



# A Guide to Zero Hour Contracts

**Manx Industrial Relations Service**

Tel: 01624 672942

Email: [iro@mirs.org.im](mailto:iro@mirs.org.im)

Web: [www.mirs.org.im](http://www.mirs.org.im)

Facebook: [Manx Industrial Relations Service](#)

**JANUARY 2021**



## **Introduction**

This guide is designed to help employers understand what zero hour contracts are and what the key considerations and issues surrounding zero contracts are. This guide also includes information for individuals to help them understand their rights under zero hour contracts.

A public survey from the [Chief Minister's Zero Hours Contracts Committee](#) found that 52.5% of respondents currently work on one or more zero hours contracts. There has been a lot of discussion surrounding zero hour contracts, and worker organisations have criticised them for the lack of security they provide for individuals. This guide will provide an overview of zero hour contracts to help employers/employees understand the key issues surrounding them and ensure that they are being used responsibly.

## **What is a zero hours contract?**

Note that 'zero hours contract' is not a legal term, however they are generally defined as:

- a contract under which an individual undertakes to work for an employer without any minimum amount of work being guaranteed by the employer.

In its simplest terms, that is the basic foundation of a zero hours contract; the employer does not guarantee a minimum number of hours. However, the exact nature of zero hours contracts can vary. For example:

- contracts under which a person is obliged to work whenever the employer demands (subject to agreed exceptions);
- contracts under which a person is obliged to work subject to a minimum notice period being given, (but is otherwise not obliged to work); or
- arrangements under which a person is free within reason to accept or reject any offer of work.

In general, a zero hours contract is a very one-sided arrangement, where the employer can decide whether to offer the individual work whilst at the same time they can demand that the employee should make themselves available within reason whenever called upon. Types of work that might use zero hours contracts include:

- bank work (e.g. health bank staff)
- care work
- delivery driving
- hospitality work
- casual hours (e.g. students who work only during holidays)



## **Working for more than one employer**

Section 116A of the [Employment Act 2006](#) has prohibited the use of exclusivity clauses in zero hours contracts. This means that an employer cannot prevent an individual from looking for work or accepting work from another employer. If an employer does include an exclusivity clause in a zero hours contract, it cannot be enforced.

## **Employment status of persons on zero hours contracts**

Persons working on zero hours contracts can be employees, workers or self-employed for employment status purposes. In general, an individual on a zero hours contract is likely to be an employee or a worker, and rarely self-employed. A survey by the [Chief Minister's Zero Hours Contracts Committee](#) found that employers classify 80% of individuals on zero hours contracts as employees, 6% as workers, and 4% as self-employed. Employment status will depend on what your contract says and how the arrangement operates in practice.

## **Employment status and rights**

Employment status is important as it determines an individual's employment rights.

Employees have the most employment rights including the right to statutory minimum notice and statutory redundancy pay, family-related rights and certain other rights to time off, and protection against discrimination and whistleblowing.

Self-employed individuals have the least rights, and generally only have contractual rights, but may be protected from discrimination and are protected under data protection legislation.

Between these is an intermediate status, a worker, who has a core of employment rights including entitlement to be paid at least the minimum wage; paid annual leave; and the rights conferred by the [Equality Act 2017](#).

An employer can give an individual additional rights in the contract, however legal rights cannot be taken away.

## **Employee or worker?**

The employer should decide in the contract what employment status to give the individual. It is important for the employer to decide employment status based on how the relationship with the individual will work in practice. The determined employment status is significant as if the contract does not match reality (e.g. the individual is working as an employee yet their



contract says they are a worker) the law will treat the individual as having a different employment status, regardless of the contract.

### **Change of employment status**

It is important to note that employment status can change during the relationship; individuals may increasingly integrate into a business such that their characteristics evolve from being those of a worker to those of an employee. If an individual's status does change, it is good practice to issue a new contract to reflect the new status.

For more information on employment status and how it is determined, please refer to appendix 1 of the [Chief Minister's Zero hours Contracts Committee](#) report and [the CIPD Guide to Zero Hours Contracts](#).

### **Continuity of Employment**

The existence of a continuing relationship is important for employees, as the length of continuous service is relevant to the accrual of certain statutory rights.

