



***ZERO HOUR
CONTRACTS
GUIDE 2019***

This revised booklet is intended to explain to employers and employees the principals of zero hour contracts. It does not represent a statement of the Law.

For further information please contact JACS on 730503

ZERO HOUR CONTRACTS - INTRODUCTION

Some businesses may be continuing to use zero hour contracts in circumstances that could be considered not appropriate.

Zero hour contracts are arrangements where people agree to be available for work **'as and when'** required but no particular number of hours or regular times of work are specified. These contracts are appropriate for businesses where regular work is not available, ie additional waiting staff to assist with a function, or a supply teacher to cover sickness. They are also used by Temporary Staff Agencies who supply temporary staff to other organisations but where there is no guarantee that work will be available, however this guide does not cover temporary agency staff, it only applies to those employees working directly for an employer.

It must be remembered, however, that in a true zero hour contract there should be no obligation on the part of the business to offer work and no obligation on the individual to accept, nor any penalty for turning down hours of work offered by the employer. Furthermore any employee working under a contract of employment - regardless of any hours – is protected under the Employment (Jersey) Law 2003. The changes to the legislation introduced on 1st September 2015 removed the 8 hour threshold for the purposes of calculating length of service and the right to claim for unfair dismissal. These changes mean that people working under zero hour contracts are likely to be employees and therefore receive the same rights as all other employees. Although each individual case can only be determined by the Tribunal, such claims have successfully been heard by the Tribunal.

The first question to arise is whether an employer/employee relationship is created but, in JACS view the amendment to the law in 2015 means that it is probable that such a relationship does exist as soon as an employee undertakes any work at all for an employer. The legislation advises that an individual is employed by another to work for them under a contract of service or an apprenticeship, the law does not reference any specific hours that an individual has to be employed for in order to be covered by the legislation. As long as the individual agrees to do the work themselves (as opposed to providing others to undertake the work) and is neither a customer nor a client of the employer then the Employment Law applies to the individual from the start of the employment.

JACS have seen misunderstandings arise when businesses use zero hour contracts for work that is regular because an employer misguidedly believes the use of such contracts will protect the business from claims of unfair dismissal, the need to give notice or, make redundancy payments, pay for public holidays, parental leave etc.

JACS have previously advised on situations where an individual has been working regular hours on a zero hours contract for a prolonged period of time (e.g. a regular 35 hours per week) and the business then decides that they need to reduce the hours to, say, 14 per week. Over time the 35 hours per week has become an "implied term of contract" and if the business wants to significantly change those hours, the normal procedure for agreeing a contractual changes would apply. Whilst it is for the Employment and Discrimination Tribunal to determine the facts in any cases – including any claims under the Discrimination (Jersey) Law 2013 -JACS would caution businesses to be careful when considering utilizing zero hour contacts and ensure they are being used appropriately. Under Article 8(2)(c) of the Employment Law the Tribunal can 'substitute other particulars' for those that are set down, therefore putting in place the terms that reflect what has been happening in practice ie 35 hours a week as opposed to 0 hours a week.

The following pages sets out guidance to assist in preventing such misunderstanding and/misuse from arising and to help improve transparency regarding zero-hours contract terms and rights

ZERO HOUR CONTRACTS - GUIDANCE

What are they?

If you look through the legislation you will not see the term 'zero hour contract' used or defined; however the term is understood to be a contract between an individual and a business to undertake work when it is offered, and equally an understanding that at times no work may be offered. Furthermore the individual is not under any obligation to accept any hours even when offered them.

When may zero hours actually mean 'zero hours'?

Zero hour contracts should be used when there is a requirement for a flexible workforce to be available. On occasion, businesses may offer work to individuals but there may also be weeks or months where no work is offered at all. Below are a few examples, bearing in mind this is not an exhaustive list:

- A hospitality function requiring additional staff to wait on the guests;
- Ill health at the hospital means that nurses need to be contacted from 'the Bank' at short notice;
- A farmer needs some additional pickers to harvest crops;
- A school requires invigilators to sit in on a couple of exams;

What are the benefits of zero hour contracts?

