



***ZERO HOUR
CONTRACTS
GUIDE 2023***

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. **Employees on Work Permits should not be working under zero-hour contracts as their main role.**

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, eg 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.

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 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. **Therefore, the employees working under zero-hour contracts receive the same rights as employees on other types of contracts including payment for any public/bank holidays that fall on days the employee would normally work.**

We 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. **All such rights apply including the entitlement to paid ante-natal appointments and parental leave. Parental leave payment is calculated by looking at the average wage an employee has earned in the previous 12 weeks of employment.**

We have previously advised on situations where an individual has been working regular hours on a zero-hours contract for a prolonged period of time and the business then decides that they need to reduce the hours. Over time the regular hours per week has become an “implied term of contract” and if the business wants to significantly change these hours, the normal procedure for agreeing contractual changes need to be applied. Whilst it is for the 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 contracts 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. **Employees also have the right to make a flexible working request under the legislation which could result in a permanent change to their contracts. Flexible working requests could be around increasing hours and requesting the employer reflect this by changing their zero-hour contract to a contract that reflects the regular hours an employee is working.**

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.

Holiday Pay ...

The Employment (Jersey) Law 2003 provides that a minimum of 3 weeks' annual leave (effective from 1 January 2022) 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 6%** 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 3 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 6% does not cover any provision that may be due for public/bank holidays which should be paid if these fall on a normal working day, even if the employee does not work the public/bank holiday itself.**

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 parental leave and redundancy will apply to employees

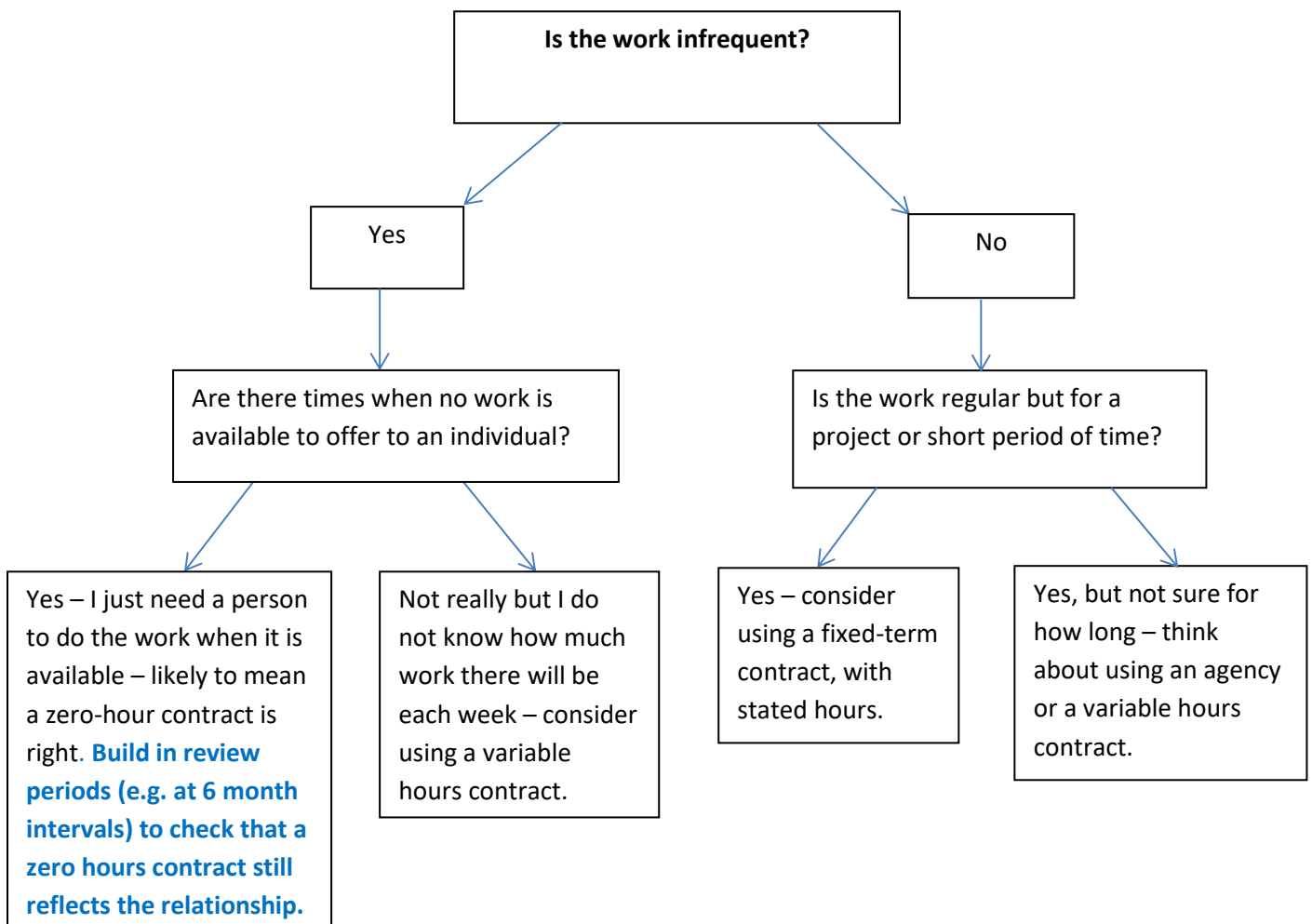
working under any type of contract, as long as the criteria set down in the legislation is met. Additionally, disciplinary and grievance procedures should still be in place.

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

Caution ...

A business (eg a temp agency) 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 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 WRITTEN STATEMENT – TEMPLATE

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, 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 clauses c) & d) 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.
- d) If for any reason we need to cancel any hours previously agreed with will offer you a minimum of [£X] as compensation. *(delete if not applicable)*
- e) Nothing in these terms prevent you from working for another employer.

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 3 weeks (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 6% of pay (to be increased if entitlement is above the 3 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 non-contractual grievance procedure which is set out in the Employee Handbook (or is in accordance with the JACS model procedure **or insert your own terms**) through which you can seek redress for grievances. .

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

The Company's non-contractual 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. Parental Rights (or insert your own terms)

The statutory minimum rights will apply to all employees.

12. 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](#)).

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

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

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

15. Collective Agreements (or insert your own terms)

No collective agreements affect these terms and conditions.

16. 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/..../