



UNIVERSITY *of* LIMERICK  
OLLSCOIL LUIMNIGH

***A Study on the Prevalence  
of Zero Hours Contracts  
among Irish Employers  
and their Impact on Employees***

**2015**



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## EXECUTIVE SUMMARY AND RECOMMENDATIONS

### KEY OBJECTIVES

The key objectives of the study were established by the Department of Jobs, Enterprise and Innovation:

- To fill the gap that currently exists in terms of the hard data and information that is available concerning the prevalence of zero hours contracts in the Irish economy and the manner of their use.
- To assess the impact of zero hours contracts on employees.
- To enable the Minister to make any evidence-based policy recommendations to Government considered necessary on foot of the study.

### 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.
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.
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.
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.
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.

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

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.
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.
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.
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.

## 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.
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.
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.
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.

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.
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.
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.
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.
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.
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.
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.
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.
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.

## SECTION I: INTRODUCTION

### OBJECTIVES

The Statement of Government Priorities, July 2014 committed the Government

*'To conduct a study on the prevalence of zero hour contracts among Irish employers and their impact on employees and make policy recommendations to Government on foot of this'.*

In November 2014, the Department of Jobs, Enterprise and Innovation issued a call to tender a study on zero hour contracts in the context of growing debate about so-called zero hour contracts, with anecdotal and media reports on such arrangements. The University of Limerick was appointed in February 2015 to undertake the study of zero hour contracts and also low hours contracts. The key objectives of the study were established by the Department of Jobs, Enterprise and Innovation:

- To fill the gap that currently exists in terms of the hard data and information that is available concerning the prevalence of zero hours contracts in the Irish economy and the manner of their use.
- To assess the impact of zero hours contracts on employees.
- To enable the Minister to make any evidence-based policy recommendations to Government considered necessary on foot of the study.

In pursuit of these key objectives, the Department of Jobs, Enterprise and Innovation stated that the study should:

- Collect and collate data/information through surveys or other appropriate means of the extent to which zero hours contracts are used by employers operating in the Irish economy.
- Collect and collate data/information about the manner in which zero hours contracts are used by employers operating in the Irish economy.
- Assess the main features of such contracts and how they operate in practice.
- Assess the advantages and disadvantages of such contracts from the perspective of both the employer and the employee.
- Assess the impact of such contracts on employees.
- Assess current employment rights legislation as it applies to employees on zero hours contracts.

- Consider recent developments in other jurisdictions, including the UK in particular.
- Having fulfilled the above objectives as a first priority, proceed to repeat a similar assessment in relation to low hours contracts.

All sectors of the economy should come within the scope of the study, including but not limited to the following sectors in particular - the retail, hospitality, education and health sectors. The study should cover both the public and private sectors.

## **INVESTIGATING ZERO HOURS CONTRACTS**

Investigating the issue of zero hour contracts involves significant complexity because of the range of terminology used, the variety of workplace practices in operation and challenges regarding data collection. A key issue relates to the terminology and meaning of a zero hours contract. While some practitioners use the term 'zero hours' to describe contracts within the specific meaning of the Organisation of Working Time Act 1997, others use the term as a catch-all phrase to describe workplace practices that involve non-guaranteed hours of work. Table 1.1 sets out the terminology for varying types of employment arrangements which will be referred to in this report and the key features of each type. The term 'zero hours contract' means someone who is not guaranteed hours of work but who is contractually required to make themselves available for work with an employer. This is the meaning ascribed by Section 18 of the Organisation of Working Time Act 1997. Under the Act, someone with a zero hours contract is entitled to some compensation if they are not required by an employer in a week. An 'If and When contract' is one in which an individual does not have guaranteed hours of work and they are not contractually required to make themselves available for work with an employer. Someone with an If and When contract does not have any guaranteed income from work; they are only paid for the hours offered and worked. A 'hybrid If and When contract' is one in which an employee is guaranteed a minimum number of hours work but additional hours of work may be offered to them on an If and When basis. Under this arrangement, an employee must be available to the employer for the minimum guaranteed hours in their contract but they do not have to be available for additional hours of work. They are guaranteed to be paid for the minimum hours only. These three types of contract differ from regular part-time or full-time contracts where there are generally a fixed number of hours per week. A regular part-time contract can incorporate a low or high number of fixed part-time hours, such as 3 or 30

hours. Table 1.1 also clarifies what a zero hours contract means in the UK context, given that it has been a topical issue there and much of the existing research on zero hours comes from the UK. A zero hours contract there is one in which an individual is not guaranteed hours of work. In some workplaces, the individual is contractually required to be available for work while in other workplaces they are not contractually required to be available. In both cases, they are only entitled to be paid for hours actually worked and there is no entitlement to compensation if an individual is not required by an employer.

### **Example of a Zero Hours Contract**

Jack works for an engineering company. His contract states that he is required to be available from 9am-1pm Monday to Friday (20 hours). Last week he was not required by his employer. The Organisation of Working Time Act 1997 states that Jack is entitled to be paid for 25% of the time (or 15 hours whichever is the lesser) so he is entitled to be paid for 5 hours.

### **Example of an If and When Contract**

Emily is a homecare worker. Her contract does not state hours of work but says that her “hours will be determined based on staffing and care requirements”. She usually works 24 hours a week. Her hours are directed by her manager, usually with a minimum 24 hours’ notice. Although Emily is regularly and consistently offered work and accepts this work, her employer is under no obligation to offer her work, nor is she required to accept it. She is paid only for the hours worked in a given week.

### **Example of an If and When Contract**

Zahid works as a hotel waiter. His contract states that his “hours of work will vary as per the roster but will not exceed 78 hours per fortnight”, but does not state a minimum number of hours. He usually works 12 hours a week over Fridays and Saturdays. During busy trading weeks Zahid has been offered up to 18 hours work per week, which he can accept or refuse. During quiet trading weeks Zahid has worked just 8 hours per week. He is paid for the actual hours worked in a given fortnight.

### **Example of an If and When Contract**

Laura is a lecturer on a number of modules in a University. She was hired by the Head of Department as an “hourly paid staff” member. This refers to employees who are engaged by

the University on an “as-required basis to fulfil specific assignments”. The hourly paid contract does not give Laura a guarantee of any fixed number of hours of work, nor is there any obligation on her to accept assignments of work from the Head of Department. Laura generally teaches 6 hours per week for a 12 week period, she may or may not be rehired on a subsequent hourly paid contract after those 12 weeks. Laura is paid only for the hours she teaches.

### Example of a Hybrid If and When Contract

Sandra works in a large retail supermarket. She is contracted to work a minimum of 15 hours a week and these hours can be scheduled at any time on 5 over 7 days. Her contract also states that she could be offered additional hours. Some weeks she works a total of 35 hours, some weeks she works 25 hours and some weeks she works 15 hours. She always works and gets paid for at least 15 hours a week and she gets paid for any additional hours worked.

### Example 5 of a Regular Part-time Contract

John is a Special Needs Assistant in a secondary school. John’s contract states that his hours of work are 11 hours per week for 10 months. He is guaranteed 11 hours each week.

**Table 1.1 Terminology of Employment Arrangements**

Type of contract	Guaranteed hours?	Required to be available for work	Guaranteed Income?
Zero hours contract	No	Yes	Compensation based on a legal formula
If and When contract	No	No	No
Hybrid If and When type contract	Yes for minimum hours only	Yes for minimum hours. No for additional hours	Yes for minimum hours
Regular full-time and part-time employment contract	Yes	Yes	Yes
UK – Zero hours contract	No	Yes or No depending on employment	No

Gathering data on the extent of the contracts in Table I.1 is problematic for a number of reasons: (i) there is no national database on types of contracts and (ii) people may not be fully aware of the specific terms and conditions of their employment contract. Indeed, the UK Office for National Statistics (ONS) (2015) noted people's lack of awareness of working on a zero hours contract as an issue in regard to their data collection. Therefore, we rely on interviews with representative organisations to gather information on the various employment arrangements used in different sectors. A second focus of this report is on low hours work. There is no common national or international definition of low hours work but the CSO gathers national data on the number of hours that employees work. We present CSO data on different categories of working hours and also report on representative organisations' conceptions of low hours work.

## STRUCTURE OF THE REPORT

**Section 2** outlines the methodology used which includes quantitative data on working hours from the CSO, qualitative data from interviews with representative organisations and contact with international experts on labour law and employment relations.

**Section 3** discusses the operation of If and When contracts (found in this report to be the primary form of non-guaranteed hours), hybrid contracts and low hours working. Section 3 discusses the extent to which these employment arrangements are used by employers operating in the Irish economy; the manner in which these employment arrangements are used by employers operating in the Irish economy; the main features of these employment arrangements and how they operate in practice; and the advantages and disadvantages of such contracts from the perspectives of the employer and the employee.

**Section 4** reports on the impact of If and When contracts, hybrid contracts and low hours work on employees.

**Section 5** presents the sectoral studies exploring If and When contracts, hybrid contracts and low hours work in retail, hospitality, education and health. These studies report on the extent to which these employment arrangements are used by employers in these sectors; the manner in which these employment arrangements are used by employers operating in these sectors;

the main features of these employment arrangements and how they operate in practice; and the advantages and disadvantages of such contracts from the perspectives of the employer and the employee.

**Section 6** assesses current employment rights legislation as it applies zero hour contracts, If and When contracts and low hours work. This section highlights the challenges that currently exist with regard to defining employment status of people on If and When contracts, drawing heavily on Irish case law and discusses developments internationally and in legal commentary.

**Section 7** presents a review of the regulation of zero hours work practices in other European countries for which information is available.

**Section 8** presents policy recommendations of the research team considered necessary on foot of the study to the Minister for Business and Employment.

## SECTION 2: METHODOLOGY

### WORKING HOURS DATA

The data reported in Sections 3 and 5 is primarily sourced from the CSO's Quarterly National Household Survey (QNHS) from 1998 to 2014. The QNHS is a large, nation-wide survey which produces labour force data on a quarterly basis. Information is collected continuously throughout the year from households surveyed in each quarter using face-to-face interviewers. The total quarterly sample is designed to be 26,000 households. All usual residents in the responding household are surveyed. The actual achieved sample varies over time depending on the level of response. It provides a wide range of data on those at work including working hours, economic sectors, employment characteristics and demographics. To ensure clarity and visual simplicity the trends in working hours and other characteristics are given in this report for three specific years 1998, 2007 and 2014. The QNHS at present does not use any measures or questions on employment contracts including zero hour or If and When contracts. A finding of this study is that crafting a single direct question measuring whether employees work under such contracts would be unlikely to provide an accurate picture of the range of employment arrangements depicted in Table I.1. In our recommendations a number of questions are suggested for inclusion in future national surveys that are more appropriate to measuring the phenomenon of non-guaranteed hours.

While the QNHS provides data on the number of hours usually worked by employees, a significant proportion of employees also report that their hours worked are too irregular and change from week to week to the extent that there is no 'normal' pattern. A key commonality in definitions of zero hours contracts and If and When contracts is that employees work a variable number of hours per week. We therefore report on the number of employees in the QNHS (excluding self-employed and unemployed) who work constantly variable hours per week and note changing trends between 1998 and 2014. Overall the QNHS provides a comprehensive and detailed view of the structure of working hours and working patterns by gender, age, occupation and industrial sector in the labour market. We report the number and characteristics of employees who regularly work various categories of hours, the extent of underemployment among part-time employees and the proportion of such employees who wish to work more hours if available. We also examine working

time patterns such as evening and weekend work among employees on different categories of hours.

We supplement data from the QNHS with data from European Working Conditions Survey (EWCS). The last survey undertaken was in 2010 and we report the findings on employees' regularity of working hours and level of input they have into scheduling their hours. The EWCS is a European-wide survey undertaken every 5 years by an EU agency, the European Foundation for the Improvement of Living and Working Conditions. The 2010 survey examined 34 countries with 1,000 to 3,000 workers interviewed in each country. Almost 44,000 workers were interviewed covering 34 European countries. The sample size for Ireland was 1,003 respondents of whom 815 were employees.

The data from the QNHS and EWCS are presented in Sections 3 and 5 and detailed tables are available in Appendices 2 and 3.

### **STAKEHOLDER INTERVIEWS**

A critical component of the methodology was interviews with informed stakeholders. An interview schedule was developed by the research team based on the objectives of the study and pilot interviews were undertaken with one representative from an employer organisation and trade union. Subsequently 32 interviews were conducted with 30 bodies (13 employer/business representative organisations, 8 trade unions, 5 government departments/agencies and 4 NGOs). The full list of interviewed organisations is included in Appendix I.

### **INTERVIEWS WITH LEGAL EXPERTS**

We interviewed two legal experts nominated by the Employment Law Association of Ireland who informed the discussion in Section 6 on the legal position of people on zero hours contracts and If and When contracts. The experts were Anthony Kerr, BL, University College Dublin and Richard Grogan, Grogan Solicitors.

## **COMPARATIVE REVIEW**

Published information and research on zero hours-type work in a wider European context is limited, in part due to the absence of legal recognition of zero hours contracts in some countries. Given the study's objective to consider recent developments in the UK in particular, we interviewed two leading international experts on labour law and authorities on the regulation of zero hours work in the UK and Europe: Professor Keith Ewing, Kings College London and Professor Simon Deakin, Cambridge University. The comparative review draws on these interviews and reports from Eurofound and CESifo, working time laws in some countries and research by the European Labour Law Network (2014) and by Adams and Deakin (2014). We also draw on the expertise of international academic experts on employment relations and labour law with whom we had email correspondence. Contact with the National Experts of the European Labour Law Network was facilitated by Anthony Kerr BL. The full list of international academic experts is available in Appendix I.