Businesses:

- Pool of individuals to call upon if business demands rise;
- No ongoing 'employment relationship' outside of the accepted hours/work.
- Cost effective as individuals are paid only for the hours worked;
- Allows flexibility when scheduling work.

Individuals:

- Offers flexible working around other commitments eg a student or a carer;
- Provides work/skills experience;
- No ongoing commitment to attend for work;
- Additional income stream if employee already has a job elsewhere.

What are the negatives of Zero Hour Contracts?

Businesses:

- The work becomes more regular and therefore the written contract no longer reflects the working practice.
- **Lack of exclusivity, therefore individuals may decline the hours offered;**
- Lack of understanding of the **Relationship** between the two parties.

Individuals:

- Work is offered on too short notice to be able to accept the hours;
- Lack of benefits that may be offered to regular employees;
- Lack of regular income;
- Pre-arranged work is cancelled with no notice.

Businesses should review both the terms set out in zero hour contracts on a regular basis and check the working arrangements in practice are as 'casual' as the contract indicates ie that the hours have not become regular. It is good practice for the employer to advise the employee each time their contract has been reviewed, even if the employer decides to keep the employee on a zero hour contract. There may be other types of contract that meet the needs of the business better, eg a flexible/variable hours contract or a contract for annualized hours. If the business requires an individual to attend work more regularly over a period of time, a fixed-term contract may be worth considering. Whilst the determination of the status of an individual rests with the Tribunal, if it is challenged, the more regularly the individual works and is expected to attend the workplace, the more likely it is that the relationship has changed. The Tribunal will look at the terms set out in the 'contract' along with what is actually happening in the working environment.

Holiday Pay ...

The Employment (Jersey) Law 2003 provides that a minimum of 2 weeks' annual leave must be paid to employees. When using zero hour contracts the majority of employers use 'rolled up holiday pay' for those employees who work 'as and when' because calculating annual leave on casual contracts is difficult. Rolled up holiday adds an additional 4% to the hourly rate of pay paid to employees under zero hour contracts (see the JACS guidance note on this for more detail), this is the equivalent of the statutory 2 weeks' annual leave. It is important that it is clearly shown on the zero hour contract and is also clearly stated on pay slips and pay records to avoid claims for holiday pay at the Tribunal. **Please note that this 4% does not cover any provision that may be due for public/bank holidays.**

Other Terms ...

The legislation does not require an employer to offer sick pay or pension rights to employees regardless of the type of contract the employee is working under. However it is important to remember that the statutory provisions for maternity/parental leave will apply to employees working

