



SMALL FIRMS ASSOCIATION

Submission on the prevalence of zero hour contracts and low hour contracts among Irish employers and their impact on employees

Presented to:

Department of Jobs, Enterprise and Innovation
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INTRODUCTION

The Small Firms Association (SFA) is the trusted partner of small businesses in Ireland, with 8,500 members and six affiliated organisations in all sectors and parts of the country. Its mission is to deliver business-focused advice and insights to member companies, influence government policy to the benefit of small businesses and connect its members in a thriving community.

The SFA has a vision of Ireland as the most vibrant small business community in the world – supporting entrepreneurship, valuing small business and rewarding risk takers. In this context, the SFA welcomes the opportunity to make a submission to the Department of Jobs, Enterprise and Innovation on the prevalence of zero hour contracts and low hour contracts among Irish employers and their impact on employees.

OVERVIEW OF SFA FINDINGS

(i) Summary

The report, 'A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees' from the University of Limerick, found that zero hour contracts are not extensively used in Ireland. However, it raises concerns over so-called 'if and when' contracts. It is implied that these contracts are aimed at circumventing the protections afforded to workers on zero hour contracts, under which workers must be compensated for 25% or 15 hours of the time they had to make themselves available.

While zero hour contracts are not widely used in small businesses in Ireland, SFA members do use flexible contracts to react to market needs and demands of doing business. The main differentiator however, is that flexibility is reciprocated on both ends of 'if and when' contracts. There is no mandatory requirement for an employee to make themselves available for work and no obligation on employers to offer a minimum amount of work. This flexibility suits many employees and employers alike.

The SFA was not consulted as part of the University of Limerick report and has serious concerns about the report, in particular its scope. Having discovered very little use of zero hour contracts, the focus of the report shifts to flexible working conditions in general and to 'if and when' contracts specifically, which are outside of the scope and key objectives of the study as commissioned by the government. The report provides no new evidence-based rationale for legislative change. For this reason, the SFA cannot support the findings of the University of Limerick study.

(ii) Concerns

The SFA has a number of major concerns with the report, including its scope, the data used and the recommendations presented. While we could support a small number of the recommendations – for example number 12 on the need for accessible, high-quality childcare – the majority of the recommendations would be unacceptable to SFA members. The overarching concern is that the report does not reflect modern working conditions and the risk of job losses and closures of small businesses.

The study relied on data obtained from the most recent CSO's National Household Survey, however there are no questions contained in this survey around employment contracts, let alone specific zero hour contracts or flexible working arrangements. The data used from the

European Working Conditions Survey is from 2010 and is now outdated, in particular as the performance of the Irish economy has changed so markedly in the intervening years. There is a concern among our members that this data is not a reflection of either employee or employer sentiment today as we commence 2016.

Small business needs differ greatly from that of larger companies. Large businesses with vast resource requirements may be able to absorb the cost of the recommendations proposed in the report. Many small businesses (less than 50 employees) and, in particular, micro business (less than 10 employees), however, which together account for over half of private sector employment, will not be able to adapt their resourcing solutions, such as offering 72 hours notice of shifts and 3 hours minimum shifts to their employees. It is for this reason that the SFA has long advocated that the government adopt the EU's 'Think Small First' principle and to introduce 'small business regulatory impact assessment' to understand the potential consequences of policy changes on small companies. This must be applied prior to any proposed legislative change to flexible working, arising from this flawed report.

There is an assumption being made in the report that flexible working arrangements like 'if and when' contracts are a negative form of employment. The SFA rejects this assumption. Flexible employment suits many employees including students, parents, carers and retirees who need a different work-life balance than the standard full time employee. There is a general desire amongst these groups to remain in the workforce, developing skills and earning, but they need the flexibility to decline shifts when they are not available. Flexible working is the future of a well functioning economy and labour market and the option of 'if and when' contracts are an important dimension of the current and future employment landscape.

At present, the fact that employers have the ability to recruit employees on these 'if and when' contracts and that employees have the flexibility to work only when they desire, actually leads to job creation and therefore less unemployment. Many of our members have clearly stated that they cannot operate their business without this flexibility and that their employees are happy to work like this. These 'if and when' contracts often aid employees to secure full time work when they desire it, both internally within the same company and externally as they remain active in the workforce and develop skills.

There is also a failure to acknowledge that many of the workers using flexible working arrangements are highly-skilled and earn high wages, such as IT professionals, engineering specialists and medical workers. These groups do not want to commit to a set period of work and are, in fact, paid a premium for working on a short-term contract basis, which they want to retain.