## **SECTION 3: THE OPERATION OF IF AND WHEN CONTRACTS AND LOW HOURS WORKING**

### **INTRODUCTION**

A zero hours contract is one in which the employee is not guaranteed hours of work but is required to make themselves available for work with an employer. Section 18 of the Organisation of Working Time Act 1997 provides for a minimum payment where these employees are not required by their employer in a week. This provision for minimum payment can potentially increase employer costs in scenarios where no work may be provided to employees. We find that zero hours contracts within the meaning of the Organisation of Working Time Act are not extensively used. In the course of this study, different employment contracts used in the four sectors (hospitality, retail, health and education) were examined. None of the contracts could be defined as zero hours within the meaning of the working time legislation. However, there is evidence of If and When contracts which involve no guaranteed hours of work but also no contractual requirement for an individual to be available for work. If an individual is not contractually required to be available for work, they are not entitled to any compensation for hours not worked. We also find evidence of hybrid contracts where employees have some guaranteed minimum hours and additional hours are offered on an If and When basis. In this report, given the absence of evidence of the widespread use of zero hour contracts, the focus is on the prevalence and use of If and When and hybrid contracts. Section 3 presents information about the manner in which these contracts are used by employers operating in the Irish economy. We assess the main features of such contracts and how they operate in practice.

To summarise the overall views of interviewees, employer organisations believed that the issue of 'zero hours' has been exaggerated. According to the Irish Business and Employers Confederation (IBEC), there have been very few cases taken by employees against employers under Section 18 of the Organisation of Working Time Act 1997 which, it argued, suggests there are few problems arising from zero hours contracts. Employer organisations claimed there are no significant issues arising from If and When contracts and stress that firms require the flexibility that such contracts provide. The view from employers is that people are satisfied to work on an If and When basis because they can refuse work and, moreover, that such work is a stepping stone to other employment. In

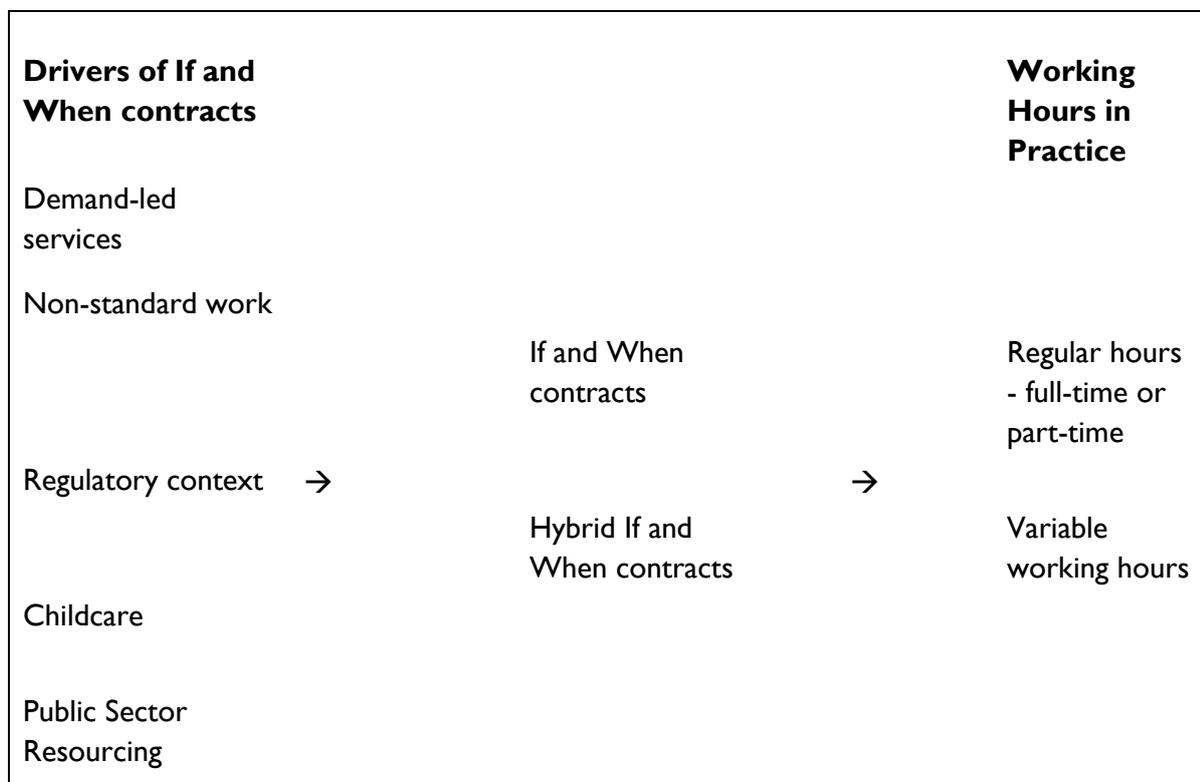
general, employer organisations stated that most employees are satisfied with part-time work, whatever the number of hours, because it suits their lifestyle. From the employers' perspective, If and When contracts, hybrid contracts and part-time work result from organisation's need for flexibility and employees' demand for such arrangements.

Trade unions and NGOs noted that If and When and hybrid contracts may suit a minority of workers but they are universally critical of such arrangements. They argued that If and When contracts are part of a growing trend towards precarious jobs which are low paid and poor quality. In their view, the majority of people do not want to work If and When hours but prefer secure predictable part-time or full-time work. Trade unions and NGOs perceived little difference between zero hours contracts, within the meaning of the Organisation of Working Time Act, and If and When contracts in terms of the impact on employees, as both arrangements involve non-guaranteed hours. The unpredictability of hours in If and When contracts leads to a range of social and economic problems for such employees. From the perspective of unions and NGOs, employees have little choice over types of contracts and they enter into If and When and hybrid contracts due a scarcity in the supply of 'decent' jobs.

## **FRAMEWORK**

Using data from the QNHS, the extent to which people work variable hours and different patterns of regular working hours are assessed below. An issue with data collection is that the QNHS does not link working hours to types of employment contracts. If and When contracts are likely to be prevalent among people whose workings hours are unpredictable and variable but a portion of those on variable hours may not have If and When contracts. Equally, If and When contracts may also be found amongst people who have regular working hours. Table 3.1 illustrates that people with If and When or hybrid contracts may in practice work either a variable number of hours or a regular number of hours. In order to address the relationship between working time and If and When contracts, we consider below a number of the key drivers of these contracts, in particular the growth of non-standard employment, the regulatory context, childcare availability and public sector resourcing.

**Table 3.1 Links Between Drivers, If and When Contracts and Working Time**



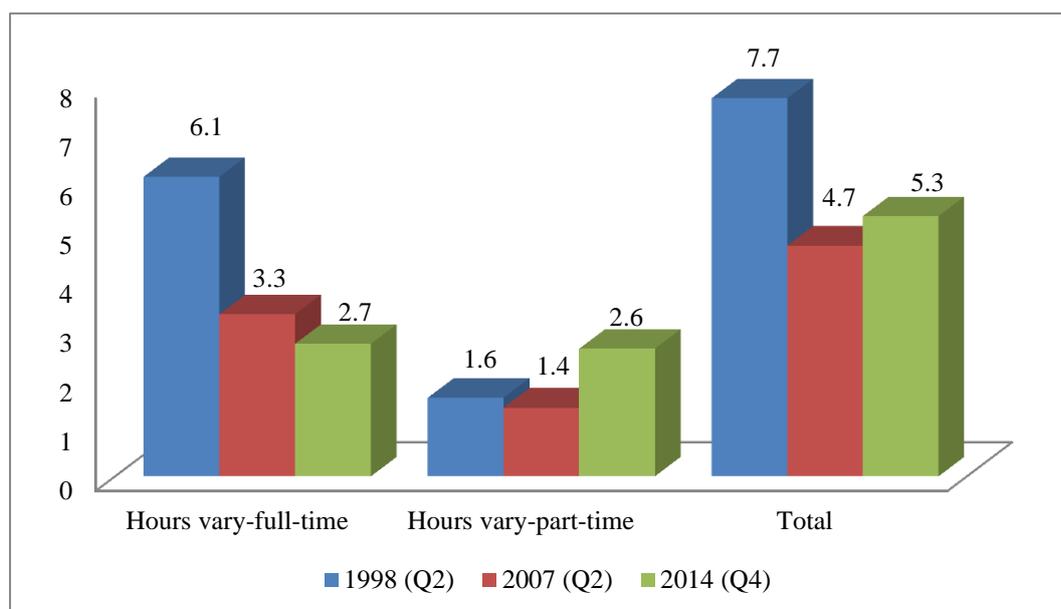
## VARIABLE WORKING HOURS

A key feature of If and When arrangements is the variability in working hours on a daily, weekly or monthly basis. Approximately 5.3% of employees in 2014 report that they work hours that vary to the extent that they cannot indicate a consistent or regular number of weekly hours. People with constantly variable hours can be full-time or part-time. The proportion of people with constantly variable full-time hours has dropped significantly since 1998 (Figure 3.1). People with constantly variable part-time hours fell slightly from 1998 to 2007 but almost doubled between 2007 and 2014. At a sectoral level in 2014, agriculture/forestry/fishing has by far the highest proportion of constantly variable full-time hours followed by transport/storage, public administration/defence and ‘other activities’<sup>1</sup>. Accommodation/food has the highest proportion of constantly variable part-time hours,

<sup>1</sup> There are slight differences in the names of economic sectors for different time periods. For sectoral data relating to 2014 only, we use NACE Rev. 2 codes for economic sector. For sectoral data reporting changes over time from 1998 to 2014, we use NACE Rev. 1 codes. For example, ‘other services’ is used in Rev. 1 while ‘other activities’ is used in Rev. 2. For ease of reporting, we use the term Accommodation/Food (Rev. 2) rather than Hotels/Restaurants (Rev. 1) throughout the main text of the report.

followed by 'other activities' and agriculture/forestry/fishing (see Appendices 2 and 3 for detailed tables).

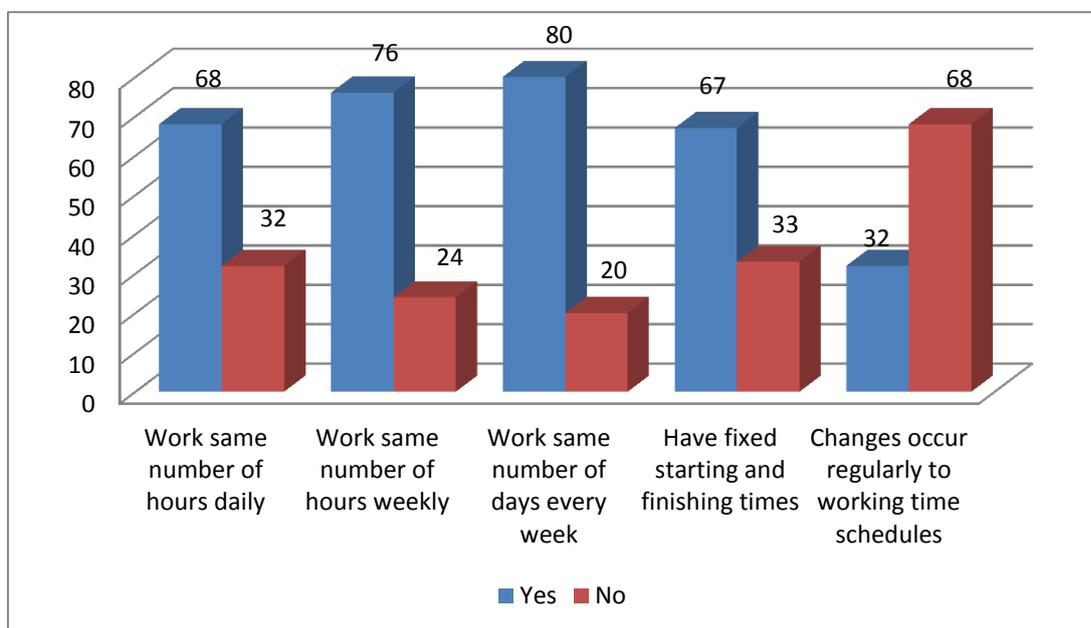
**Figure 3.1 Employees with Constantly Variable Working Hours 1998-2014 (%)**



Source: QNHS 1998, 2007, 2014.

According to interviewees, the extent to which hours vary differs across organisations. The European Working Conditions Survey (EWCS) 2010 provides some additional data on the regularity of hours though not specific to people on If and When contracts. Results from the Irish section of the survey indicate that almost a third of employees report that their hours of work vary every day, 24% work a different number of hours each week, 20% work a different set of days every week and 33% appear to have no fixed starting or finishing times (Fig. 3.2). Based on the weighted QNHS, it is possible to estimate the gross number of workers affected. Approximately 500,000 workers work a different number of hours each day, 376,992 work a different number of hours every week and 314,160 do not work the same number of days every week. Over 500,000 have no fixed starting or finishing times. Given the sample size of the EWCS, these figures may be overestimates or underestimates and should be treated with some caution. Nevertheless these results indicate considerable variability and flexibility in the Irish labour market.

