



<b>MRCI's submission to:</b>	Employment Rights Policy Unit, Department of Jobs, Enterprise and Innovation
<b>RE:</b>	Consultation Document on Zero Hour/ Low Hour Contracts
<b>Date:</b>	4 January 2016

### **For Confidential Use**

#### **Introduction**

MRCI welcomes the opportunity to make this submission to the Employment Rights Policy Unit, Department of Jobs, Enterprise and Innovation to respond to the findings and recommendations of the University of Limerick Study on the Prevalence of Zero Hour Contracts and Low Hour Contracts in the Irish Economy. Our comments and recommendations are based on research conducted by MRCI with migrant workers and our 14 years of casework, representation, advocacy and outreach work with migrants across Ireland.

#### **Who We Are**

The Migrant Rights Centre Ireland (MRCI) established in 2001, is a national non-governmental organisation working to promote the rights of migrant workers and their families in low paid employment and at risk of poverty, social exclusion and exploitation in Ireland. MRCI provides a free and confidential Drop-in Service to migrant workers and has established a number of action groups to support vulnerable migrants. The Drop-in Centre provides information and advocacy to migrant workers on immigration and employment issues. In 2014, the service dealt with over 2,000 cases of migrants working in low pay. Current priorities include rights for undocumented migrants; addressing forced labour and human trafficking; rights for au pairs; carers, domestic workers and restaurants workers; an outreach programme into hard to reach sectors - seafarers, apple pickers and agricultural workers.

## **Response to the Findings**

MRCI believes that there is a serious problem of casualisation of employment in Ireland. Whilst “zero hour” contracts arguably represent a minority of employment in Ireland, the concern is that the labour market is moving towards lower paid, less secure and more exploitative employments. This is reinforced by the evidence of “if and when” contracts or “hybrid” contracts which are detrimental for the majority of workers because of the unpredictability of working hours and corresponding income. This in turn has a negative impact on people’s ability to make ends meet and plan for the future.

Employers argue that such atypical employment contracts/ arrangements are beneficial for employers as well as employees in so far as they provide flexibility for employers and offer stepping stones for employees into permanent employments and the ability to balance the work life with family / caring commitments. However, evidence gathered by the MRCI from its long standing, well documented and researched work in this area, shows that while some flexibility of working arrangements could be attractive to minority of workers, there is no substantial evidence to suggest that such atypical or casual employment contracts/ arrangements are beneficial for a wider group of workers. In fact, the evidence from the MRCI work suggests that such casual / atypical employment arrangements are contributing to the abuse and workplace exploitation of the employees. The growth in such casual employment is contributing to the growth of poverty as low hours and unpredictable hours jobs do not provide enough hours for a sustainable income for workers and their families. The situation of many migrant workers in low waged work has become more precarious. From a worker’s point of view, precarious work is related to uncertain, unpredictable and risky employment. This is characterized by low paid, insecure and unpredictable hours, zero hour contracts, irregular hours, lack of progression, discrimination, exploitation and the lack of compliance and enforcement of rights.

A recent survey conducted by MRCI with 104 migrant workers<sup>1</sup>, revealed that many migrant workers in domestic work, security, retail and restaurant worked low and unpredictable hours and had no control or input over scheduling their working hours. The survey also showed high levels of breaches of employment law and the lack of enforcement of employment standards in such sectors.

Research conducted by the Migrant Rights Centre Ireland in 2012 into the experience of migrant care workers<sup>2</sup> showed the prevalence of “zero hour” or irregular on – call hour contracts in the sector. It was argued that such arrangements were not a matter of choice for workers in this sector. The workers felt that they either accept the employment on such conditions or not have a job at all. Such employment arrangements do not offer any tangible benefits but rather leads to abuse and exploitation.

## **Response to Recommendations**

Recommendation 1 – MRCI supports the recommendation to amend the Terms of Employment (Information) Acts 1994-2012 to require employers to provide the employee with a written

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<sup>1</sup> All Work and Low Pay: The Experience of Migrants Working in Ireland, MRCI (November 2015)

<sup>2</sup> Working Paper: Who Cares? The Experience of Migrant Care Workers in Ireland, MRCI (November 2012)

statement of “normal working hours” no later than the first day of employment. This should be extended and applicable to all employees, including those on atypical employment arrangements.

