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SUBMISSION: University of Limerick Study on the Prevalence of Zero Hour Contracts and Low Hour Contracts in the Irish Economy

17 December 2015

Introduction

I would like to thank the Minister for providing the opportunity to make a submission on the issue of zero hour contracts and to respond to the points made in the study carried out by the University of Limerick. This submission has been drafted in my capacity as an independent T.D. for Donegal and is based on representations I have made on behalf of seasonal workers including my experience as a seasonal worker myself, in the fishing industry.

A significant failure of the report undertaken by the University of Limerick is that it precludes seasonal work from its study into zero hour contracts. The definition used to describe seasonal work is inaccurate and may have contributed to its exclusion under the category of If and When contracts.

The report also shifted its focus from zero hour contracts to If and When contracts as it claimed this was the emerging dominant trend in work patterns in Ireland. Not only did this new category not include seasonal workers, its scope was too limited to allow for a comprehensive investigation into the nature of atypical work arrangements.

There was an opportunity here to redefine work categories that reflected the existing realities for many workers in atypical work. Seasonal workers would have been categorised accordingly, absorbing fish factory workers within the definition of If and When. However, there are flaws within the definition of If and When contracts itself including the possibility of mislabelling workers as 'self-employed' which is not an appropriate classification. Recommendations as outlined in the report would have been more relevant to those currently labelled seasonal workers and a fuller engagement on the consequences that legislative changes could have, would have been carried out.

With that in mind, I will continue to outline my concerns regarding seasonal workers within this submission but would urge the Minister to consider undertaking research into seasonal work in Ireland if not soon after the review of this report, then at a later date.

Seasonal workers

Little is understood about seasonal work and reporting in this area is significantly lacking. The fact that political decisions are being made without sufficient knowledge on the issues affecting seasonal workers warrants a separate report into this category of work.

Firstly the definition of seasonal worker is inaccurate and should be specified. This report was an opportunity to do this which was not undertaken. I believe certain types of employees are wrongly classified as seasonal workers and that the traditional meaning of the term has moved on due to changes in work practices.

I believe that a seasonal worker should be classified as someone who works for each new season and where each new season represents a new employment (ie: strawberry or mushroom pickers).

The problem is that in my constituency and in particular in Killybegs, fish factory workers are often wrongly classified under the current definition of seasonal work. This may have been the case 20 years ago where each year there were three fishing seasons, however, due to substantial changes in the sector the fishing season currently only lasts 6-8 weeks of the year. Fish factory workers often engage in employment in-between these shorter seasons as a result and could be incorrectly labelled as self-employed which severely reduces their income security and social welfare entitlements.

The International Labour Organisation's consistent monitoring of emerging employment trends chose a broader scope of classification of atypical employment under the banner of 'non-standard work' which is inclusive of seasonal workers and other workers potentially left out of this Report. The ILO regards 'non-standard work' as a reflection of an increasingly 'integrated, diverse but evolving world economy'.¹

The ILO suggests that in light of this changing world economy, there are concerns that these new forms of contractual arrangements are leading to a "blurring of the employment relationship, making it difficult for workers to exercise their rights at work, or gain access to social security benefits."

Seasonal workers are particularly affected by changes in employment structures and are at the frontline of the 'blurring' effect as referenced by the ILO. My engagement with seasonal workers confirms the fact that they are finding it increasingly harder to exercise their employment rights.

Meanwhile, access to social welfare is also becoming increasingly difficult as a result of looser employment arrangements. As employment is harder to categorise it makes access to social protection difficult. Many fish factory workers are mislabelled as 'self-employed' initially by the Department of Social Protection yet after an appeal the label is removed for

¹ <http://www.ilo.org/global/topics/employment-security/non-standard-employment/lang--en/index.htm>

some of them. I also deal with a number of people who are part-time farmers but also engage in factory work in a particular season and are again incorrectly classified as self-employed.

Substantial cuts to social protection payments and income support created greater income insecurity for people in precarious employment as their nature of employment makes them heavily reliant on income supports such as Jobseekers, Farm Assist, subsidiary employment and income disregards. Much of my work involves assisting workers appeal the decision by the Department of Social Protection.

I believe it is in the interest of the Government to protect workers in atypical contracts including seasonal workers because strengthening their rights will bring about better working conditions, better wages which in turn would lessen the cost to the state in terms of Department of Social Protection payments. It's also better for businesses if workers are protected; business will gain greater access to workers if the employer can guarantee better working conditions in return.

University of Limerick Findings:

I have focused below on two particular findings that stand out to me in relation to seasonal workers with regards to contracts and legal status.

Finding #1

“The fundamental difference between the two [If and When and Zero Hour] is that individuals with a zero hour 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.”

I dispute the assumption that people on If and When contracts are not required to be available for work. From my experience, and in the case of fish factory workers (more accurately defined as If and When) these workers are required to be available despite the fact they do not have a written contract.

As mentioned earlier in the submission fish factory workers are traditionally associated with a particular employer (ie: either 'Factory A' or 'Factory B' but never both) with the expectation that the employee remains loyal to that particular employer, season after season. Employees are expected to be available for work when the employer requires them or they risk a reduction in hours or even a termination of employment. Consequently, a worker might not be asked back to work in the following season and will be disassociated from a particular factory. For some, there is no option to start work in another factory.