Figure 3.2 Regularity of Working Hours (% of Employees)



Source: EWCS 2010 (N=815)

## WHAT ARE LOW WORKING HOURS?

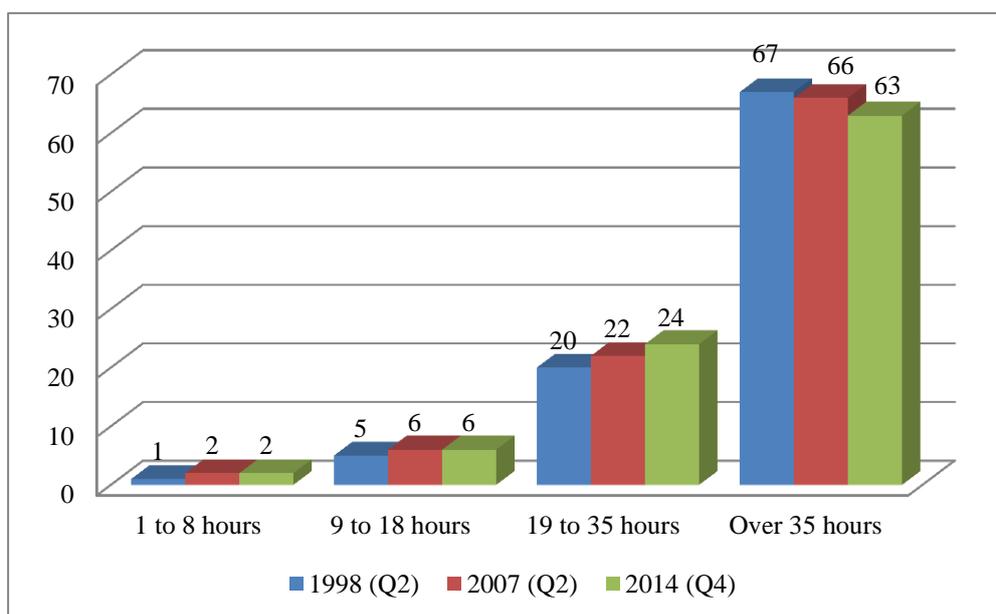
There is no common national or international definition of low hours work. Interviewees in various organisations had different perceptions about what constitutes low hours or indeed questioned whether the concept of low hours had any meaning. IBEC and ICTU referred to low hours as anything less than full-time work, other organisations suggest low hours might be less than 15 hours (SIPTU), around 10 hours per week (Irish Hotels Federation (IHF)) or up to 8 hours per week (Department of Public Expenditure and Reform). Interviewees in second-level education defined low hours as anything less than full-time teaching hours of 22 hours per week. The Department of Social Protection defined part-time hours as anything less than 19 hours per week (the threshold for eligibility for Family Income Supplement). Mandate did not have a single definition of low hours work but notes that employees in large retailers may consider low hours to be anything below the minimum number of guaranteed hours in their local collective agreement. The Migrant Rights Centre of Ireland (MRCI) considered a low hours job as one “that doesn’t provide enough hours for a sustainable income”. Given the variety of meanings, it is appropriate to consider low hours as part-time hours. According to figures from the QNHS, the proportion of regular part-time working

among employees increased significantly from 17.7% in 1998 to 24.2%<sup>2</sup> (388,570) of all employees in 2014. The proportion of part-time employees rose prior to 2007 but the financial crisis most likely accelerated the trend.

### Regular Working Hours

The QNHS allows employees to be categorised according to the usual hours worked. Figure 3.3 presents data on employees with regular working hours in the following categories: 1-8 hours, 9-18 hours and 19-35 hours. Between 1998 and 2014 the proportion of employees usually working 1-8 hours, 9-18 hours and 19-35 hours all increased while those working more than 35 hours a week decreased. In 2014, 1.8% (28,449) of employees regularly worked 1-8 hours, 7.9% had 1-18 hours and 31.8% (509,784) worked 1-35 hours per week (see also Appendix 2).

Figure 3.3 Percentage of Employees with Regular Working Hours 1998-2014



Source: QNHS 1998, 2007, 2014

<sup>2</sup> QNHS respondents are asked whether they have a full-time or part-time job. The proportion of employees who say they work part-time is 24.2%. A subsequent question asks respondents to indicate their usual working hours. The proportion of employees who indicate they work 35 hours or less per week is 32%.

## DRIVERS OF IF AND WHEN AND HYBRID CONTRACTS

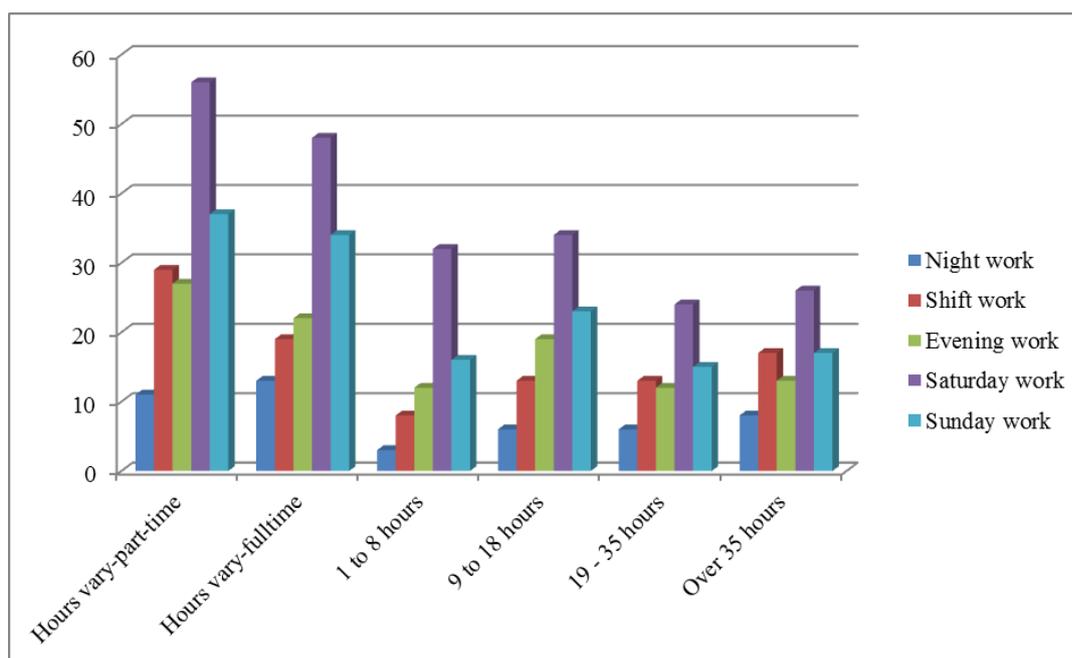
### Shift to Non-Standard Work

A standard working week is usually taken to mean working an eight hour day and a regular Monday to Friday week. There has been a major move away from the standard working week towards working evenings, Saturdays and Sundays with little change in shift and night work (Table A3.4 in Appendix 2). The proportion of employees regularly working evenings increased from 9% in 2001 to almost 14% in 2014; Saturday work from 19% to 28% and Sunday work from 10% to over 17%. These trends essentially began before 2007 but may have been accelerated by high levels of unemployment and the increase in part-time work after 2007. Using the QNHS, 445,264 (28%) employees usually work on Saturdays, 281,100 (17%) usually work on Sundays, 14% regularly work evenings and 16% regularly work shifts. Apparently for a large section of employees in the labour force, regular working patterns are spread over seven days and evenings and, to a lesser extent, nights. Employees with constantly variable hours have the highest incidence of working nights, shifts, evenings, Saturdays and Sundays (Fig. 3.4). Amongst employees who regularly work 1-8 hours per week, a third work on Saturdays with less incidence of working shifts and Sundays. A higher proportion of employees on 9-18 hours than other employees work evenings, Saturdays and Sundays. In interviews, the Labour Relations Commission commented that the challenge with increasingly flexible employment arrangements is achieving business requirements for flexibility while also “ensuring non-exploitative employment activity”.

At a sectoral level, there were significant increases in non-standard working between 2001-2014 in the wholesale/retail, accommodation/food and health sectors, and to a lesser extent, in education (see also Section 5). ‘Other services’ also experienced significant increases in non-standard working hours. IBEC noted that because the business ‘week’ has lengthened, organisations require flexibility of staffing. This flexibility requirement is reflected not just in part-time and variable hours contracts but also in full-time contracts. For example in retail, a full-time contract historically consisted of hours from Monday to Friday, 9am to 5pm, whereas a full-time contract now means potentially being scheduled at any time over seven days. As the standard working week gives way to the possibility of a seven-day working week, particularly in service sectors of the economy, employers require a pool of workers whose hours can expand and contract depending on market demand to facilitate shifts

during peak business times. Having a more flexible workforce over a seven-day week also means costs savings in some sectors in terms of over-time payments, which might otherwise be paid. Chambers Ireland commented “*maintaining flexibility throughout the working week is important. If staff need to be on Saturday or Sunday or whenever, you need to have them available without being tied into double time or triple time on Sundays as a consequence of being on a full-time employment contract*”. Although a large number of employees in the labour force work shifts, evenings, Saturdays and Sundays, few appear to receive any over-time payments. Approximately 2% of all employees in 2014 were paid over-time and about 3% report working unpaid over-time. Regardless of the number of hours usually worked, the proportion of employees paid for any over-time work is relatively negligible.

Figure 3.4 Working Hours and Working Time Patterns (% of Employees)



Source: QNHS 2014 (Q4)

### Demand-led Services

According to interviewees, If and When hours are more prevalent in demand-led services where either the quantum of work or funding source may be difficult to predict. Employer organisations refer to unpredictable demand in retail, hospitality, health and social services and certain parts of education. Chambers Ireland noted that “*if the business model allowed for*

*accurate planning of staffing needs over a week or month, employers would opt for that. If the nature of demand of the business doesn't allow for that, there has to be flexibility of staffing arrangements. Where employers can offer fixed or firm contracts they do".* Some trade unions groups like ICTU commented that there *"may be bona fide situations when zero hour practices are used where an employer genuinely has no idea when they need them"* but it, along with other trade unions, dispute the extent of unpredictability of demand. For example, in retail, Mandate highlighted the extensive monitoring by retailers of consumer purchasing trends which can be used to predict demand.

### The Regulatory Context

Legislation is often introduced in Ireland on foot of EU Directives for the purpose of extending employment rights. However, a number of unintended consequences can arise from the operation of legislation and interviewees highlighted examples of such consequences which has influenced the prevalence of If and When contracts. Section 18 of the Organisation of Working Time Act 1997 provides for some payment to a zero hours employee for hours not worked. As IBEC noted, there is no advantage to an employer offering a zero hour contract if they do not know what hours they need employees for. If an individual is not contractually required to be available for work i.e., If and When, then they are not covered by Section 18 and are not entitled to receive pay for hours not worked. It is more economically advantageous for an employer to have a panel of people on If and When contracts, who can be called upon when work is available and they are only paid for hours worked. Unintended consequences also appear to have emerged as a result of the introduction of the Protection of Employees (Fixed-Term Work) Act 2003. Interviewees in education claimed this Act has made education employers more careful in their recruitment decisions and suggested it was one of the factors contributing to more temporary positions with low working hours and If and When hours in second and third-level education (see the education sector study in Section 5).

### Childcare

An issue, frequently raised by interviewees, is the extent to which employees with caring responsibilities require flexible working hours. According to the QNHS, in 2014 17% of employees who work part-time and 8% of employees who work constantly variable hours

do so because of caring responsibilities. Many interviewees noted that women require part-time work to accommodate their caring responsibilities and the lack of an affordable, accessible childcare system contributed to this need. Similarly, the Department of Social Protection stated that “*for certain cohorts, childcare costs may be a barrier to moving to full-time hours*”. The lack of affordable childcare has resulted in families juggling childcare responsibilities between parents or extended family. The National Women’s Council of Ireland (NWCI) argued that the rate of women’s participation in the labour market drops significantly once they have children and that a lack of affordable accessible childcare makes women more “*vulnerable to working low hours*”. An increase in affordable childcare would be expected to give greater choice to women with regard to their participation in the labour market (women in the labour market discussed further below).

### Public Sector Resourcing

In interviews, the Department of Public Expenditure and Reform stated that it has influence over pay policy and the number of employees in the public sector but does not have significant influence over types of employment contracts. Trade unions and NGOs argued that If and When contracts, hybrid contracts and low hours as a growing feature of public sector employment. Increased privatisation, they argued, has led to downward pressure on terms and conditions of employees as tenderers seek to reduce costs. For example, they compare community care jobs in private organisations with more If and When contracts and lower pay (e.g., not being paid for travel time between clients) while the same community care jobs in the HSE have a floor of minimum hours and better conditions. The pressure on costs, combined with the fluctuation in demand for community care services, has contributed to If and When contracts becoming more prevalent, trade unions argued. The public sector moratorium on recruitment was also noted by interviewees in health as restricting the ability of organisations to recruit permanent positions and led to more If and When contracts and agency work. In education, interviewees argued that the resourcing model used by the State means that some occupations in second-level education are not funded as full-time jobs and are employees therefore more likely to have low hours and If and When hours. Third-level employer institutions argue that the delivery of a wide range of programmes can only be delivered through more ‘flexible’ employment contracts due to fluctuating demand and funding.

## **OPERATION OF IF AND WHEN CONTRACTS, HYBRID CONTRACTS AND LOW HOURS**

### **Working Hours**

As noted earlier, hours on an If and When basis are incorporated into contracts in two ways:

- (i) Individuals have employment contracts where their hours are entirely on an If and When basis or
- (ii) Individuals have employment contracts with some guaranteed minimum hours of work but also additional hours on an If and When basis, i.e., a hybrid arrangement.

Both types of contract are used by employers: (i) to provide cover for staff shortages in short-term, relief situations such as sick leave or annual leave and, (ii) as a long-term employment arrangement. The extent to which each scenario prevails depends on the sector and employer.

Examples were provided in interviews of employees who work a regular number of hours per week but remain on employment contracts which provide for If and When hours only, i.e., the reality of what an employee works may not be reflected in the employment contract.