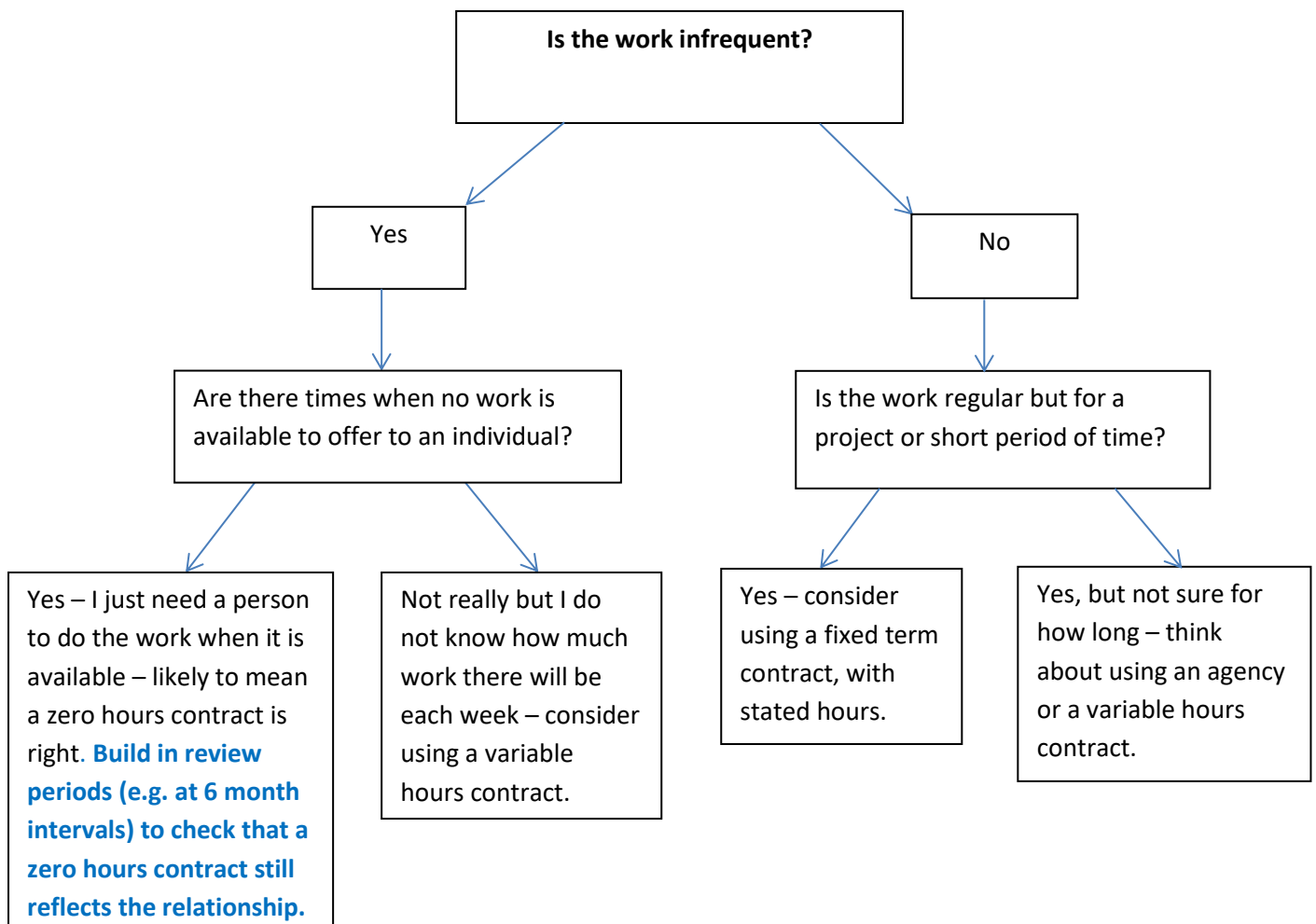
under any type of contract, as long as the criteria set down in the legislation is met. Additionally disciplinary and grievance procedures should still be in place.

Please bear in mind that the Discrimination Legislation applies to all employees and now covers disability discrimination as well as race, sex, and age.

Caution ...

As mentioned above the removal of the 8 hour rule from 1 September 2015 and recent Tribunal outcomes mean that there is now greater clarity about employment rights for those working under zero hour contracts. Any business that requires a flexible workforce and does not intend to create an ongoing employment relationship, should ensure that an 'umbrella contract' is not in place so that service does not build up when an individual is not actually working.

Questions to ask before using zero hours contracts:



Please contact JACS Outreach and Business Liaison Officer if you require further details about setting up terms of employment and policies – tel 730503, or jacs@jacs.org.je.

ZERO HOUR CONTRACTS – TEMPLATE

ZERO HOURS WRITTEN STATEMENT

Between:

(The Company)

And

(Name and address of individual)

Date:

Nature of Engagement:

This document sets out the terms and conditions of your working with us. Work may be offered to you on an “ad hoc” basis and, subject to 15 below, you are free to accept or decline such offers. We are under no obligation to offer you work or re-engagement and this statement in itself does not constitute a Contract of Employment, but explains the terms that will apply should work be offered to you.

Any amendments or additions to this statement (other than as to rate of pay) will be issued to you as a supplemental document. Work may be offered to you on an hourly basis or such longer period as may be required. . When you have agreed to attend work and are unable to do so, you are required to notify us immediately, as detailed in 6 below.

1. Job Title and Location

You will work as a Zero Hours xxx or in such role as may be agreed between us from time to time. Your normal place of work will be XXXX but you may be required to work from such place or places in Jersey as the Company shall reasonably require.