Recommendation 2 – MRCI supports the recommendation to amend the Terms of Employment (Information) Acts 1994-2012 to require the employers to provide a statement of working hours or “normal working hours” that are a true reflection of the hours the employee is expected to work. The written statement should guarantee the existing working patterns on an ongoing basis. The only exception should be allowed where the employee himself or herself actively requests to remain on zero hour contracts. MRCI further recommends that the employers are obliged to provide a statement of minimum hours, the days on which the worker is expected to carry out duties, the length of the working day and a statement of the hours during which the worker might be called for work. This should be extended and applicable to all employees, including those on atypical employment arrangements.

Recommendation 3 – MRCI supports the amendment to the Organisation of Working Time Act 1997 to include the provisions in recommendations 4-8. From MRCI experience, the “hybrid” contracts or “if and when” contracts are more prevalent among migrant workers as opposed to zero hour contracts (with the exception of care sector). Therefore, the wording of the section 18 of the Organisation of Working Time Act 1997 as it currently stands is quite irrelevant. The workers are not able to avail of the protection under this section simply because the section excludes workers engaged in the work of casual or irregular nature. The legislation does not provide any definition of “casual” worker.

Recommendation 4 – MRCI supports the proposed provisions in principle. However, MRCI would recommend the amendment to provide for the “floor payment” for the “normal working hours” to be calculated using the following methods: (i) as stated in the written statement of terms and conditions of employment; (ii) by using a reference period of 13 weeks and (iii) the hours the employee may be called for work. MRCI further suggests providing for a right for the worker to request full time work and an obligation for the employer to consider this. The refusals could only be allowed where the employers could justify and demonstrate the need for such contracts. MRCI also recommends generally limiting the use of atypical employment contracts to situations where they are only genuinely needed.

Recommendation 5 – MRCI supports the proposed provision as regards the notice for working hours. It is important that the employers should be required to provide workers with a proper notice of when work will be available or will be cancelled. However, we would recommend that notice period of working hours should be increased to at least a week. Only in genuinely unforeseen circumstances a shorter notice of working hours should be applied.

Recommendation 6 – MRCI supports this recommendation.

Recommendation 7 – MRCI recommends to increase the minimum continuous working hours from 3 to 4 hours. In other words, MRCI recommends providing that the worker could not be called for work for short periods such as less than 4 hours. MRCI also recommends that the workers in atypical employment arrangements should be compensated for the added flexibility that they offer to their employers. Such workers should be paid for all the time spent on-call for the employer and

expected to be available for work on short notice. Workers should also be entitled to get reimbursed for travel expenses where their working hours are cancelled at a short notice.

Recommendation 8 & 9- MRCI supports these provisions. It is well documented and established nationally and internationally that collective bargaining can play a vital role in reducing casualization of employment arrangements, in successfully negotiating improved pay and working conditions for workers and in protecting vulnerable workers from abuse and exploitation. Therefore, it is pivotal to consider adopting measures that would ensure that all workers have improved access to union membership and representation to promote collective bargaining in the workplaces.

Recommendation 10 – MRCI supports the provisions in this. It is critical that employment status law and rules on continuity of employment is reformed to ensure that all workers benefit from the same basic floor of rights at their workplaces.

Recommendation 11 – MRCI supports the putting in place the system to consult with employer organisations, trade unions and NGOs with a view to examining the relevant social welfare issues for workers.

Recommendation 12 – MRCI supports this recommendation to develop an accessible, regulated and high quality child care system. This would also reduce the instances of workplace exploitation in domestic sector whereby particularly migrant workers are used as a cheap labour to facilitate childcare.

Recommendation 13 – MRCI recommends establishing a task body that would have the oversight on the implementation and the enforcement of the proposed provisions. MRCI recommends that the government establishes a strengthened system for enforcing workplace rights; the remit of the labour inspectorate needs to be strengthened in this regard. Its function should be to ensure that all workers, especially those vulnerable to exploitation and discrimination, can enforce their rights.

Recommendation 14 – data collection is vital to capture the trends and patterns in the labour market, particularly relating to the low pay work. MRCI supports the proposed recommendation for data collection.