Various contractual arrangements exist for someone working low hours. They could be under a number of arrangements: (i) have a regular part-time contract or (ii) an If and When contract or (iii) a hybrid contract.

Interviewees suggest that the number of hours an individual works depends on a range of factors including the employers' requirements to fulfil service demands, whether or not a collective agreement is in place, which regulates working hours, and the demands of employees for hours. Interviewees also suggested that social welfare entitlements can influence employer and employee decisions over the number/scheduling of hours and this is discussed later in this section.

## Underemployment

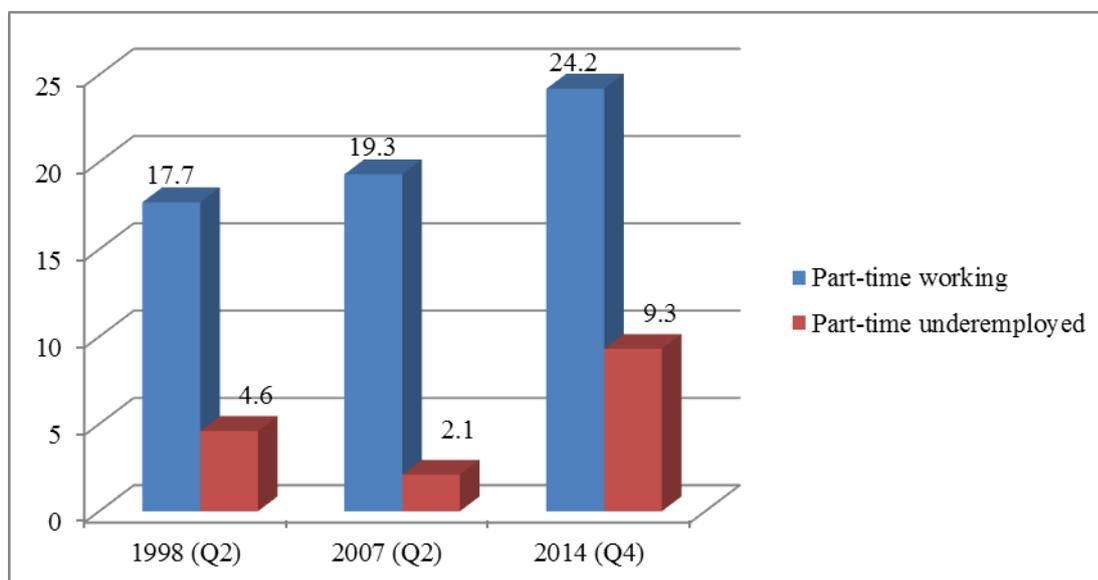
There was consensus amongst interviewees that not everyone wants full-time work and that some employees seek part-time hours. There has been a trend towards increasing part-time hours (Fig. 3.4). Interviewees noted that the economic recession has influenced this upward trend but there was divergence of views over the extent to which individuals want more work. Some employer organisations such as ISME, the National Federation of Voluntary Bodies (NFVB) and the IHF argued that their members are experiencing difficulties finding employees to take additional hours during the recent period of economic recovery. Trade unions and NGOs highlighted underemployment and the fact that employees would work additional hours if offered on a permanent rather than temporary basis.

There are two approaches to assessing the extent of underemployment and we report on both. The first approach is to examine the proportion of employees who work part-time because they could not find a full-time job. QNHS data show that 38% of part-time employees or 9.3% of all employees (149,043) in 2014 worked part-time only because they were unable to find full-time employment (part-time involuntary) (Fig. 3.5). This proportion decreased substantially between 1998 and 2007 but then rapidly increased and more than doubled overall between 1998 and 2014. This increase suggests that the lack of opportunity to find full-time employment has been significantly influenced by the economic recession. Comparative data indicate that the proportion working part-time because they could not find full-time work is higher in Ireland (41.4%) than in the EU (28.9% in EU15 and 29.6% in EU28<sup>3</sup>) (Eurostat, 2015a).

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<sup>3</sup> The data presented from the CSO QNHS only refers to employees. Eurostat data on part-time employed who could not find a full-time job and on those who want more hours refers to all employed i.e., employees, employers and self-employed.

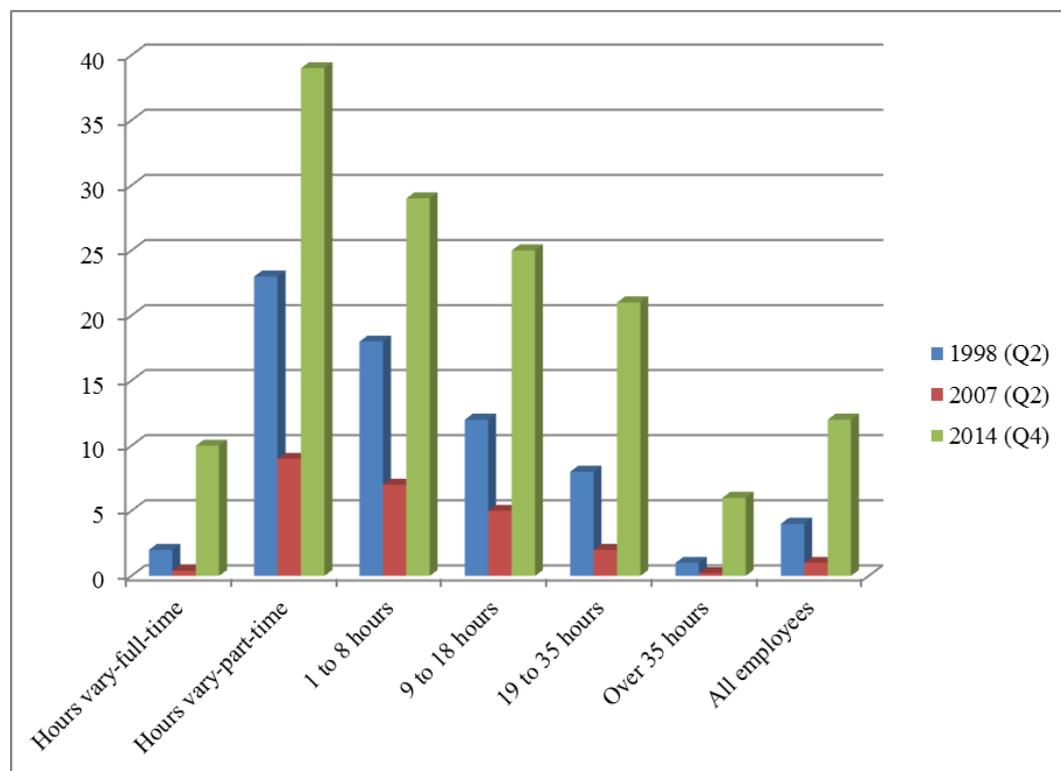
Figure 3.5 Part-Time Employment and Underemployment 1998-2014 (% of All Employees)



Source: QNHS 1998, 2007, 2014

The second approach to assessing underemployment is to examine the proportion of employees who wish to work more hours. The proportion of all employees (including those with variable hours and regular hours) who would work more hours decreased between 1998 and 2007 from 4% to 1% but then increased sharply to over 12% by the end of 2014 (Fig. 3.6). Approximately 23% employees with less than 35 hours (including variable part-time) wish to work more hours. The desire to work more hours is highest for employees with constantly variable part-time hours (39%) and employees who regularly work 1-8 and 9-18 hours per week. Comparatively, the proportion of part-time employed who want to work more hours is higher in Ireland (28.7%) than the EU (22.2% in EU28) (Eurostat, 2015b).

Figure 3.6 Percentage of Employees Who Wish to Work More Hours if Available 1998-2014



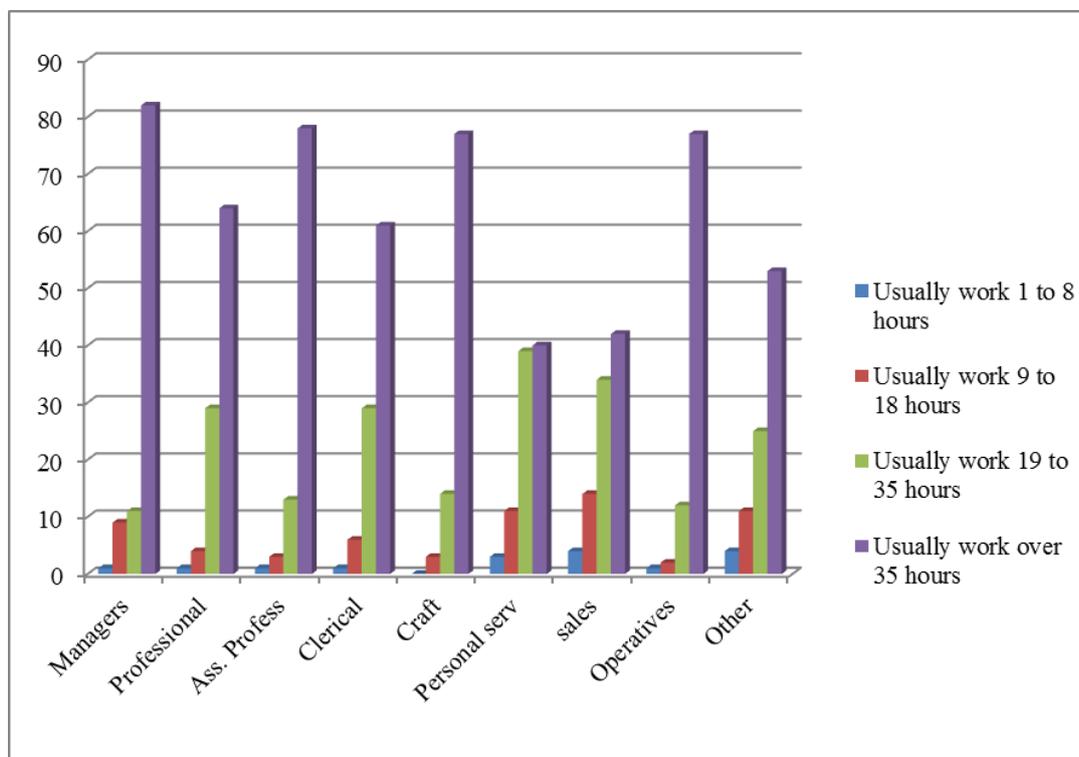
Source: QNHS 1998, 2007, 2014

## Job and Workforce Characteristics

### Occupation

There are trends evident regarding the pattern of working hours and occupations. Lower level occupations such as sales workers (5%), other service workers (5%) and personal service workers are more likely than other occupations to work constantly variable part-time hours and regularly work 1-8 hours, 9-18 hours and 19-35 hours per week (Fig 3.7). Higher level occupations such as managers (4%), associate professionals (4%) and plant operatives (5%) are more likely than other occupational groups to work constantly variable full-time hours. Similarly, managers, associate professionals, plant operatives, and craft workers are more likely to regularly work more than 35 hours per week.

Figure 3.7 Regular Working Hours by Occupation (%)



Source: QNHS 2014 (Q4)

Interviewees in the four sectors indicated that some occupations/services are more likely to have If and When contracts, hybrid contracts and low working hours (Tables 3.2-3.4). If and When contracts and low hours of work were also reported to be prevalent in aviation, the arts sector, contract cleaning, security and transport and distribution but these were not examined in detail in this report. In general, interviewees indicated that people on If and When contracts and low hours have lower skill levels than regular full-time workers with the exception of certain occupations like third-level lecturers, adult education tutors and nurses. Trade unions and NGOs argued that lower skill levels contribute to individuals' vulnerability as they have less capacity to move to jobs with better conditions. The capacity of employees to change jobs may also be influenced by geographical factors, for example, employees in rural areas may have fewer opportunities to change jobs than those in urban areas.

**Table 3.2 Relevant Employment Arrangements in Four Sectors**

Type of contract	Retail	Hospitality	Education	Health
If and When contract	Yes	Yes	Yes	Yes
Hybrid If and When type contract	Yes	Yes	Yes	Yes
Regular part-time contract	Yes	Yes	Yes	Yes

**Table 3.3 Relevant Employment Arrangements in the Education Sector**

Type of contract	Teachers	SNAs	School Caretakers, Cleaners, Secretaries	University/IoT lecturing	Adult Education Tutors
If and When contract	Yes			Yes	Yes
Hybrid If and When type contract	Yes		Yes	Yes	Yes
Regular part-time contract	Yes	Yes		Yes	

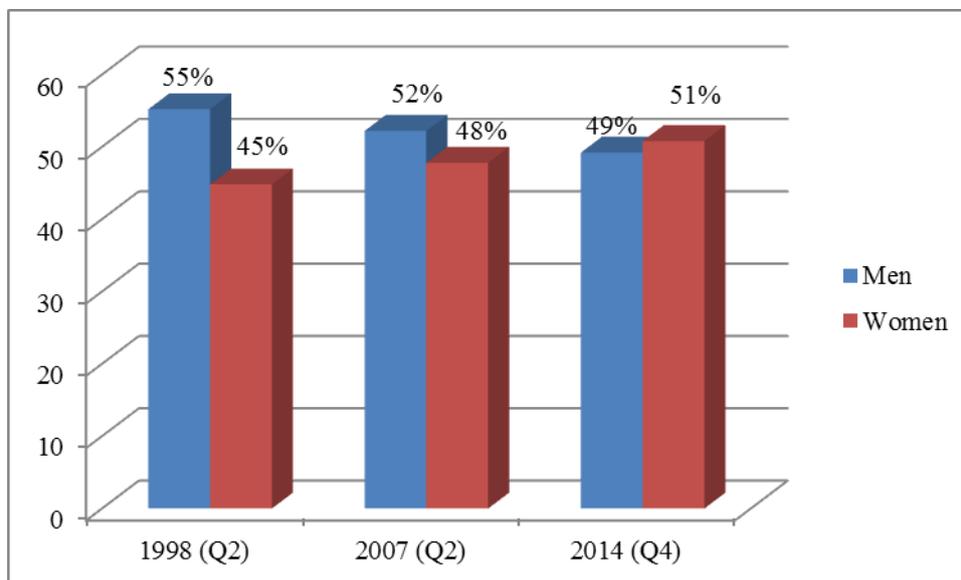
**Table 3.4 Relevant Employment Arrangements in the Health Sector**

	Bank Nurses	Community Care	GP Practice Nursing
If and When contract	Yes	Yes	
Hybrid If and When type contract		Yes	
Regular part-time contract		Yes	Yes

### Women

The extension of the working week and the increasing use of flexible working arrangements, including If and When contracts, has occurred at the same time that women’s participation in the labour market has increased across all sectors of the economy. According to the QNHS, women in the labour force as a proportion of the female population increased from 55.4% to 55.9% between 2003 and 2014 while the participation of men decreased from 74.9% to 65.7%. In 2014 women accounted for a majority of employees in the Irish labour market (51% are women and 49% are men) - a significant change since 1998 (Fig. 3.8). Fig. 3.6 earlier showed that personal service and sales occupations have higher proportions of constantly variable and regular part-time hours and women account for the majority of employees in these occupations (82% and 66% respectively).