2. Commencement Date for the purposes of continuous employment

This zero hours contract will commence (or commenced) on (date)

3. Remuneration Hours of Work and duties

- a) You will be paid only for hours worked. Your normal hourly rate will be £xx.xx or such other rate as may be specified from time to time in writing. Payment will be made weekly/monthly (on X day/date) in arrears by cheque/bank transfer subject to deduction of Social Security contributions and Income Tax.
- b) Your hours of work are conditional on various business requirements. There may be times when no work is available for you and the Company has no duty to provide you with any work at such times. However when there is work available the Company will do its best to offer work to you and will endeavour to provide you with as much notice as possible of any hours you will be required to work. Where you accept an offer of work you will devote your whole time, attention and abilities to those duties allocated to you during those hours you are required to work by the Company.
(Add sub clause c) below, if required)
- c) Your duties are set out in a separate non-contractual document (job description) but the Company may in its discretion require you to undertake any duties it considers appropriate to your skills, and with appropriate training as is considered necessary.

4. Deductions

The Company has the right to deduct from your pay any sums which you may owe the Company including any overpayments or loans made to you by the Company.

5. Holiday Entitlement

Your entitlement to holidays and holiday pay is governed by the following provisions: -

During each full year of service your holiday entitlement (in addition to public holidays that fall on normal working days see JACS guidance note 2) is 10 days (or include your own higher entitlement) with full pay. In recognition of the fact that you will work variable hours, the Company will pay you on each pay day an additional sum equivalent to 4% of pay (to be increased if entitlement is above the 2 week minimum) for each hour worked, based on the hourly rate as set out in 3 above, as amended from time to time, representing your holiday pay. No further sums will be paid to you when you take holiday.

6. Absence for any cause including sickness and injury (or insert your own terms)

In the event of your being absent for any reason on days that you have accepted work, you must advise your manager by 9.00am (or other time as required) on the first day of absence, giving reasons for your absence and its likely duration, you are not entitled to receive any company sick pay.

7. Grievance Procedure (or insert your own terms)

The Company has a grievance procedure through which you can seek redress for grievances. .

An individual who has a grievance relating to their employment or engagement should raise the matter with their X or, if the grievance is directly associated with their X, with their manager.

If the matter is not then resolved to the individual's satisfaction, they may refer the matter to a more senior manager who was not involved in the first grievance discussion. Reference must be made in writing, and set out full details of the grievance and why the individual is dissatisfied with the decision.

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The decision of the senior manager shall be final.

The grievance procedure is not to be used to challenge a disciplinary decision.

8. Disciplinary Rules and Procedure (or insert your own terms)

The Company's disciplinary procedure is set out in the Staff Handbook (or is in accordance with the [JACS](#) model procedure, or insert your own terms). Appeals against any disciplinary decision must be made in writing within 7 days of the date of the written disciplinary decision, giving reasons for the appeal.

9. Pension Scheme (or insert your own terms)

There is no Company Pension Scheme and you are advised to make your own provision.

10. Redundancy

There is no provision for any redundancy payment other than as provided for under legislation.

11. Maternity/Parental Rights (or insert your own terms)

The statutory minimum rights will apply to all employees.

12. Nothing in these terms prevents the employee from seeking other employment whilst working for the employer.

13. Health and Safety (or insert your own terms)

The Company will take all reasonably practicable steps to ensure your health, safety and welfare while at work. Under the Health and Safety at Work (Jersey) Law each individual has a legal responsibility for their own welfare and for the health and safety of others. Any queries you may have relating to health and safety matters should be raised in the first instance with your Manager.

You must comply with the Company's Health and Safety Procedures for the time being in force and with the Health and Safety Policy Statement. (Employers with 5 or more staff must have a written [policy statement](#)).

14. General (add any special provisions here, e.g. uniform, or delete clause if not required)

15. Termination of Service (or insert your own terms)

The statutory minimum notice periods will apply to these terms of employment.

16. Collective Agreements (or insert your own terms)

No collective agreements affect these terms and conditions.

17. Amendments

The Company may from time to time review these terms and conditions.

Signed by the Company Date/....../....

I confirm my understanding and agreement of this zero hours contract.

Signed by the Individual Date/..../