SFA MEMBER FEEDBACK

We have sought member feedback from a variety of sectors, to provide direct insights into the practical impact of the recommendations contained in the University of Limerick report, and share some of these beneath for consideration.

(i) Statement from a contract stocktaking firm:

"We employ staff to complete non-standard shifts because the workload from our clients comes in non-standard quanta and schedules. We do this in a good faith, fully communicated manner and have built a strong team of well remunerated long term staff completing this work based on open two way communication and on finding the team members for whom the variability in scheduling and flexibility of commitment that comes with

it is a benefit to them not offered at other employments. Legislating away the freedom for us to offer and for our team to accept these terms by obliging the Company to pay for hours not worked and for which there would be no revenue will lead to the destruction of the company, the loss of jobs, and the loss of taxes paid. Many of our employees would be earning more per hour with us than they would be likely to be offered if they could secure alternative employment”.

(ii) Statement from a private ambulance operator:

“Any amendment, such as compelling us to give staff 72hrs notice, would be catastrophic, as we usually do not know what 80+% of our activity is going to be for the next day until between 1400 and 1700 on any given day. That is how little notice we typically get from the hospitals. In our experience, the nature of the arrangement does suit them [employees] and, when we try and formalise arrangements, it would not be unusual for us to actually be met with resistance from some staff, as they like the flexibility. ...they tell us when they are available and, if we have work to match their availability, then we bring them in. They can cancel their availability at fairly short notice, without penalty. Equally, for our part, we can contact them when we have work but where they’ve indicated that they are not available. However, if it does not suit them, we simply move on to the next person. So it is very flexible from both parties’ perspectives.”

We see from this example that the arrangements provide flexibility to both parties. This company would not be in a position to schedule work 72 hours in advance.

(iii) Statement from a recruitment agency

“As a small recruitment and employment agency, if the proposed partial payment for cancellation of shifts comes into law we would not be able to remain in business. As the economy is starting to return to a positive place, companies in catering and retail need the ability to ramp up for demand spurts that are still just that – spurts or seasonal adjustments. The suggested ‘compensation’ will actually result in huge impacts for companies who currently are supplying temp and relief hours and to students who are only accessing these types of hours due their own study commitments.”

Many recruitment and temporary worker agencies are small companies themselves, which operate in a high-volume/low-margin space. The proposals would simply make their business commercially unviable, as well as removing the flexibility for their clients and resulting in job losses for temporary and agency employees.

(iv) Statement from an outsourced inventory management provider.

“The work we perform for our clients is in demand on certain days of the month and not on others. We hire to this situation and employ people who are fully aware that we will not have work for them when we have no bookings but that we will accept that sometimes they will be unavailable for shifts offered. In this way we have been able to develop and retain talent for up to and over a decade in some cases but also to provide employment to people who may have otherwise erratic schedules through study, family or artistic pursuits that makes them unsuitable for other employers.

Modern lifestyles and competitive businesses and individuals with a ‘portfolio’ of interests and skills do not fit into a cloth cap mentality of the relationship between employer and

employee. Our staff do not accept the terms and conditions we offer because we oppress them but rather they do so because we have a reciprocal relationship.”

This member is one of many that feel that ‘modern lifestyles’ are demanding more flexible working. We see a strong example where employees favour the flexibility of ‘if and when’ work as opposed to not being able to work at all.

(v) A retail and online book store’s view

“We employ a lot of students and they are happy to take work when it is available and equally take time off for exams and study when it suits them. Small retail outlets often have one person only operations. How could we give 72 hours notice of somebody getting sick and needing immediate replacement?”

We don't have any zero hour contracts but we do need flexibility. Employees in receipt of benefits cannot work more than 12 to 15 hours per week. If the legislation is too tight it will be impossible to employ students/carers in particular in retail.”

This type of micro business is also one of many where the proposed restrictions would be counter productive to the Government’s job creation agenda. These proposals would simply make it impossible for the students and carers mentioned to get work. There are also many in the situation where they claim social welfare benefits as well as taking flexible working shifts to add to their household income when needed.

(vi) Private home care and home help providers

“The report is simply incorrect. Caregivers enjoy casual flexibility of working hours. They tell us when they are available! We then spend time scheduling the work with what suits the employees. It suits everyone. In rural Ireland many are very pleased with this type of work; they cannot commit to certain working times, let alone commute to towns and cities to take up standard part time/full time work.”