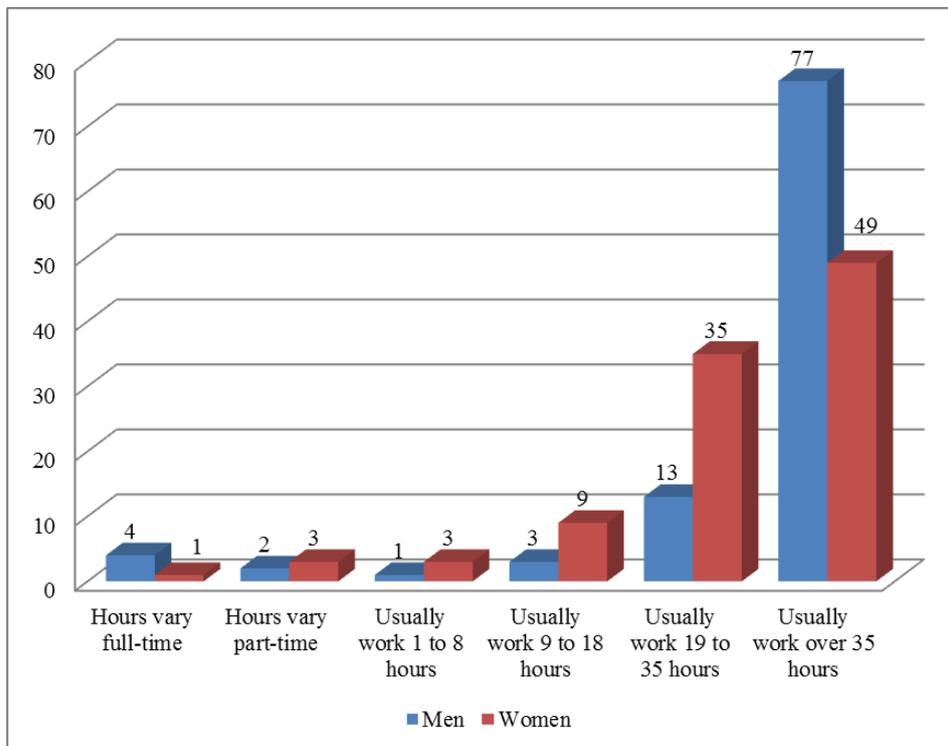
Figure 3.8 Men and Women as a Percentage of All Employees 1998-2014



Source: QNHS 1998, 2007, 2014

Women make up the majority of employees with constantly variable part-time hours and regular part-time hours while a majority of men (77%) work over 35 hours per week compared to 49% of women (Fig. 3.9). Women are nearly three times more likely than men to work 1-8 hours; three times more likely than men to work 9-18 hours and over twice as likely to work 19-35 hours per week. Higher proportions of women than men work part-time hours in retail, accommodation/food, health and education. Interviewees generally agreed that women are more likely to work If and When hours and low hours because of their caring responsibilities and the lack of affordable, accessible childcare. Employer organisations argued therefore that such work arrangements suit the flexibility needs of women. In contrast, trade unions and NGOs claimed that women, particularly lone parents, are “vulnerable” to working to such arrangements and, while some women may want a low number of hours, they do not want unpredictable hours. Women are of major importance to the economy and continue to be in the main the primary carers in the family. According to the QNHS, 96% of employees who cite caring responsibilities as the reason for working part-time are women. Consequently working hours and patterns of working time are a vital strategic consideration for the employment and retention of women for a productive economy and a balanced healthy society.

**Figure 3.9 Working Hours by Gender**

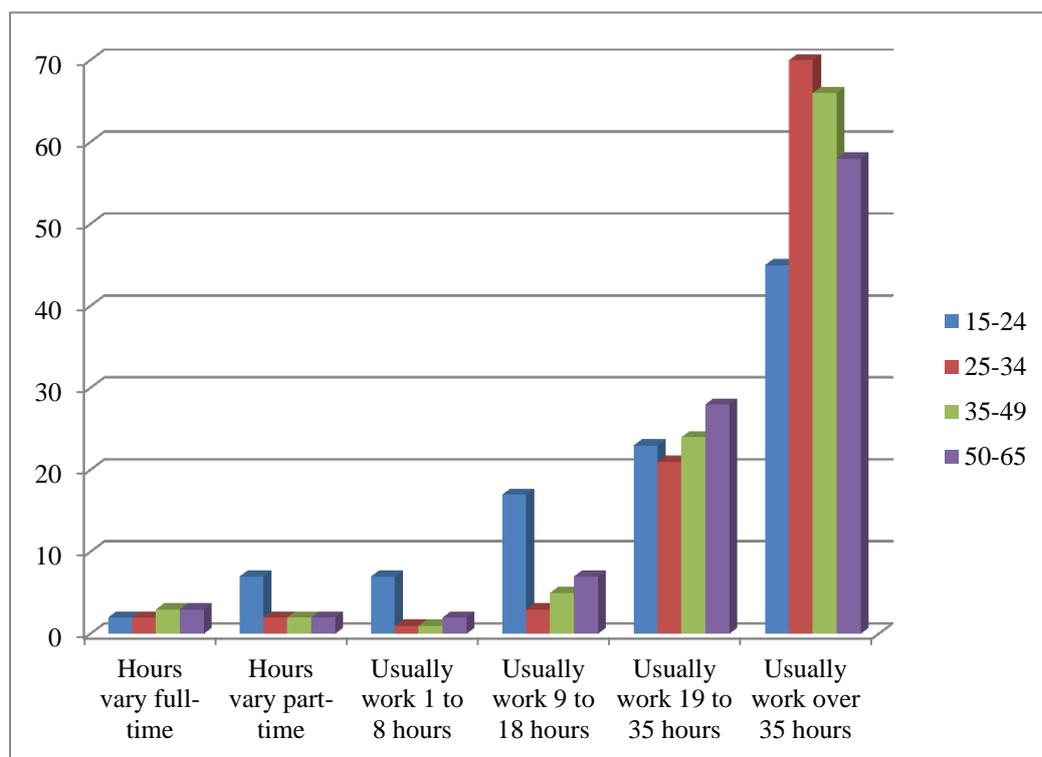


Source: QNHS 2014 (Q4)

### Age

Higher proportions of employees in the 15-24 age category than other age categories work constantly variable part-time hours and regularly work 1-8 and 9-18 hours (Fig. 3.10). The most frequently cited reason amongst this age group for working part-time is because they are in education (80%) and the second most cited reason is not being able to find a full-time job (13.5%). However, students account for a minority of all those working part-time and variable part-time hours, at 15% and 20% respectively. In regard to other age groups, similar proportions of 25-34, 35-49 and 50-65 age categories work constantly variable hours. However, a different pattern emerges with regard to regular part-time work. Regular part-time hours are lowest amongst the 25-34 age group but part-time working increases as the age bracket rises. A quarter of 25-34 year olds, 30% of 35-49 year olds and 37% of 50-65 year olds work regular part-time hours (excluding variable hours).

Figure 3.10 Working Hours by Age



Source: QNHS 2014 (Q4)

### Non-Irish Employees

Lower proportions of non-Irish employees than Irish employees work constantly variable hours (4%) and regular part-time hours (27%) while a higher proportion work full-time hours (68%) (see Table A3.7 in Appendix 2). Of the four sectors in this report, non-Irish employees account for a small proportion of employees in education and health in comparison to accommodation and food, where they account for a third of employees, and retail, where they account for 18% of employees (see Table A5.4 in Appendix 3). The MRCI expressed concern about migrants in homecare working If and When hours and migrants in security, domestic work, retail and restaurants working low hours. It cited retail and restaurants as “precarious sectors” where migrants have low hours and no control over working hours. Interviewees from employer organisations argued that part-time work in these sectors can suit employees and should not be labelled as precarious.

### Employee Availability

If and When contracts do not require people to be available for work and hybrid contracts only require employees to be available for the minimum guaranteed hours but not for additional hours. Interviewees relayed different reports about the day-to-day reality of the requirement for employee availability. Trade unions and NGOs stated that many individuals who refuse work would not be offered work again for a period of time. In their view, this amounted to penalisation for refusing work and claimed therefore that individuals felt they could not refuse work offered. Trade unions also argued that because of the unpredictable nature of If and When hours, individuals have to be available in order to get any work. Conversely, employer organisations stated that an individual with If and When hours can refuse work without negative consequence and that the ability to refuse work is a benefit of If and When hours.

### A Written Statement on Terms and Conditions

Under the Terms of Employment Information Act 1994 to 2012, employees with at least one month's continuous service are entitled to a written statement of terms and conditions within two months of commencing employment. Employer organisations noted that they encourage members to provide a written statement to individuals working If and When hours and many employer organisations provide template documents for members. Most interviewees believed people on If and When hours do receive a statement of terms and conditions with some exceptions. SIPTU noted that some community care workers do not have contracts; the MRCI stated that migrant workers in some sectors like domestic care do not receive contracts and; ISME stated that there can be difficulties with small firms providing contracts. The National Employment Rights Authority (NERA) inspects workplaces in all sectors of the economy and while it does not have inspection powers specifically targeted at If and When hours, it stated that poor record keeping on working hours can be an area where issues arise during its inspections. It cited hospitality, retail and construction as "*high risk areas*" in regard to breaches on record keeping but noted that most employers rectify issues when highlighted to them.

The provision of a statement of terms and conditions is not a panacea for establishing clarity of terms in the employment relationship and two issues emerged in interviews in this

regard. The first is that even when a contract is provided, an individual may not realise they are working on If and When hours when commencing their employment. We gathered employment contracts provided to people on If and When hours across the four sectors. Some of these contracts explicitly state that the employee will work on an If and When basis but others do not. The information provided on hours of work may not clarify the situation as the wording in some contracts could be construed by individuals as referring to a regular contract. An example of such wording is: “This is a full-time position. Due to the nature of the business, your working hours will vary from week to week”. In a Young Workers Network survey, almost 19% of respondents said they did not know if they were on a zero hour contract or not<sup>4</sup>. The issue of disconnect between employees’ perception of the nature of their contract and the reality has been noted in the UK. The Office for National Statistics there suggested employees’ lack of awareness that they were on a zero hours contract may partly account for the disparity in the number of zero hour employees recorded between 2012 and 2014. The information provided in some contracts on working hours can be of limited value for an employee wanting to know the pattern of their hours, as illustrated by the following examples in Table 3.5 (further examples in Section 5).

**Table 3.5 Sample of Working Hours Provisions in If and When Contracts**

Contract Example 1 “You will be required to submit timesheets for hours worked”
Contract Example 2 “Your hours of work will vary as per the roster and will be notified to you in advance”

A second issue with written statements of terms and conditions is that they may not reflect the reality of hours worked by employees over time. Interviewees from trade unions and some employer organisations noted instances where individuals on If and When or hybrid contracts can in reality work regular hours including full-time work. In some cases, contracts have been changed from If and When to regular part-time or full-time contracts.

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<sup>4</sup> The Young Workers Network Survey undertaken in 2015 was a sample of 101 workers under the age of 35. The survey results were part of a submission by the Young Workers Network to the Department of Jobs, Enterprise and Innovation.

In the health sector, the HSE and trade unions have, in the past, negotiated the conversion of If and When contracts to regular part-time or full-time contracts where the employees were found to work regular hours.

