



EMPLOYMENT, PENSIONS AND EMPLOYEE BENEFITS

Government Accelerates Introduction of Legislation on Zero Hours Contracts

by **Aoife Bradley**

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The Government has announced that it is prioritising the introduction of legislation intended to protect employees on zero hour and low hour contracts.

The Government's legislative programme for autumn 2017, published last week, states that the priority legislation for publication in the coming months will include an Employment (Miscellaneous Provisions) Bill to address zero hour contracts, low hour contracts, and banded hours.

Last week Taoiseach Leo Varadkar was reported as having stated in a speech to employers' group IBEC that the Government would move to 'outlaw zero hour contracts in almost all cases' in new legislation, which would be prioritised during the coming Dáil term.

The term 'zero hour contract' is commonly applied to a contract of employment where an employee is required to make himself or herself available for work, but is not guaranteed a minimum number of hours of work.

Currently, the Organisation of Working Time Act 1997 provides for the entitlements of employees who are required to make themselves available for work for a certain number of hours a week, or as and when required by their employer.

Zero hour and low hour contracts can provide flexibility and result in reduced costs for employers, but have been criticised by trade unions as having negative impacts for employees, including unpredictable working hours, unstable income, difficulties in managing family commitments, insufficient notice when called to work, and penalisation for not accepting work.

In the UK, where zero hour contracts have been widely criticised, the Office of National Statistics has recently reported a marked decline in their use.

The new legislation is being prioritised following a commitment in the programme for government that a study would be conducted on the prevalence of zero hour contracts and their impact on employees.

In a report published by the University of Limerick, it was recommended that the Terms of Employment Information Acts 1994 to 2012 and the Organisation of Working Time Act 1997 be amended to provide greater protections for employees on zero hour and low hour contracts.

In May 2017 it was announced that the Government had approved draft legislative proposals in light of the recommendations made in the University of Limerick report, having engaged in a consultation process with interested parties.

It is anticipated that the core features of the proposed legislation will include some or all of the following features:

- A requirement that employers inform employees in writing, within 5 days of the commencement of their employment, of five core terms of their employment, including what the employer reasonably expects the length of the employee's working day and week will be;
- The creation of a new offence for the failure of an employer to provide the required statement within one month of the commencement of employment;
- Introducing a minimum payment for low paid employees who are required to report for work but who are not provided with the expected hours of work. The proposals would introduce a minimum payment of three times the national minimum wage, or three times the minimum rate set down in an employment regulation order for the relevant employment sector;
- Prohibiting zero hours contracts, except in cases of genuine casual work, emergency cover, or short-term relief work for the employer;
- Amending Section 18 of the Organisation of Working Time Act 1997 to remove reference to 'zero hours working practices', and to provide that an employer will no longer be able to engage an employee on a contract for a certain number of hours, where the stated contractual hours are zero;
- Ensuring that employees on low hour contracts who consistently work more hours each week than provided for in their contract of employment will be entitled to be placed in a band of hours that reflects the reality of the hours that they have worked over an extended period;
- The creation of a new right for employees to be placed in a band of hours that reflects the actual hours worked over a given reference period of 18 months. The 18 month reference period is intended to allow for normal fluctuations in working hours due to seasonal or other factors. Under the proposals, an employee will be able to refer a complaint to the Workplace Relations Commission as against his or her employer with a view to being placed in the appropriate band of hours.
- The introduction of protections from penalisation for employees who exercise their rights under the proposed legislation.

We will provide a further update once the Bill is published. For further information, please contact [Aoife Bradley](#) in our [Employment, Pensions and Employee Benefits team](#).

About the Author



Aoife Bradley
Partner

Aoife is Head of the Employment and Pensions Team. Aoife's practice is primarily focused on contentious employment law matters and commercial litigation.

T: + 353 1 637 1583 **E:** abradley@lkshields.ie