



RESEARCH ARTICLE

FUTURE IN ZERO HOUR CONTRACTS: WORLD PERSPECTIVE

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ABSTRACT

This study conduct with the zero hour contracts in world perspective. Here focus on the zero hour contract value as well as disadvantage. There has been growing public interest in the growth of zero hours contracts (ZHCs), where people are placed on a contract under which the employer is not obliged to offer regular work. These are seen by some as part of the flexible labor market and an important reason why unemployment has been lower and employment higher than it would have expected over the past five years. For others, they have entirely negative connotations associated with labor market exploitation and the growth of insecure forms of labor contract. The interest in zero hours contracts is, in some ways, surprising given they represent less than 1% of the workforce according to the Labor Force Survey. By comparison, other more traditional forms of insecure work such as casual and seasonal employment have attracted little attention, even though they are more common. One reason is that there may be far more zero hour contracts around than the statistical measure can capture. The most recent independent estimate, from the CIPD, puts the total at around 1 million compared with the latest ONS estimate of 250,000. Moreover, what happens at the margin matters – zero hours could be a small part of the workforce but account for a much bigger share of the new jobs, if their use has been rising sharply in the recovery. Whatever the hard numbers tell us, zero hours contracts have come to symbolize a wider concern that the labor market is moving towards more contingent, less secure and more exploitative forms of employment at a time when in many areas jobs are scarce and people have little choice over taking whatever work is available.

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INTRODUCTION

The interest in zero hours contracts is, in some ways, surprising given they represent less than 1% of the workforce according to the Labour Force Survey. By comparison, other more traditional forms of insecure work such as casual and seasonal employment have attracted little attention, even though they are more common. One reason is that there may be far more zero hour contracts around than the statistical measure can capture. However, do zero hours really deserve this totemic status as representing all that is bad in modern employment practice? Bad practice is hardly confined to zero hours but is common across all forms of employment contracts. So too is good practice. Properly used, zero hours can offer flexibility to some individuals and allow employers to offer work that would

otherwise not be available. Rather than a knee-jerk ban, a more constructive approach would be to see how the legal basis of zero hour contracts and good practice in the workplace surrounding their use can be improved.

Background of the Study

In the United Kingdom, under the National Minimum Wage Act 1998, workers operating under a zero-hour contract on stand-by time, on-call time, and downtime must be paid the national minimum wage for hours worked. Prior to the introduction of the Working Time Regulations 1998 and the National Minimum Wage Regulations 1999 zero-hour contracts were sometimes used to "clock-off" staff during quiet periods while retaining them on site so they could be returned to paid work should the need arise. Neville, Simon (1 August 2013). The National

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Minimum Wage Regulations now require that employers pay the national minimum wage for the time workers are required to be at the workplace even if there is no "work" to do. In the past, some employees working on a zero-hour contract have been told that they are required to obtain permission of their employer before accepting other work but this practice has now been banned under UK legislation enacted in May 2015. In *Autoclenz Ltd v Belcher* [2011] UKSC 41, the UK Supreme Court delivered a groundbreaking judgment on workers who were on a zero hour contract. Lord Clarke held, at paragraph 35, that in employment relations which are characterized by inequality of bargaining power, the written terms of a contract may not in truth represent what was the contract in law. In 2013, the reasoning in *Autoclenz* was applied by *Supperstone J* in the Employment Appeal Tribunal to hold that a security guard who was given a zero hours contract was entitled to a stable working pattern: the contract's written terms were invalid. Together, this indicates that all zero hours contracts may be unlawful, and workers may be entitled to sue their employers for an unlawful deduction of wages if they are willing and able to work.

Literature Review

The key literature argument surrounding zero-hours contracts "centres on the 'mutuality of obligation' between the employer and the worker." (Beardwell and Claydon, 2010, P395) There needs to be a mutual understanding of the terms of the contract and that both parties have an agreement of what is required of them. "If someone engaged under a zero-hours contract does not have regular hours of work and is able to decline offers of work and/or work elsewhere, there is unlikely to be a mutuality of obligation" (Beardwell and Claydon, 2010, P395). Although the terms of the contract do not state there will be consistent work, employees are expected to be relied upon when needed. In order to gain a further understanding of zero-hour contracts as a whole, it is essential to understand why people work in the first place. Focussing on what motivates individual workers will provide good reasoning to suggest why employees could be happy on these contractual terms. With research stated from theorists, this will help to gain a deeper insight into this area.

