



ISME response to invitation to make a considered submission in relation to consultation on Report on prevalence of Zero Hours Contracts

4th January 2016

ISME, the Irish Small & Medium Enterprises Association, is the INDEPENDENT body representing owner managers of small & medium businesses in Ireland. SMEs constitute 99.7% of all businesses in Ireland, employ over 800,000, which equates to 68% of Private Sector employees and 52% of total employees, 50.3% of Turnover and 46.2% of Gross Added Value.¹

The Irish Small and Medium Enterprises Association (ISME) was formed in 1993 to guarantee that Small and Medium Enterprises in Ireland have an **independent voice**. The Association represents in excess of 10,000 SME businesses throughout the 26 counties. Our independence stems from the fact that as a business organisation we uniquely rely on the resources of our members. We are not reliant on big business which compromises other representative organisations. We are the only independent representative body for SMEs in Ireland.

Our organisation's members employ over 245,000, from the one woman and her dog operation right up to businesses with 250 employees. We also are a 'broad church', representing all sectors, from importers to exporters, agri-food to engineering, retail, manufacturing, distribution, service industries, including accountants, solicitors and other professions.

The defining feature is that the businesses are run by the very people who own them and invest their life savings and their family's' life savings in their enterprises.

We thank the Minister for his invitation to make a submission in response to the consultation, based on the University of Limerick's "A STUDY OF THE PREVALENCE OF ZERO HOURS CONTRACTS among Irish Employers and their impact on Employees.

The fact is that the study found that there was little evidence of Zero Hours Contracts, which is what ISME stated from the beginning.

The authors of the report then went on to 'examine' "If and When" contracts, which was never part of their remit. This is now on which we have been asked to comment.

The views of employers on "If and When" contracts were not ascertained and therefore, their views did not inform the findings or recommendations drawn and cannot be considered an accurate analysis of how these working arrangements benefit both businesses and employees.

We in ISME have responded to the "KEY FINDINGS" and the Recommendations and we welcome further discussion on and proper analysis of the situation of "If and When" contracts. We agreed that total Zero Hour arrangements were unbalanced and if they were being used then they should be monitored and curtailed.

However the very essence of modern industry is flexibility and particularly in the Small and Medium sector it is a 'must' in all areas. There has to be a pragmatic view taken of flexible working arrangements, especially in 'start-ups' and 'early stage' enterprises. The recommendations proffered in the Report are, in the main, totally unworkable and should be scrapped.

¹ *Business in Ireland 2012 CSO.*

The Key Findings

Key Finding No. 1- the Absence of a Problem

KEY FINDINGS

1. Zero hours contracts within the meaning of the Organisation of Working Time Act 1997 (OWTA) are not extensive in Ireland according to our research. There is evidence, however, of so-called If and When contracts. Both types of contract involve non-guaranteed hours of work. The fundamental difference between the two is that individuals with a zero hours contract are contractually required to make themselves available for work with an employer, while individuals with an If and When contract are not contractually required to make themselves available for work with an employer.

The first finding of the UL report was that there is no zero hours' problem in Ireland. The researchers conducted interviews and investigations with employee and employer representatives and found that the use of such contracts is 'not extensive in Ireland'. This answer fulfilled the purpose of the study which was to ascertain whether or not zero hours contracts were prevalent and in need of legislative reform. However, the researchers went on to study 'if and when' contracts and to make recommendations on same. This was not within the remit of the study and was not the topic discussed with stakeholders in the stakeholder meetings. Stakeholders were not informed of the change in the focus of the study and were not asked to provide information about 'if and when' contracts. Thus, their views did not inform the findings or recommendations drawn and cannot be considered an accurate analysis of how these working arrangements benefit both businesses and employees.

2. If and When hours arise in different forms in employment contracts. In some contracts, all hours offered to an individual are on an If and When basis. In other contracts, there is a hybrid arrangement whereby employees have some guaranteed hours and any additional hours of work are offered on an If and When basis.

