unexpected or irregular events such as bereavement leave by staff, to deliver sufficient customer service during peaks in demand, or when preparing to open a new store. Many businesses provide a regular service or product and have a broadly predictable timetable or output and so permanent or fixed hour contracts can be more appropriate.

Alternatives

Employers should consider whether a zero hours contract is the best type of contract for their business need depending on the nature of the work to be

offered and the specific circumstances. Depending on the business need, alternatives might include:

- offering overtime to permanent staff to ensure experienced staff deal with temporary fluctuations in demand
- recruiting a part time employee or someone on a fixed term contract if regular hours need to be worked to adapt to a change in the business needs
- offering annualised hours contracts if peaks in demand are known across a year
- using agency staff can be a quicker and easier way to hire someone if staff are needed temporarily or at short notice

Best practice

Contracts should be clear and transparent so the individual can understand their rights and what the implications of such a contract means to them. For more information see the employment contracts guidance at:

<https://www.gov.uk/employment-contracts-and-conditions/overview>.

When offering a zero hours contract, employers should consider including information such as:

- whether the individual is an employee or worker and what employment rights they are entitled to
- if the individual is an employee, how statutory employment entitlements will be accrued where appropriate, for example, redundancy pay
- the process by which work will be offered and assurance that they are not obliged to accept work on every occasion if they so wish
- how the individual's contract will be brought to an end, for example, at the end of each work task or with notice given by either party

Employers should plan ahead and give as much notice as possible when offering work. Those who work on a zero hours contract may have caring responsibilities or have studies and may need to plan for childcare or around exams. Employers should be transparent about how they offer work, for example, is there a rota?

Cancelling work at late notice, or when the individual turns up at the place of work, is unacceptable unless truly unavoidable. Employers should consider putting into place a policy explaining the circumstances when and how work might be cancelled, and how they try to avoid this, and whether the individual can expect any compensation for caring costs they may have incurred.

When recruiting for a zero hours contract, the job should be clearly advertised as such and the individual should be clear that hours are not guaranteed, and that work may cease if there is a fall in demand.

Employers should ensure they familiarise themselves with their responsibilities when employing someone on a zero hours contract. Employers must comply with every aspect of the law, including employment law.

Those who take up work on a zero hours contract are often students, partially retired, or have caring commitments. As an employer you should respect the needs of those individuals to arrange care and be flexible in whether they can accept work at short notice or if they cannot arrange suitable care.

Exclusivity clauses

The Small Business, Enterprise and Employment Act (which can be seen at <https://www.gov.uk/government/collections/small-business-enterprise-and-employment-bill>) prohibits the use of exclusivity clauses or terms in any zero hours contract. This means an employer cannot stop an individual from looking for work or accepting work from another employer.

An employer must allow the individual to take work elsewhere in order to earn an income if they themselves do not offer sufficient hours.

If an employer includes an exclusivity clause in a zero hours contract, the individual cannot be bound by it, the law states the individual can ignore it.

An employer must not attempt to avoid the exclusivity ban by, for example, stipulating that the individual must seek their permission to look for or accept work elsewhere.

<https://www.gov.uk/government/collections/small-business-enterprise-and-employment-bill>