The key motivational theories here to look at are 'Taylorism', 'Maslow's hierarchy of needs' and 'Herzberg's two-factor theory', each suggesting that employees work for different reasons. Firstly, there is Taylorism. Introduced by Frederick Winslow Taylor, is the idea that employees work solely for reward. Resulting in the idea of instrumentality, the theory states that "people only work for money." (Armstrong, 2012, P55) This opposes theories where intrinsic rewards play a role in motivation. These include "psychological enjoyment and the satisfaction of challenge." (Bratton and Gold, 2012, P363) This idea is explored in more depth within Taylor's book of scientific management. It is stated that the principle of scientific management is to secure maximum prosperity for parties, the employer and the employee (Taylor, 1998). "Prosperity for the employer cannot exist through a long term of years unless it is accompanied by the prosperity of the employé, and vice versa; the workman [gets] what he wants – high wages and the employers what he wants - a low labor cost" (Taylor, 1998, P1). In relation to zero-hour contract, it seems that the employer has acquired their 'prosperity'

however the employee has not. The employee desires to be on high wages and receive good rewards for their work but this cannot be assured without a guarantee of hours. With the employer using zero-hour contracts they are able to keep down their labour costs to be prosperous. The second motivation theory is Maslow's hierarchy of needs. This theory ranks employee needs "with basic physiological needs at the bottom and self-actualization needs at the top." (DuBrin, 2008, P375) The lower deficiency needs need to be satisfied ensuring that the higher growth needs are being met. The lower needs section focuses on physiological needs and safety and social needs. The lower needs ensure that the employee is working within the right conditions and that they feel secure within their role. Social needs are key here as many employees "see their jobs as a major source of [satisfaction]" (DuBrin, 2008, P376). The higher additional needs, esteem and self-actualization question whether the employee ability is being fulfilled and therefore reaching their potential. When looking at esteem needs, "occupations with high status are a primary source for the satisfaction of esteem needs." (DuBrin, 2008, P376) With employees working under zero-hour contracts, dependent on whether they rely heavily on their role this hierarchy of needs can be displayed in numerous ways. An employee who works constantly under these terms may not feel 'safe' as they are unsure from week to week whether they will receive their desired income and hours. According to Heath (2014) "there's some pretty sharp practices going around and the growing prevalence of zero hours contracts is undermining what small sense of security many people had been clinging to." (Heath, 2014) This reinforces the minimal safety within these contractual terms. Employees are then unable to be seen within the growth needs. Adjacent to this, students who may be working on these terms could view their hierarchy of needs differently.

Where are zero-hours contracts used?

What was once seen as a characteristic of the low-paid sectors such as care work and retail, zero-hours contracts have spread to the skilled professions such as university lecturers and hospital consultants (IDS, 2013) (covering 11 per cent of professionals, CIPDa, 2013). According to the CIPD, the voluntary (34 per cent) and public sectors (24 per cent) now have the highest proportions of employers using zero-hours contracts (compared to a private sector figure of 17 per cent), with the industry's most commonly using zero-hours contracts being the higher education sector (35 per cent); healthcare sector (27 per cent); and hotels, catering and leisure (48 per cent), to cope with seasonal demands.

How big is the zero-hours issue?

The size of the zero-hours contract issue is debatable. Evidence suggests that the number of people on zero-hours contracts has risen in recent years, with the latest Workplace Employment Relations Study (2011, published in January 2013) showing the proportion of workplaces with employees on zero-hours contracts has risen from 11 per cent in 2004 to 23 per cent in 2011 (House of Commons, 2013a). However, actual estimates of numbers of people engaged on these contracts range significantly from 250,000 (0.8 per cent of the working population) based on Labour Force Survey (LFS) figures for Q4

2012 (ONS, 2013a), to a CIPD estimate of around one million individuals (three to four per cent of the working population) (CIPD, 2013), based on a 2013 survey of employers. The lower government estimate is based on self-declaration and the ONS has outlined the limitations of this method, including the concern that individuals may themselves not select 'zero-hours contract' as their employment status when other response options in the LFS such as part-time or shift-working may be more meaningful to them (ONS, 2013a). In August 2013, the ONS announced that they would consult on a better means of collecting this information from September 2013 with the first figures, using the new statistics for measuring this employment category, available from early 2014 (ONS, 2013b). This timetable has since been revised and the consultation document was released on 23 October 2013 (ONS, 2013c) with the results.

Advantages of Zero hour contract

- Flexible working arrangements like zero hours contracts preserve jobs when times are tough.
- They enable employers to respond quickly to spikes in demand.
- For some workers it won't be their only job, but a way to top up with additional income and/or get experience in a new or different field.
- For some people such contracts can be a foot in the door of the labour market e.g. a full-time student making extra money and getting experience for their CV before they graduate

Disadvantages of Zero hour contract

- Employees can end up with less work than they would like.
- Poorly managed communications / administration of shifts can unsettle workers and make them feel insecure in employment.
- Employers can lose highly skilled/ in demand workers to the freelance market.