Many businesses are not in a position to offer all staff permanent full-time hours and many staff could not accept such an arrangement. Flexibility in business is essential and staff who accept 'if and when' contracts understand the nature of these arrangements and in many cases value this flexibility as it allows them scope to organise their home/leisure/work schedules to suit their other responsibilities. Many industries absolutely rely on this flexibility such as education, personal care, hospitality etc.

3. Low working hours arise in various employment contracts. An individual working a low number of hours may have either a regular part-time contract with fixed hours or a contract with If and When hours only or a hybrid arrangement whereby employees have some guaranteed hours and any additional hours of work are offered to them on an If and When basis.

The report fails to acknowledge that many people choose to work part-time hours to suit family commitments. The report does not analyse the numbers of people in this situation. It assumes that all employees are in position to work full-time weeks of set hours which is simply not true.

4. Employer organisations argue that If and When hours and low hours suit employees. Such arrangements, it is claimed, especially suit students, older workers and women with caring responsibilities. Some employer organisations argue that they have difficulty finding employees who want more working hours. A number of employer organisations also argue that providing any work to people reduces the cost to the State of paying unemployment benefit.

ISME stands by and agrees with this argument. As mentioned, many people prefer to work part-time hours to allow themselves time for other responsibilities such as family, leisure, children and education. Employers allow them the flexibility to work around these obligations and, in return, they are often agreeable to take on some more ad-hoc hours when asked to. These arrangements are mutually beneficial to the business and the employee. Constraining flexibility in work contracts will constrain it not just for the employers, but for the employees also.

5. The variety of contractual arrangements which include If and When hours present significant challenges in collecting accurate data on the number of people on them. A key feature of each of these arrangements is the variability of working hours. Central Statistics Office (CSO) data on working hours indicate that 5.3% of employees in Ireland have constantly variable working hours (employees whose hours of work vary greatly from week to week). The highest proportions of those with constantly variable working hours are employed in the wholesale/retail, accommodation/food and health and social work sectors.

This data shows that the use of 'if and when' contracts is limited to sectors who absolutely require flexibility. Thus, any changes to such contractual arrangements would seriously restrict the ability of such businesses to remain viable and competitive.

6. Managers and professionals are more likely to work constantly variable full-time hours while those in sales and personal services occupations are more likely to work constantly variable part-time hours.

No comment

7. A higher proportion of men work constantly variable full-time hours, while a higher proportion of women work constantly variable part-time hours.

This finding fails to probe the reasoning for a gender differential. The burden of childcare still falls to women in the majority of families and thus explains the higher number of women who choose to work part-time hours in comparison to their male counterparts.

8. Employees with constantly variable working hours are more likely to work non-standard hours (i.e., evenings, nights, shifts, Saturdays and Sundays) than those with regular hours.

This is a key requirement in many industries whose main business often occurs in non-standard hours.

9. There is no commonly used national or international definition of low hours working. CSO data show that 2% of employees regularly work 1-8 hours per week, 6% work 9-18 hours per week and 24% work 19-35 hours per week. 10. Very low hours (1-8 hours) are prevalent in the wholesale/retail and accommodation/food sectors. A quarter of all employees working 9-18 hours per week are in wholesale/retail with another 17% working in health. A significant proportion of those who work 19-35 hours per week are in education and health.

No comment

11. Higher proportions of personal service and sales workers than those in other occupations regularly work 1-8, 9-18 and 19-35 hours per week. Given that these occupations are highly feminised, more women than men work 1-8, 9-18 and 19-35 hours per week.

No comment.

12. In the four sectors studied in this report (retail, hospitality, education and health), If and When hours and low working hours are prevalent in the accommodation/food and retail sectors and in certain occupations in education and health: community care work, so called 'bank' nursing, general practice nursing, university/institute of technology lecturing, adult education tutoring, school substitution, caretaking, and secretarial and cleaning work.

No comment.

13. The key factors driving the use of If and When contracts are: • Increasing levels of work during non-standard hours • A requirement for flexibility in demand-led services • The absence of an accessible, affordable childcare system • Current employment legislation • The particular resourcing models of education and health services.