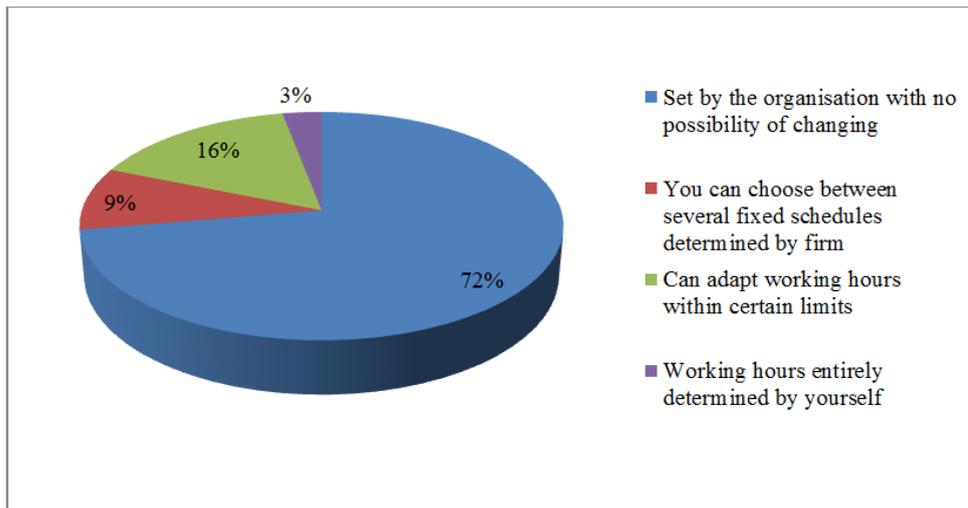
### Exclusivity Clauses

Exclusivity clauses are provisions in employment contracts which stipulate that an employee is contractually prohibited from working for a second employer. The Department of Social Protection stated it would be very damaging and expensive for social welfare to have to “*finance the consequences*” if exclusivity clauses existed to prevent people from supplementing low income/hours. Interviewees indicated that exclusivity clauses are not a feature of employment contracts in Ireland, with the exception of the MRCI who noted their inclusion in contracts provided to some migrant workers. It is arguable that there would be a constitutionality issue if such clauses were used on the basis that the Irish Constitution, Bunreacht na hEireann 1937, provides for a right to work and earn a living and exclusivity clauses could be construed as a denial of that right.

### Notice and Scheduling of Hours

Different organisations have different processes for scheduling hours. For individuals working on If and When and hybrid contracts, some contracts request new hires indicate their availability and desired working hours while other contracts stipulate that the individual could be scheduled at any time during the week. There was agreement amongst interviewees that there is no standard system in place across organisations regarding the distribution of work to people on If and When hours. In general, the local manager has final discretion of who to offer work to. A number of employer organisations stated that managers cooperate with employees in scheduling hours to suit both parties or that staff manage their own hours. In contrast, trade unions and NGOs argued that employees have little or no input into the scheduling of working hours and they claimed there can often be inequitable distribution of hours. The EWCS reports that a majority (72%) of employees have working times set by the organisation with no possibility of change with 28% having some input into scheduling (Fig. 3.11).

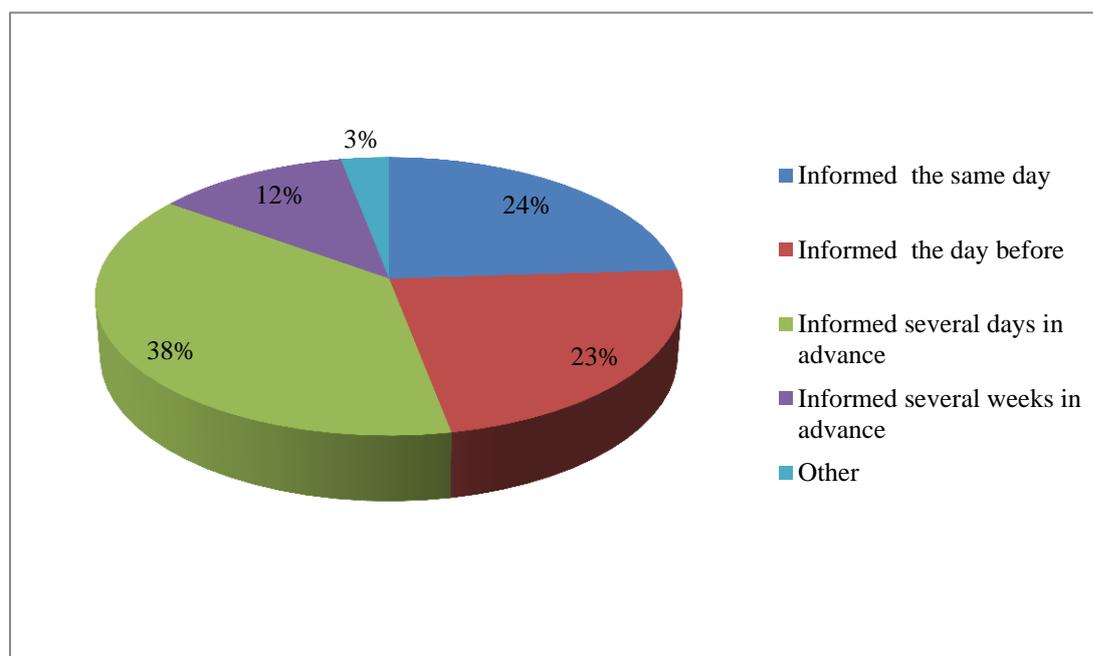
Figure 3.11 Who Sets Working Hours?



Source: EWCS 2010 (N=813)

We indicated earlier in Fig 3.2 that, according to the EWCS, almost a third of employees report that there are regular changes to their work schedules, which can be grossed up to an estimated 500,000 employees. In those cases where employees experience regular changes to work schedules, 47% of respondents indicate that they only received notice of work schedule changes either the same day or the day before with 53% notified several days or more in advance (Fig. 3.12). In interviews, trade unions argued that having a pool of people on If and When or hybrid contracts acts as a disincentive to some organisations from planning rosters well in advance. Trade unions and NGOs argued that people are offered work at short notice of less than 24 hours and expressed concern about people being sent home during shifts. Employer organisations stated that firms try to schedule rosters at least one week in advance, with two weeks or more the normal practice in some sectors, and short notice is provided to employees in instances of emergencies, such as to cover sick absences.

Figure 3.12 When are Employees Notified of Changes to Work Schedules?



Source: EWCS 2010 (N=213)

### Terms and Conditions

While NERA has enforcement powers regarding employers obligations to keep records, there are no powers which are specific to If and When contracts. In interviews, NERA stated that it treats anybody with a contract of employment as an employee who is entitled to all employment rights. Similarly, the Labour Relations Commission noted that it treats people on If and When hours as employees. Interviewees reported that some organisations manage people on If and When contracts as part-time employees with *pro rata* entitlements as provided to regular full-time employees, including premium pay, while other organisations provide few entitlements outside of the national minimum wage, annual leave and rest breaks. NERA noted that while annual leave should be based on hours worked, the calculation of holiday entitlements can be “*problematic*” for people working variable hours. For benefits above legal minima, such as sick pay and pensions, many organisations have service requirements for eligibility and calculations of continuous service can also be problematic for people working on If and When contracts.

## Agency Work

QNHS data indicate there were over 19,000 agency workers in 2014 accounting for 1.2% of all employees. Agency work is prevalent in the four sectors examined in this study but particularly so in health. Over half of all agency workers are in health (55.3%) followed by education (17.4%), wholesale/retail (17%) and accommodation/food (10.4%) but they account for small proportions of all employees in each sector. The majority of agency workers (64%) have more than 35 hours a week with another 20% with 19-35 hours. Almost 8% of agency workers have constantly variable hours; a higher proportion than other employees. The National Recruitment Federation (NRF) stated that in the economic recovery, organisations are taking longer to make recruitment decisions and are using agency workers “to test do they need to have somebody in full-time employment”. Trade unions and NGOs claimed that agency workers are often employed on If and When contracts even if they work regular hours. However, the NRF argued that it is not aware If and When contracts in agencies. It noted that agency workers are generally hired on fixed-term contracts and their employment is terminated between assignments. Some interviewees argued that agency work can lead to complexities in defining the employment relationship despite the introduction of the EU Directive on Temporary Agency Work and the Protection of Employees (Temporary Agency Work) Act 2012. The INMO cited cases where employment status has been an issue of dispute such as where someone is recruited by an agency which itself is subcontracted by another agency to provide services.

## Social Welfare

Interviewees emphasised the importance of social welfare entitlements to people working If and When and low hours. The most frequently cited social welfare supports were the Family Income Supplement (FIS) and Jobseeker’s Scheme with the medical card and housing assistance mentioned less frequently. The FIS is a weekly tax-free payment to families at work on low pay. To qualify, an employee must be in a paid job expected to last at least 3 months, work at least 19 hours work per week (or 38 per fortnight), have at least one child and earn under particular income thresholds. To qualify for the Jobseeker’s Scheme, a person must be unemployed for 4 days in a 7 day period and must be available for, and genuinely seeking, work. Statutory Instrument 142/07 sets out the criteria for establishing if a person is available for work. It states that a person shall not be regarded as being available

for employment if they impose unreasonable restrictions on the nature of the employment, the hours of work, the rate of remuneration, the duration of the employment, the location of the employment, or other conditions of employment he or she is prepared to accept.

Interviewees had a number of concerns arising from the interaction between employees and social welfare entitlements. The following issues were presented:

- (i) Practices concerning the interaction between welfare entitlements and working hours.
  - a. Employer organisations argued that some employees refuse additional hours work offered to them because they believe they are better off on social welfare benefits. In contrast, trade unions and NGOs claimed that social welfare is not a disincentive to work but that insecure work is a disincentive to leaving social welfare.
  - b. Trade unions, NGOs and NERA noted that the number and scheduling of hours is a significant concern for people accessing welfare entitlements, i.e., getting 19 hours a week to access FIS or having hours scheduled over a 3 day period to avail of the Jobseeker's Scheme. Employer organisations and trade unions cited instances of organisations facilitating employee requests to schedule hours over certain days while trade unions and NGOs argued that some organisations use employees' dependency on social welfare as a lever of control (see Section 4).
  - c. Trade unions, NGOs and some employer organisations believed that the days-based system used to assess eligibility to the Jobseeker's Scheme should be replaced with an hours-based system because, at present, less than an hour's work is counted as a day. However, the Department of Social Protection stated that if an hours-based system were introduced, *"it is likely that such a change could have significant implications for the existing casual jobseeker population. For instance an individual over 3 days can work a very substantial number of hours and if they are on low pay and remain within the means assessment guidelines they may still get a Jobseeker's Payment. If the system was moved to an hours-based system, this could result in a substantial inflow of individuals into the Jobseeker's schemes resulting in a significant increase in costs to the Exchequer. One method of controlling costs may be to have a relatively low number of hours similar to the UK system, which would then have implications for many of the existing casual jobseeker population. There are flaws in*

*every system but the existing system does provide substantial support that we allow people to work 3 days”.*

- d. Trade unions and NGOs stated that people can feel pressured by the social protection system to accept work which they believe is insecure with non-guaranteed hours or low hours. The NWCI argued that people do not want “*to gamble a suite of essential supports for a job which might shrink or be insecure and is unpredictable*”. The view of the Irish National Organisation of the Unemployed (INOUE) was that people should not be obliged to take up a job where they are “*not better off, in precarious low paid work especially when it’s the only income in house*”. The Department of Social Protection noted that someone cannot refuse an offer of employment ‘without just cause’ but it must be ‘reasonable employment’ and a case officer will assess these criteria on a case by case basis.
- 
- (ii) A view expressed by Mandate, SIPTU, the National Youth Council of Ireland (NYCI) and INOUE was that a cut in employers’ PRSI contribution rates between 2011 and 2013 had a detrimental impact on the number of working hours offered to employees. From their perspective, the cut, which applied to the contribution rate for jobs with earnings of less than €352 gross per week, incentivised some organisations to reduce their costs by engaging in ‘job-splitting’ whereby one job was split into two jobs. ISME stated that it does not support the practice of job-splitting while Chambers Ireland noted that splitting employment between two people can be beneficial where two employees have a preference for part-time hours.
  - (iii) Some employer organisations argued that providing If and When hours and low hours saves the State money because organisations are employing people that would otherwise be fully unemployed and require larger social welfare support. Alternatively, trade unions and NGOs maintained that the State is subsidising employment through the FIS and the Jobseeker’s Scheme and “*compensating for the increasing erosion of pay and hours*” (NWCI). They argued that the social protection system should challenge companies which have large numbers of employees that rely on social welfare. The NWCI and NYCI recommended the State use levers at its disposal to penalise such organisations.

The Department of Social Protection expressed concern over the rising costs of income support. The number of families availing of FIS across all sectors has increased by 70% since 2011 and cost €281m in 2014. Over 65,000 people working were in receipt of the Jobseeker's Scheme in 2014, an increase of 300% since 2005 but a fall of 16% since a peak in 2012. The Department argued that employment should be sustainable in the long term; *“our orientation is supporting people to secure more employment, to earn more and the welfare system would spend less. From a career development point of view, you want people to be in better paid work and getting longer hours as long as it works for their family situation”*.

## CONCLUSION

Almost one in four employees in the Irish labour market are part-time and there has been a noticeable increase between 2007 and 2014 in the number working part-time because a full-time job is not available. Regular work of 1-8 and 9-18 hours per week increased before the recession and has remained stable since. The proportion of employees with regular work of 19-35 hours per week was rising before the recession and this pattern has continued since. Nearly 8% of employees work less than 19 hours a week and 5.3% of all employees have working hours that constantly vary from week to week. Between 2001 and 2014 the proportion of employees working non-standard hours increased in all sectors but particularly in the accommodation/food and wholesale/retail sectors. Women are more likely to work part-time. Higher proportions of young people work variable and low hours but account for a minority of all part-time and variable work. Due to the variable nature of If and When and hybrid contracts, employment contracts may provide minimal information on working hours. Social welfare supports are important to people with If and When and low hours but the costs to the State of income supports to working people have increased substantially in recent years.