The future of zero-hours

In summary, we will expect to see 2016 bring an improved method of measuring the extent of zero-hours contracts use in the UK and the findings from the government consultation on the issue. It is hoped that it will also shed light on how mutuality of obligation can function in the context of zero-hours contracts and the consequent employment status of those individuals contracted under them. The year will also bring more details on the private member's bill and its progress through parliament, although many commentators think it is unlikely to result in a complete ban on the use of such contracts. Outside of regulation, many alternative solutions exist, for example, the Recruitment and Employment Confederation has called for a voluntary code of good practice for zero-hours contracts and measures that will mitigate the worst practices (BBC News, 2013). Most importantly, the government review of the use of such contracts is expected to bring some greater clarity on how the flexibility achieved through such contracts can be combined with protection and greater certainty for the most vulnerable workers.

A word of warning on zero hours statistics

Almost all of the statistical information on zero hours contracts comes from the household Labour Force Survey (LFS) or the Workplace Employment Relations Survey (WERS) which is based on representative workplace surveys of both managers and employees. However, while the data comes with some important caveats, it is important to recognise that the Labour Force Survey is a high quality and reliable source of information on many aspects of the labour market.

Firstly, the LFS is a sample survey, and because the number of people who say they are on zero hours contracts account for just under 1% of total employment, the sample size is small. The 2011 WERS survey is also a sample survey and identified zero hours contracts as present in just 8% of all workplaces. All statistics on zero hours contracts should therefore be regarded as approximate, with only substantial changes counted as significant. More detailed analysis of the characteristics of people on zero hours contracts is problematic as the sample size rapidly drops to a level which is not statistically significant. Even those where the sample size is large enough to draw some conclusions are subject to wide margins of error.

Secondly, there is serious under-reporting. Estimates for the NHS and the domestic care sector put the number on zero hours contracts at 75,000 and 300,000 based on returns by NHS trusts and estimates from a different dataset covering social work in England and Wales³. Yet the LFS estimate for the whole economy had until very recently been cited as just over 200,000 in Q4 2012. At the time of writing some MPs are attempting to get estimates of zero hours contracts in higher education based on employer returns through Freedom of Information requests. This should help to identify if the education sector is also under-reporting. There is no easy way at the moment to estimate whether returns from other sectors such as retailing, hospitality or business services are also under-recording.

Some of the reasons why the LFS under-records ZHCs are to do with the scope and design of the questionnaire used to capture data. The LFS question only applied to those with ZHCs when it was their "main arrangement" so would exclude, for example, some NHS staff on ZHCs in addition to their main job. The latest ONS revisions have taken this into account, and this and other technical adjustments have increased the estimate for 2012Q4 from 200,000 to 250,000, an increase of 25%.⁴ The ONS is due to introduce a further refinement, so that people who said they were on shift-work could then be asked whether they were on a zero hours contracts (previously, if someone answered shift-work to the questionnaire, they were deemed not to have a ZHC). The revised estimates will be available in early 2014, and the ONS says that "There is potential for a step change in the data when this is introduced."

However, it remains to be seen how much of the potential gap in under-recording of ZHCs the new methods is able to close. If zero hours are highly concentrated in small areas of the labour market, a representative sample survey such as the LFS may still struggle to fully pick them up. We also still suspect that under-reporting remains a problem, with some people on a contract that is to all intents and purposes a ZHC but has been called something else by the employer. The analysis presented below uses the estimates of zero hours contracts before the

latest revision. We will re-run the analysis once the new estimates become available early in 2014 to see whether it changes our picture of the characteristics of people who hold ZHCs. The current analysis should therefore be regarded as provisional.

Findings

Even if zero hours contracts are much higher than current statistics suggest, they are still a small part of the overall labour market. We are skeptical that their rise is an unintended consequence of the recent EU Directive on Agency Workers, as claimed by some.

The greater use of zero hours contracts is taking place against a background of falling real wages, high levels of workplace fear of the consequences of redundancy and unfair treatment for a significant minority, and an employment recovery where permanent employee jobs have been in a minority. The calls to ban zero hour contracts however are in our view misplaced. The UK labour market currently supports a wide variety of flexible working arrangements. Moreover, zero hours contracts can suit some people and there may be some circumstances where work is so erratic that it would be hard for an employer to offer the work on any other basis. Don't know how many people on ZHCs have taken them out of choice and how many have taken them out of necessity. We do not know exactly why employers are making more use of them.

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