No comment

14. The main advantage of If and When contracts to employers is flexibility, which allows them to increase or decrease staff numbers when needed. A second benefit is reduced cost, as organisations only pay people on If and When hours for time actually worked and these individuals may not build up enough service to attain benefits such as sick pay. The main disadvantage to organisations is the administrative burden that arises from having to manage a larger workforce with variable hours.

No comment

15. Trade unions and non-governmental organisations (NGOs) argue that there are significant negative implications for individuals working If and When hours. Negative implications include: • Unpredictable working hours (the number and scheduling of hours) • Unstable income and difficulties in accessing financial credit • A lack of employee input into scheduling of work hours • Difficulties in managing work and family life • Employment contracts which do not reflect the reality of the number of hours worked • Insufficient notice when called to work • Being sent home during a shift • A belief amongst individuals that they will be penalised by their employer for not accepting work • Difficulties in accessing a range of social welfare benefits • Poorer terms and conditions in some cases.

No comment

16. The Department of Social Protection has raised concerns about the rising cost to the State of income supports (Family Income Supplement and Jobseeker's Scheme) to people on variable and part-time hours.

No comment.

17. We find that there is a lack of clarity over the employment status of individuals who work only If and When hours. As there is no mutuality of obligation between an employer and individual with If and When hours (i.e., there is no obligation to provide work or perform work), there is a strong likelihood that individuals in this situation are not defined as employees with a contract of service. Consequently, questions arise on the extent to which they are covered by employment legislation.

There is a lack of clarity on employment status. It is untrue to state that there is NO MUTUALITY of obligation.

18. In Europe, working hours are regulated by legislation and collective agreements. Zero hours contracts do not exist in a number of countries. Where zero hours-type practices are regulated, some countries have placed limitations, such as time limits, on their use. A number of countries have increased regulations on zero hours-type work in recent years.

We now seem to have jumped back into ZERO HOURS !!!!

RECOMMENDATIONS The recommendations of the research team are listed below and set out in detail in Section 8 of the report.

1. We recommend that the Terms of Employment Information Acts 1994 to 2012 be amended to require employers to provide the written statement on the terms and conditions of the employment on or by the first day of employees' commencing their employment. This requirement should also apply to people working non-guaranteed hours on the date of first hire.

This is an unrealistic and unreasonable request to place upon employers. In many cases, small business owners rely on external personnel to draft employment contracts and this can take time to organise. It is not always feasible for employers to have a written contract ready on or by the employees first day of work. The current legislation on this matter is sufficient to protect the interests of the employee and also to allow the employer some organisational time. Receiving an employment contract on day one provides little extra benefit to the employee and puts undue pressure on the employer.

2. We recommend that the Terms of Employment Information Acts 1994 to 2012 be amended to require employers to provide a statement of working hours which are a true reflection of the hours required of an employee. This requirement should also apply to people working non-guaranteed hours.

Employers can only provide a statement of working hours that outlines guaranteed/known hours. They cannot accurately foresee what hours an employee will work on an 'if and when' basis as these are determined by the market and consumer demand. It is not feasible to ask employers to provide a statement of hours which they cannot accurately predict.

3. We recommend repealing Section 18 of the Organisation of Working Time Act 1997 and introducing either a new piece of legislation or a new section into the Organisation of Working Time Act 1997 to include the provisions in recommendations 4-8 below.

4. We recommend that legislation be enacted to provide that:

- (i) For employees with no guaranteed hours of work, the mean number of hours worked in the previous 6 months (from the date of first hire or from the date of enacting legislation) will be taken to be the minimum number of hours stipulated in the contract of employment.

- (ii) For employees with a combination of minimum guaranteed hours and If and When hours, the mean number of hours worked in the previous 6 months (from the date of first hire or from the date of enacting legislation) will be taken to be the minimum number of hours stipulated in the contract of employment.