## **SECTION 4: THE IMPACT OF IF AND WHEN CONTRACTS AND LOW WORKING HOURS ON EMPLOYEES**

### **INTRODUCTION**

Employer organisations viewed If and When hours and low hours positively and argued that these jobs suit the needs of employees and employers. They expressed concern about the negative portrayal in the media about such jobs being labelled as poor or precarious. Chambers Ireland argued that people in such jobs are not marginalised “*but there is self-selection*”. In IBEC’s view, “*the notion that [low hours work] is precarious is not true. Most people on low hours actually work very regular hours and they know what they are and they negotiate them. Maybe on a week by week basis with their employers, maybe on relatively stable rosters but they have the opportunity to do that and they also have the opportunity to take on more hours and they’re paid the same*”. In general, employer organisations believed that people working If and When hours demand them and that many people working low hours are doing so as a lifestyle choice.

### **ADVANTAGES TO EMPLOYEES**

#### **Suits Needs of Employees**

From the perspective of employer organisations, If and When contracts, hybrid contracts and low working hours offer employees flexibility, and therefore they are particularly suitable for students, older workers who want to transition out of full-time employment and women with caring responsibilities. Organisations like ISME, NFVB, IHF and Nursing Homes Ireland (NHI) argued that their members have difficulties in finding employees who will take additional hours and that such employees do not want full-time jobs. IBEC argued that employees can have a preference for If and When hours, as they can decide to work or not, and they do not necessarily demand alternative arrangements such as guaranteed minimum hours. Thus, such jobs with low hours and If and When hours offers certain groups access to the labour market who may not want/have the opportunity for full-time employment. In addition, IBEC noted that employers benefit from having access to a labour market that might not otherwise be available in the absence of low hours and If and When hours.

## Stepping Stone

Employer organisations such as ISME and Chambers Ireland argued that jobs with low hours and If and When hours are often a stepping stone to full-time employment and help employees get their ‘foot in the door’ of a preferred industry. As IBEC commented, “*there’s always the potential that maybe somebody leaves and there’s an opportunity for a step-up or promotion*”. Employer organisations argued that such jobs offer an opportunity for individuals to develop their skills and CV, especially where no other job is available. For example, in secondary schools, teachers who cannot get full-time posts have a chance to develop their skills when they act as substitute teachers. Some trade unions groups like ICTU noted that If and When hours can be better than working for no pay such as unpaid trials and INOU stated that it can be easier for people to hear of a job vacancy while they are working but they both also argued that people want predictable hours.

## DISADVANTAGES TO EMPLOYEES

### Precarious Jobs

Trade unions and the four NGOs (MRCI, NWCI, NYCI and INOU) were highly critical of If and When contracts, considering them to be precarious jobs which transfer the risk of business onto employees. The INOU commented that people “*are taking a leap of faith*” taking a job with If and When hours; SIPTU viewed them as “*exploitative*”, the NWCI considered them “*the worst of all worlds*”, the MRCI labelled them “*dead end hours in dead end jobs*” and ICTU stated that they have become a normalised “*business school model of running a business - it’s just-in-time for workers*”. In the view of trade unions and NGOs, the majority of individuals accept If and When and hybrid contracts because of a lack of alternatives and that there are significant negative economic and social consequences arising from their prevalence. These organisations also argued that such contracts and low working hours negatively affect the State through loss of income tax revenue, increases in social welfare payments such as FIS and a dilution of “*decent work*” in the labour market (INOU). Trade unions and NGOs argued that flexibility should be a positive evolution of work which operates on the basis of predictability and negotiation and that good practice would allow mechanisms for employees to request transfers to and from full-time and flexible work.

## Unpredictability of Hours

Trade unions and NGOs dispute employers' contention that workers want the flexibility of If and When contracts, noting that employees seek full-time or part-time work with predictable hours. The primary negative consequence for individuals on If and When type contracts is the lack of predictability of working hours, both the number of hours and the scheduling of hours in a week. ICTU and the NWCI referred to the emotional anxiety of people on If and When hours from *"not knowing a schedule, waiting by the phone, guessing hours"* (NWCI). ICTU argued that even where employees have regular hours, the fact they are on an If and When contract leads to anxiety because they *"don't know which is the week [they] won't get the hours"*. The lack of predictability can also arise after a roster is scheduled when individuals are given short notice when offered work or are sent home during a shift. The lack of predictability of working hours is the basis for other negative consequences of If and When working.

## Financial Implications

If and When hours and low hours work can result in unstable and low earnings and makes individuals more reliant on State income supports. Trade unions and NGOs noted that the lack of minimum or regular contractual hours can prohibit employees from being granted bank loans or mortgages. Even if employees regularly work a number of hours, a bank will only use an employment contract to provide evidence of hours rather than examine the actual pattern of work undertaken, thereby excluding people from loan eligibility.

## Work/Life Balance

Trade unions and NGOs argued that the unpredictable nature of If and When hours is not conducive to individuals achieving work/life balance and can be stressful for parents juggling childcare and eldercare responsibilities. Two scenarios were presented by the NWCI to illustrate the challenges in relation to childcare: where women cannot book childcare because they do not know the scheduling of their working or where women book full childcare but may get a low number of hours work, so that childcare costs outstrip wages. The INOU stated that people on If and When hours can find it difficult to manage childcare unless they have very accommodating relatives. In the view of the MRCI, unpredictable

hours have particularly negative consequences for migrant workers because of a lack of childcare options and social networks which could help them juggle caring responsibilities with unpredictable hours. The Department of Social Protection noted its awareness that childcare issues can influence someone's decision not to take up work if it is offered on short notice such as a few hours. It also noted though, that if an employer offered work to someone with longer notice, such as two weeks, and the individual refused it, *"then a deciding officer may decide you're not available for and genuinely seeking work so you could in those circumstances face a disallowance [of jobseekers]"*. Thus, the amount of notice for work can have important implications in making care arrangements and in decisions on social welfare entitlements.

### Power

Trade unions and NGOs claimed that some employers use the scheduling of hours as a mechanism for controlling employees. The NYCI noted that there is *"not a relationship of equals"* between organisations and people on If and When hours. The NWCI argued that people on non-guaranteed hours can become *"trapped in cycle of poverty which strengthens employers' control"*. Trade unions expressed concerns that an employee who refuses work offered at short notice can be reported to social welfare by their employer as being unavailable for work. A number of interviewees claimed that If and When hours inhibited employees' propensity to speak up in the workplace. The NWCI argued that some women on low or non-guaranteed hours have a fear that raising grievances about working conditions will result in being penalised with reduced hours, which can have wider consequences if the adjustment in hours prohibits access to social welfare benefits like FIS. NERA commented that people working low hours may be unlikely to take a case against an employer *"after appraising the consequences for their continuing employment relationship"*. Similarly, the INMO argued that nurses' fear of speaking up could influence their decision on whether to whistleblow on safety concerns. ISME commented that only rogue employers use the scheduling of hours as a mechanism for controlling employees. Similarly, IBEC commented that it would not be good business to control people over hours and it has not noticed a trend of people on low hours or non-guaranteed hours taking cases against employers for unfair treatment or dismissal.

### Lack of Integration into Organisations

Trade unions argued that individuals on If and When or low hours do not feel integrated into organisations as they may be excluded from organisational decision-making or training opportunities. Examples cited in interviews were nurses not included in ward reports and third-level lecturers not included in teaching development fora. Similarly, trade unions in education reported staff in schools on If and When and low hours being assigned tasks outside the normal duties of a role, which they described as the “dirty work”, and claimed that teachers conceded to such work because of competition for full-time positions.

### Job Mobility

While some trade unions acknowledged that If and When hours can be of benefit to individuals where they have no alternative work available, unions and NGOs dispute that such jobs are a stepping stone because (i) people may not get working hours (ii) people can work If and When hours for long periods and not progress to permanent jobs with higher skills and better conditions. The MRCl stated that If and When and low hours may be “*jobs for life*” for migrant workers who are often overqualified for their jobs. The NWCl claimed that people working If and When hours do not get progression opportunities open to other regular employees.

### Terms and Conditions

Trade unions claimed that in some organisations, individuals on If and When hours have the same pay and conditions as regular employees but in others, employees can experience difficulties in accessing legal minima such as holiday pay. The intermittent nature of work in If and When contracts can result in problems identifying a ‘normal working week’ for entitlements, for example, trade unions argued that such individuals do not get redundancy pay if they are not called back to work. ICTU argued that many people on If and When hours do not get premiums and contrasted this with other European countries where, it was claimed, employees are entitled to over-time pay after their normal contracted hours.

## CONCLUSION

Employer organisations believe that people working If and When hours and low hours choose to do so and are satisfied with the arrangements. Employers are concerned about maintaining flexibility to meet service requirements and they oppose regulation of If and When contracts. For example, Chambers Ireland states *“if we go down a very strict route imposing the longer hours contracts on people it’s not necessarily going to work out for employees or employers. Avoiding absolute rigour in terms of these contracts would work out better for the employers and employees”*. Conversely, trade unions and NGOs categorise jobs with If and When hours as precarious and instead advocate for quality part-time and full-time work.

## SECTION 5: SECTORAL STUDIES

### THE HEALTH SECTOR

The QNHS data for the sectoral studies are depicted in Figs. 5.1-5.6 at the end of this Section and expanded tables are available in Appendix 3.

#### Sectoral Context

At the end of 2014, there were 248,900 people employed in human health and social work activities (QNHS). The HSE employs approximately 100,000 people, 70% of whom it directly employs while the remainder are employed by HSE-funded agencies (interview, HSE). Homecare and residential care services are operated by so-called Section 39 not-for-profit organisations, funded mostly through HSE grants, or subcontracted by the HSE to private organisations. In 2007, there were 128 private providers of homecare (IHPCA, 2009). In terms of demographics, the health sector is characterised by a female and relatively older workforce. Over 80% of employees in the health sector are female and the majority of employees are over the age of 35 (Figs. 5.3; 5.4 at end of Section 5). Of the four sectors examined, health has the highest proportion of employees in the 35-49 and 50-65 age brackets. The vast majority of employees are Irish with non-Irish accounting for 12% of staff (Table A5.4, Appendix 3) though there are significant variations depending on the service. For example, a survey of nursing homes found that 51% of their staff are non-Irish (Nursing Homes Ireland, 2010).

The health sector has experienced significant changes and pressures over the last two decades. Some of the sources of change have been the restructuring of the health boards to form the HSE, the opening of the health insurance market to competition, strategies for primary driven care, the establishment of cancer centres of excellence, the creation of the Health Information and Quality Authority (HIQA), the introduction of the Fair Deal Scheme and employee pay cuts and productivity reforms under public service agreements. In the context of this study, interviewees referred to the following sources of change as the most relevant to If and When contracts and low hours: the public sector moratorium on recruitment, the increase in community care provision and increased subcontracting of community care services by the HSE.

## Working Hours

The health sector has a high proportion of employees who work part-time with half of all employees regularly working 35 hours or less per week (Fig. 5.1). Of the four sectors in this report, health has the second highest proportion of employees who work 19-35 hours per week, accounting for a third of those working in health while 7% work 9-18 hours and 2% work 1-8 hours. Four per cent of employees have constantly variable hours of work with an even split between those with variable full-time and variable part-time hours. Figure 5.2 confirms the importance of part-time working in health. A fifth of all employees in the country with 19-35 hours per week, and 17% of all employees with 9-18 hours, work in the health sector. More women than men work part-time hours while higher proportions of men work full-time hours (Fig. 5.3).

There are significant levels of work in health during non-standard hours. Almost a third of employees work Saturdays, over a quarter work Sundays and 17% work evenings (Fig. 5.5; 5.6). There have been increases in non-standard work between 2001 and 2014, particularly evening work which increased by 19%. Saturday work increased by 10% and Sunday working grew by 6% (Fig. 5.6). Interviewees suggested that 'split shifts', such as morning and evening work, are a feature of some jobs, such as in homecare.

## Relevant Employment Arrangements

Zero hours contracts, within the meaning of the Organisation of Working Time Act 1997, are not evident in the health sector. If and When contracts, hybrid contracts and regular part-time contracts with low hours are prevalent in certain occupations, services and scenarios in health. An agreement between the HSE and INMO and SIPTU in 2011 stipulates that If and When contracts should only be issued to provide cover for short-term relief needs such as annual leave, study leave and sick leave. In interviews, the HSE noted that it discourages the use of zero hour contracts (which require employees to be available for work) but state that If and When hours are a legitimate employment arrangement (whereby the employee is not contractually required to be available).

If and When contracts and the hybrid arrangement of guaranteed minimum hours plus If and When hours are reported to be prevalent in the community care sector, i.e., homecare and intellectual disability. Homecare is provided to older people and people with disabilities

through home helps or homecare packages. Home helps are employed directly by the HSE or by not-for-profit organisations. Traditionally home helps provided non-personal care but increasingly have personal care duties (NESC, 2012). Homecare packages are provided by the HSE, not-for-profit organisations and private organisations. Private organisations are, for the most part, subcontracted by the HSE but they are also funded by families directly to provide homecare services. Homecare packages can involve non-personal care assistance and medical care e.g., physiotherapy (NESC, 2012). In interviews, the NFVB<sup>5</sup> stated that a well-established practice in intellectual disability services is having a panel of relief staff with If and When hours. This panel fulfil staff requirements during planned and unplanned leave but some staff on If and When contracts can work full-time hours. Arrangements for covering leave differ across employments: some might give a fixed-term contract to one relief employee to cover a long absence such as maternity leave while other organisations might split that cover between multiple relief staff. The NFVB viewed If and When staff as being rooted in the community, often employed through Community Employment Schemes, student placements and job placements. Employees are mostly female and interviewees suggested lone parents feature prominently in relief jobs. It estimated that people on If and When hours constitute approximately 10% of the workforce with significant variations across organisations while the INMO estimated that under a third of employees in intellectual disability have If and When working arrangements. The NFVB noted that, on average, individuals on If and When contracts work on that basis for four years before transitioning to full-time employment.