“We are training these people, giving them skills in a time where they otherwise would remain outside the workplace for years and find it hard to return. They are delighted to have this arrangement. They also remain paying PRSI for income continuance if needed and pension qualification. It really suits young people, athletes, artists, parents, caregivers etc. Where is the want for this change coming from?”

Points are made about employees wanting flexible working arrangements and the benefits these types of arrangements can be to them. Therefore we see no justification to restrict these flexible working arrangements that are agreed between the employer and employee.

“The report recommended a minimum shift of three hours. This would be completely unfeasible in home care. The HSE currently allocate half hour and 45 minute shifts and these could be based anywhere in the country.”

(vii) Statement from a food packaging and distribution business, in a small rural village.

“What the government and state bodies don't understand is that a lot of the female working population do not want full time work. In fact the biggest problem that the food industry has had for some time is full time workers wanting to revert to either a two or three day week, which does not suit in certainly most small companies. This is, by default, leading to a new

discrimination against hiring female workers. If they are in management, as in say the finance office, or indeed sales, it's unworkable, as customers/clients have not the patience to wait for them to reappear.

However as in all these types of prescriptive and restrictive legislation, it is important to ensure that a free and fair regime for both employers and employees remains in place. The more regulation or state intervention exists, the less flexibility and ability to respond to market opportunities or threats. There should be a proper balance which does not erode competitiveness."

We see a frustrated business owner who is a prominent employer in a rural village and has faced a tough recession. He has to deal with recent additional legislative protections for employees, which imply a cost and simply affects his bottom line.

(viii) Statement from an outsourced merchandising business

"Our clients require a contingent workforce. Our businesses employ hundreds of people in Ireland. Some of the clients want one hour's work at a time but our employees typically work for many clients and some are highly skilled/highly paid workers.

This proposal is unworkable. We wouldn't be a viable business and would end up leaving Ireland. There would be a big fallout as the proposal is just so impractical.

We could have hundreds of workers scheduled in a retailer some mornings. There is a right of refusal for work mostly up to one hour before the shift. We provide entry and continuance to the workforce for those who need flexibility. These workers stay as long as it suits them and then seek permanent opportunities usually. It is a temporary or flexible solution to get the money they need. We have a lot of employees that are post-standard retirement age and students.

We aim for two week rotas at a time but then there is the flexibility to change shifts and last minute - flexibility suits these people! We have never had to put pressure on people to get them in at short notice – they are happy to. People only end up working when they want to."

We see similar points made about these flexible conditions suiting the employees that opt for it and to be mindful that a lot of jobs would simply not exist if these proposals were enacted, as many businesses could not operate in this proposed environment.

(ix) Statement from a retail business

"We are increasingly concerned at changes in employee legislation. At the moment our wages bill is 50%+ of our gross profit and we cannot afford to pay people when they are not working. We have a very seasonal business, minimum wage increase, accrual of annual leave whilst on sick leave, living wage €11.50, travel time now counted as working time, – where will it end? We have not seen an increase in business to absorb the increased cost of employing people.

In my view legislation that costs businesses should be stress tested with small businesses or apply only to businesses over a certain size. Multinationals might easily absorb the cost of these changes, but for small businesses this comes out of an already challenged small profit."

We see reference to the increasing cost of employment in Ireland, which is particularly difficult for small businesses to absorb in comparison to larger organisations. We need to be mindful of the ease of running a small business.

CONCLUSION

In response to the proposals in the consultation document, the SFA would like to outline that its members have clearly signalled their refusal to accept proposals to legislate for the following in particular, under 'if and when' contracts:

1. Minimum hours per shift
2. Minimum notice of shifts,
3. Minimum guaranteed hours
4. Compensatory premiums for not delivering minimum hours of work

The proposal to allow unions to negotiate sectoral collective agreements to opt out of certain proposals, while in principle is practical, it does not protect the needs of small business who are rarely unionised and do not have the scope to register exception agreements with the Labour Court.

The study from the University of Limerick is an unbalanced account of the issues. It does not outline the need for flexible and part time working from both an employee and an employer's perspective.

Given our still high unemployment rate of 9%, we are concerned that proposals like those in the report will have a negative affect on these small businesses that are creating jobs, being able to provide flexible working to those employees that desire it and those employees that need the flexibility reciprocated to react to demands and change in the market.

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