'Mutuality' does exist in fish factory workers, albeit informally, presenting another reason why these workers should be included in under the definition of If and When rather than seasonal work.

Finding #2:

*"We find that there is a lack of clarity over the **employment status** of individuals who work only If and When hours...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."*

The assumed lack of mutuality inherent in If and When and fish factory workers, according to this report, means workers risk being classified as 'self-employed. Consequently, they lose out on vital social welfare payments, income supports or subsidiary employment payments.

It also implies that these workers have control over how much they work and when they can make themselves available which is not the case. Twenty years ago there were three distinct fishing seasons throughout the year however, that has changed and the fishing season has shortened to just 6-8 weeks of the year meaning fishermen now engage in employment between the seasons. It is sometimes assumed that this suggests flexibility and control over their work or that they are self-employed which is not the case.

Another serious consequence of mislabelling certain workers as 'self-employed' according to the definition that they are not 'contractually required to work' means they may not be entitled to any compensation for hours not worked.

I agree that the legal status needs to be looked into. Again I would urge that further research be carried out on the nature of seasonal work in the future and atypical work arrangements in Ireland.

University of Limerick Recommendations

Below are my views on each recommendation from the perspective of fish factory workers.

Recommendation 1:

I welcome any clarification carried out on current legislation that may result in positive changes empowering both the employer to adhere to the law and accept responsibility for any legal implications, and the employee to defend their rights and entitlements as workers.

Recommendation 2:

I disagree with this recommendation because it clearly states seasonal workers are excluded from the timelines attached to the recommendations in the Report. Again I would urge the Minister to take into consideration the points I have made previously in relation to seasonal workers and fish factory workers when examining the recommendations in the Report.

Recommendations 3-8:

Improvements on Section 18 of the Organisation of Working Time Act 1997 are very much welcome. It has left many seasonal workers without compensation for low hours on a given day and no recourse for claiming compensation.

Social welfare payments should reflect this problem too. One hour can count as a one whole day's work by the Department of Social Protection leaving workers financially worse off seeking work. Adequate compensation for a call into work resulting in minimal hours should be applied to workers affected, especially as many are on low incomes. I would advocate that 8 hours compensation would be sufficient.

Recommendation 9:

I agree there are huge issues regarding the employment status of people on If and When contracts as I have mentioned before in the submission. Due to the complexity and far-ranging consequences of the categorisation of workers either as employees or self-employed, the Minister should take on board this recommendation as a matter of priority.

Recommendation 10:

Access to social welfare payments is the number one issue concerning seasonal workers. The following are recommendations the Minister should take into consideration:

- Hours as opposed to days should be used as the preferred measurement of an individual's eligibility to Jobseekers.
- Classification upon applying for social welfare benefit in INTREO offices needs to be reviewed and clarified so that Deciding Officers are not incorrectly identifying people as 'self-employed'.

Recommendation 11:

While I agree that the Department of Social Protection should put in place a system to consult with employer organisations, trade unions and NGOs with the view to examining

social welfare issues, I must reiterate the fact that most seasonal workers are not unionised or organised and suffer the consequences of this.

A mechanism should be established which will include non-organised workers people (including fish factory workers) to contribute in any consultation process established.

Recommendation 12:

The lack of available childcare supports is a huge factor for many parents in certain employment arrangements. I have voiced my support on many occasions for investment in affordable childcare for families and would encourage the Minister to take this advice seriously in accordance with other recommendations.

Recommendation 13:

I agree with the recommendation that the Government establish an inter-departmental working group to allow for greater cooperation between Government departments and those representing employers and employees.

As discussed before, my main concern is the fact that because seasonal workers, fish factory workers and other atypical workers are not unionised or organised in accordance to their line of work, they risk being excluded from any beneficial process. I would encourage the Minister to address ways in which non-represented workers can in fact engage equally on this level.

On the point made in relation to statistical date, I am in full agreement with this recommendation that data collection mechanisms commence in the near future to provide accurate date and information on types of work arrangements.

In terms of coherent statistical data available on seasonal work, there is very little and so we are not aware of any changes made in trends in employment arrangements, and of course workers are disadvantaged when decision-makers are ill informed.

Summary of points:

1. A further comprehensive study is required to explore the category of seasonal work and what the typical work arrangements associated with that category.
2. Fish factory workers in particular should be considered If and When workers.
3. If and When employees can be contractually required to work as is the case with fish factory workers and other seasonal work even though no written contract exists. Fish factory workers, for example, are required to be available for work or they risk losing increased hours or termination of employment.

4. Seasonal work also includes the 'mutuality' aspect considered under the definition of If and When. Workers are often associated with a particular fish factory and are assumed to be available only for that particular factory and for any hours allocated.
5. Further clarification on the legal status of If and When contracts is required so that employees are not incorrectly categorised as 'self-employed'.
6. Seasonal workers do not have written contracts yet the onus is on the worker to prove a contract existed. I believe the onus should be placed back on the employer as the work relationship between employer/employee is inherently imbalanced placing the worker in a vulnerable position throughout their employment.
7. Seasonal workers are not organised and this is crucially important for the consideration of recommendations within this report. Any mechanism established inter-departmentally or between the Minister and organisations and unions should consider those who are not organised.