- (iii) A mechanism will be put in place whereby, after the minimum number of hours is established, employers and employees can periodically review the pattern of working hours so that the contract accurately reflects the reality of working hours.

- (iv) Where after 6 months an employee is provided with guaranteed minimum hours of work as per subsection (i) and (ii), but is contractually required to be available for additional hours, the employee should be compensated where they are not required by an employer in a week. The employee

should be compensated for 25% of the additional hours for which they have to be available or for 15 hours, whichever is less.

These recommendations are unrealistic and unworkable and have the potential to create situations which will lead to less work being available to workers who depend on the flexibility of the hours offered.

5. We recommend that an employer shall give notice of at least 72 hours to an employee (and those with non-guaranteed hours) of any request to undertake any hours of work, unless there are exceptional and unforeseeable circumstances. If the individual accepts working hours without the minimum notice, the employer will pay them 150% of the rate they would be paid for the period in question.

This recommendation is entirely unreasonable and fails to understand the unpredictable nature of today's business environment and the flexibility required to satisfy the customers' needs. Employers need to be able to ask staff to do extra hours when the need arises. The staff member is then free to accept or refuse this work. It is an essential flexible arrangement based on mutual consent. In this situation, where employees gain extra earnings and employers meet their immediate business need, both parties are 'winners'.

If employers are forced to pay staff a higher rate for these extra hours they will, in many cases, be unable to offer them to staff members. This means the employee loses out on extra earnings and the employer is unable to cater for extra demand. In this situation, both parties are 'losers' and there is an overall economic loss for the country.

6. We recommend that an employer shall give notice of cancellation of working hours already agreed to employees (and those with non-guaranteed hours) of not less than 72 hours. Employees who do not receive the minimum notice shall be entitled to be paid their normal rate of pay for the period of employment scheduled.

There is legislation on this already.

7. We recommend that there shall be a minimum period of 3 continuous working hours where an employee is required to report for work. Should the period be less than 3 hours, for any reason, the employee shall be entitled to 3 hours' remuneration at the normal rate of pay.

This model of allowing three hour work slots only is incompatible with many industries.

8. We recommend that employer organisations and trade unions which conclude a sectoral collective agreement can opt out of the legislative provisions included in recommendations 4-7 above, and that they can develop regulations customised to their sector. Parties to a sectoral collective agreement should be substantially representative of the employers' and workers' class, type or group to which the agreement applies.

No comment.

9. When negotiating at sectoral level, we recommend that employer organisations and trade unions examine examples of good practice which can provide flexibility for employers and more stable working conditions for employees, such as annualised hours and banded hours agreements.

No comment.

10. We recommend that the Government examine further the legal position of people on If and When contracts with a view to providing clarity on their employment status.

Agreed.

11. We recommend that the Department of Social Protection put in place a system that provides for consultation with employer organisations, trade unions and NGOs, with a view to examining social welfare issues as they affect people on If and When contracts and low hours.

ISME believes that a full review of the social welfare system is necessary to make it suitable for today's labour force. Part-time employment claims should be based on hours works rather than days and payment rates must be reviewed to ensure that they do not dissuade people from taking up work. The system must also become more responsive and process claims at a faster pace.

ISME agrees with the recommendation that such a consultation should take place and would be willing to participate.

12. We recommend that the Government develop a policy for an accessible, regulated and high-quality childcare system that takes into account the needs of people working If and When contracts and low hours.

ISME believes that the entire labour force would benefit greatly from the introduction of an improved childcare system. The association is in favour of this recommendation.

13. We recommend that the Government establish an interdepartmental working group to allow for greater cooperation between government departments on policies which affect patterns of working hours.

ISME is in favour of this recommendation as joined-up thinking across departments is always welcome. However, such a group would likely benefit from external stakeholder involvement.

14. We recommend that the Central Statistics Office have a rolling Quarterly National Household Survey Special Module on Non-Standard Employment which would include questions on non-guaranteed hours.

We support this recommendation as extra data is always welcome when reviewing any topic.