Zero hours contracts can be structured as 'umbrella contracts', under which there is a continuing contractual relationship with ongoing obligations between the employer and individual regardless of whether the individual is working at the time. Even when a zero-hours contract states that there is no continuing relationship between engagements, if, in practice, there is a well-founded expectation of further engagements (which is common in many zero-hours situations), that could be sufficient to create an umbrella contract.

If the employer does not want a continuing relationship between engagements, it should not create an expectation of further work. The contract should confirm:

- There is no contract between the parties between assignments.
- Each assignment shall be regarded as separate.
- The fact that the employer has offered work does not mean that there is any entitlement to or any expectation of future work.

### **Holiday Pay**

Zero hours workers/employees do have the right to paid holidays – they are entitled to a statutory minimum of 4 weeks' holiday per year (including bank holidays). Zero-hours employees and workers are treated as part-time workers, and so will usually be entitled to a pro-rated number of days' holiday. However, because zero-hours workers work irregular hours, it can be difficult to calculate the appropriate number of days' holiday entitlement.



Commonly employer's use 'rolled-up' holiday pay for irregular workers, where holiday pay is paid in instalments, on an accruing pro-rata basis, as an addition to the worker's ordinary wages. For more detail on holiday pay and working out holiday accrual, please refer to the Department for Enterprise [Holidays and Holiday Pay guide](#).

## **Pay Slips and payment methods**

Individuals on zero hours contracts are entitled to receive an itemised pay statement, regardless of their employment status. Helpful guidance has been provided by the Employment & Equality Tribunal which can be found at: <https://www.judgments.im/content/J2763.htm> and there is also guidance on our website at: <https://www.mirs.org.im/articles-and-news/news-articles/2021/jan/payslips/> but essentially a payslip must be provided at or before the time of payment – the payslip can be provide on paper or provided online but it must be clear to the employee how, where and when they can access their payslips.

If wages are paid direct to an employee's bank, it would be helpful if this is made clear in the statement of terms and conditions, or is otherwise confirmed in writing in a separate document. It should be clear when, within any pay period, the payment will actually be made so that payslips can be issued on or before the payment date.

Employers should notify employees in writing that payslips are confidential documents and there is an obligation on the part of employees not to leave payslips lying around where other employees or third parties may be able to read them

## **Sick Pay**

Individuals on zero hours contracts may be able to claim Incapacity Benefit from IOM Government from the fourth day of their sickness absence.

## **When should a zero hours contract be used?**

An employer should use a zero hours contract when they wish to engage an individual on an ad hoc (as required) basis and when the employer cannot guarantee work. In essence, zero hour contracts should be used where work fluctuates unexpectedly. Zero hour contracts can be used to not only allow flexibility for the employer, but can also provide flexibility for individuals.



## **What should the contract look like?**

An employer should make sure that a zero-hours contract contains the following basic terms (please note that this list does not include all the terms that are mandatory in an employment contract, nor all clauses which are advisable for inclusion in an employment or worker contract).

1. Whether the individual is an employee or a worker
2. The business need that is driving the zero-hours arrangement
3. The rate of pay
4. How holiday and holiday pay will be dealt with
  - a. Working out holiday accrual
  - b. Timing of holidays
  - c. Calculating holiday pay
5. Whether or not the relationship continues between engagements
6. How any work that is being offered will be notified to the individual and what obligation there is on the individual to accept work that is offered
7. How the relationship will be brought to an end

For more information and detail on these points, please refer to [the CIPD Guide to Zero Hours Contracts](#). For more information on written statements, please refer to our [Guide to Preparing Written Statements of the Terms and Conditions of Employment](#).

## **Best Practice**

The Chief Minister's Zero hours Contracts Committee has provided Best Practice Guidance in appendix 6 of its [report](#). Some of the key points of this guidance are as follows:

- 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.
- Zero hours contracts are rarely appropriate to run the core business.
- Contracts should be clear and transparent.
- Cancelling work at short notice, or when the individual turns up at the place of work, is unacceptable unless truly unavoidable.

**THIS IS NOT A FULL STATEMENT OF THE LAW**

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