There was some disagreement amongst interviewees about the prevalence of If and When contracts in nursing homes. SIPTU reported the use of such contracts for support grades such as healthcare assistants, porters and laundry workers. However, NHI stated that there is minimal If and When and low hours working because the sector is not particularly prone to fluctuations in demand for services and the numbers of beds per nursing home has increased in recent years. For these reasons, NHI stated that most of the approximately 20,000 employees in nursing homes are full-time employees and that labour shortages are

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<sup>5</sup> The NFVB is the national umbrella organisation for voluntary / non-statutory agencies which provide direct services to people with intellectual disability on behalf of the HSE. There are 60 member organisations which account for 85% of Ireland's direct service provision to people with an intellectual disability.

an issue in the sector. For example, it claimed that nurses do not view nursing homes as being “cutting edge” and are therefore not attracted to them as a career choice. Additional staff, who work on a sessional basis in nursing homes, are often self-employed such as physiotherapists, the NHI stated.

Regular part-time contracts with low hours e.g., 10 hours per week are prevalent amongst nurses in general practices, according to the INMO. There are approximately 1,600 employees in practice nursing and this number is likely to grow due to increased government funding and the greater shift towards primary care.

### Drivers of If and When Contracts and Low Hours Working

Interviewees noted that, as a result of employment law claims and negotiations with the HSE over the last ten years, the HSE has regularised the employment contracts of some employees who were working full-time hours but on If and When contracts. The HSE claimed that If and When contracts amongst its directly employed staff are declining because of (i) better planned services, (ii) lower absenteeism levels due to changes to sick pay policies, (iii) staff shortages particularly doctors and nurses and, (iv) the increased use of agency workers due to the public sector moratorium on recruitment. The HSE noted that If and When contracts have been replaced to some extent by agency work, which was necessary to fulfil staffing requirements while the public sector moratorium was in place. The QNHS indicates that agency work is prevalent within the health sector, with 55% of all agency employees based in health but they still account for a low proportion of all health employees (1.8%). Agencies can supply doctors, nurses and healthcare assistants directly to hospitals or as care providers in the home. The INMO and SIPTU expressed concern over the use of agency working in health because of the financial costs incurred by the State and because of the lack of direct full-time positions being created. The INMO claimed agency work costs employers 32% more than direct employment. While a Government circular in 2014 stated that the moratorium was ending and that employers should issue 2 year fixed-term contracts from the agency ‘spend’, unions were sceptical that such changes will occur because health employers do not have an agency budget which can be reallocated. The HSE stated that, for services under its direct control, If and When hours are limited but are used in administration, catering and ancillary services where there is a temporary need for

additional staff such as leave replacement or fluctuations in demand for services e.g., if teas/coffees are provided to outpatients, then additional catering staff would be needed.

The NFVB argued that in some of its services, such as residential care, there is more stability in workload demand and organisations can generally forecast relief panel requirements. However, it also argued that intellectual disability services could not operate without the flexibility of If and When contracts because of planned and unplanned leave and the difficulties in recruiting permanent healthcare professionals. It stated that the Government would have to finance a significant number of new permanent posts to replace If and When contracts.

In homecare services, four drivers of If and When and hybrid contracts were noted in interviews. The first is that such services are characterised by variation in demand for client/user care and there is a consequent need for flexibility in employee attendance to fulfil the service. It can be difficult to predict how long a client will need homecare for and how many new users will need care on a weekly basis. The second driver has been the increased subcontracting by the HSE of homecare services and the growing presence of private organisations. There has been a decline in the numbers of people receiving home help (through the HSE or not-for-profit organisations) and an increase in the numbers receiving a homecare package (through HSE, not-for-profit or private organisations) in recent years and there has been a growth in the number of private organisations in homecare (NESC, 2012). Trade unions and the MRCI claimed that cost is a primary criterion by which tenders for homecare are awarded and that this has resulted in downward pressure on employee terms and conditions as tenderers seek to win contracts. In their view, private organisations use If and When type contracts to cut costs and increase profits. They argued that not-for-profit organisations find it difficult to compete for tenders with profit making organisations on the basis of working pay and conditions. A report by the Irish Private Homecare Association (IHPCA) (2009) indicates that state-provided care costs €29 per hour while private care costs €21 per hour. Private organisations noted that the funding model by which tenders are awarded by the HSE can be a barrier to providing more regular contracts to employees because funding is based on an estimate of required care services in the future but demand for services can fluctuate. The HSE noted that cost is a consideration in the decision-making process for tenders *“due to an environment of constrained resources”* and an ageing

population but that quality of care is the key criterion. A third driver, noted by SIPTU and the MRCI, relates to the workforce profile in homecare. They stated that many community care jobs have high proportions of female and migrant staff and that these factors exacerbates the imbalance of power in the employment relationship and reduces employees' capacity to demand more regular contracts. The fourth driver of If and When contracts relates to the evolution of the community care sector. It is a sector which historically involved many informal working arrangements with voluntary and religious organisations and people getting paid "*out of the biscuit tin*" (SIPTU), but has evolved to a larger and more formal sector. SIPTU stated that some informal relationships still exist with individuals on "*the books*" of an organisation, and these may work sporadically on an If and When basis. Geographical differences also affect the experience of homecare workers. Employees in urban areas are less likely to be negatively affected by fluctuations in service demand as they can be moved to newer clients/users and sustain regular working hours. In contrast, there is less opportunity for employees in rural areas to move to new clients and they are more likely to have fluctuating working hours.

Interviewees disagreed on the extent to which people on If and When and hybrid contracts choose such work. The HSE and NFVB noted that the contracts can suit female employees with family responsibilities as they have the flexibility of refusing work offered to them. The NFVB also argued that If and When hours suit relief staff who do not want full-time hours. The INMO argued that 'bank nurses' do not accept such work by choice while, in contrast, the NHI and HSE stated that due to the shortage of nurses, they can earn premium pay and work any number of hours they wish. In relation to workers in community care, SIPTU noted that 'flexible' working hours can suit some employees with caring responsibilities but argued that they do not demand If and When hours because of the associated unpredictability of hours and lack of income security. The MRCI argued that migrants often have no option but to accept working on If and When contracts because of a lack of alternatives in the labour market.

## OPERATION OF IF AND WHEN CONTRACTS, HYBRID CONTRACTS

### Written Contracts

Interviewees indicated that most people on If and When hours do have written contracts of employment. The exceptions to this are some home helps, who may have had long-standing informal arrangements with an employer, and the MRCI stated that some migrant workers in community care do not have written contracts. HIQA's *National Quality Standards For Residential Care Settings For Older People* require that employers provide all staff with job descriptions and written terms and conditions prior to commencing employment. While most employees have written contracts, some interviewees highlighted incidences of complex employment relationships where it can be difficult to establish the employment status of workers. For example, the INMO pointed to the example of an agency which enters into a service level agreement with the HSE to provide homecare services following a tendering process. However, the agency could subcontract this work to a subsidiary. A nurse can be employed, believing they are working as an agency worker but may be told that they are working for the subsidiary under a managed service contract and not as an agency worker. The INMO expressed concern about the potential rise in such arrangements given the increase in homecare provision.

### Working Hours and Terms and Conditions

For employees under its direct control, the HSE uses contracts with If and When hours to satisfy a peak in demand and to fill staffing gaps on a short-term basis such as annual leave, sick leave, maternity leave or longer sick absences. In the case of maternity or long sick leave cover for a full-time employee, an individual on If and When hours will have fixed hours while providing substitute cover but will revert to If and When hours when the post holder returns. The HSE noted that should an individual on a relief panel with If and When hours seek fixed hours, it encourages employers to give consideration to them but that requests for fixed hours may not be met where regular work is unavailable. People on If and When hours may be scheduled to work anytime during the week but are less likely to work Sundays because of the premiums available to staff, according to the HSE.

In regard to the contractual status of people on If and When hours, the HSE views them as employees covered by the Protection of Employees (Part-Time Work) Act 2001 and should get *pro rata* entitlements including premiums. The NFVB noted instances where there can be a lack of clarity over the contractual position of relief staff on If and When hours, for example, if they agree to work hours but do not attend or if they are unavailable for work for a lengthy period. The NFVB also highlighted a variety of practices across intellectual disability organisations in relation to the application of contracts of indefinite duration under the Protection of Employees (Fixed-Term Work) Act 2003. In some organisations, If and When relief staff automatically receive such contracts after four years while in others, they have to apply for an advertised position.

In regard to homecare workers, terms and conditions can differ depending on the employer, and the type of employer can vary across geographical region. In some counties like Cork and Kerry, there is a high level of homecare services provided directly by the HSE so home helps will be employed under HSE terms and conditions. Not-for-profit organisations are prevalent in Dublin, Wicklow, Roscommon and Clare while private organisations operate in more highly populated areas such as Dublin. Approximately 10,000 home helps are employed directly by the HSE and, under a SIPTU/HSE agreement in 2013, they are employed on hybrid contracts with 7-9 guaranteed minimum hours per week. Any additional hours offered to these home helps are on an If and When basis. Historically, many of these home helps started with 8 hours per week, rising to 24 hours and many now regularly work between 30 and 39 hours. These home helps get paid for their travel time between clients, travel expenses and premiums. Not-for-profit organisations and private companies may receive a block grant or tender for funding from the HSE to provide homecare services. The funding does not oblige these organisations to provide employees with a minimum number of hours or other benefits as provided by the HSE. There are estimated 7,000-8,000 people in these organisations but there could be a higher number 'on the books'. In services outside of direct HSE control, collective agreements may exist which stipulate that employee terms and conditions align with the HSE. In the absence of a collective agreement, terms and conditions vary across employments. SIPTU stated that terms and conditions in non-for-profit organisations are aligned with HSE conditions with hourly pay of €14 plus Sunday premium, unsocial premium, pay for each hour that the employee is at the employers' disposal and travel expenses. While voluntary organisations

are not-profit driven, private companies are profit-making and therefore will include a profit margin in tenders for HSE funding. Private companies are not obliged to provide HSE terms and conditions and SIPTU argued that employees may be paid much less than the HSE rate of pay and only for contact time with the care user, which could be 15 minutes of care per client. Employees may not get paid premiums or for travel time between clients. The MRCI reported that some migrant workers who are employed as home helps through agencies may have no guaranteed hours and are given minimal hours; *“enough to keep them dangling but not enough to survive. If an employee leaves, they can’t get a reference to get recruited elsewhere”*. The INMO expressed concern over the terms and conditions of ‘bank nurses’ employed in private, non-unionised hospitals and agencies. It argued that while the EU Directive on Temporary Agency Work protects employees’ basic terms and conditions, it does not believe they have the same securities as a directly-employed HSE staff. Table 5.1 provides a sample of provisions on hours in If and When contracts.

**Table 5.1 Sample of Working Hours Provisions in If and When Contracts in Homecare**

**Contract Example 1**

“The employee shall work 5 hours minimum. The employee may be required to work additional hours in excess of those 5 hours. Due to the nature of the business, the employee may be required to work outside normal rostered hours including weekends and evenings and if this is the case, they will receive as much notice as reasonably possible of such working hours”.

**Contract Example 2**

“You are required to work on this contract 0/78 hours per fortnight. You are not obliged to work the hours requested by your manager and likewise the organisation is not obliged to employ you for a fixed amount of hours”.

**Contract Example 3**

“In view of the nature of the home help service, the hours of work will vary. The employer is not in a position to guarantee hours of work. Hours of work will be set out in a roster weekly or informed to you. In certain circumstances the company may require you to adjust the hours in order to ensure the efficient discharge of your duties and/or meet the needs of the service”.

**Contract Example 4**

“Your hours of work will be directed from the office. This will include bank/public holidays. Hours of work need to be flexible to suit the needs of the business and therefore all care assistants are expected to be flexible at all times. Where a care assistant works 10 hours a week or more, they are required to work every other weekend”.

In intellectual disability services, relief staff are generally employed on indefinite contracts with non-guaranteed hours. They are asked for their availability and preferred hours upon commencing employment and this information is circulated to managers who call them as needed. The NFVB argued that organisations have a preference for offering hours to the

same If and When staff due to the unique care needs of service users. The terms and conditions of relief staff can vary across organisations. In some organisations, their conditions such as annual leave, pension contributions, sleepover allowances, unsocial hours pay and Sunday premiums are on a *pro rata* basis with permanent peers. In some organisations, If and When staff do not receive the same benefits as permanent colleagues. An example was given of one organisation where relief staff are paid an extra €1 per hour in lieu of annual leave. The NFVB noted that the variation in terms and conditions is an historical legacy of the development of intellectual disability services. Arrangements with regard to working hours can differ across intellectual disability organisations. In some, there are staff shortages and relief staff can often get as many hours as they wish. In some organisations, there are agreements with trade unions so that the employer has to provide If and When staff with minimum hours, with a provision for a periodic review of hours. Relief staff can progress to longer hours either by filling an advertised full-time position or getting guaranteed hours based on the average worked during the third and fourth year of employment. Permanent vacancies are advertised internally to the relief panel first and are generally filled by them, unless a specific skills mix is required. The NFVB argued that If and When staff often do not want full-time hours or fixed hours, in some cases because of their childcare responsibilities.

In relation to nursing homes, the payment of premiums for unsociable work is variable. The NHI argued that a barrier to increasing pay for employees is the State is a monopoly purchaser of nursing home services and it dictates their income levels.

### Notice of Hours

Interviewees indicated that procedures regarding notice to employees for work are variable. The HSE was unaware that employees in its services would be given less than 24 hours' notice for work. SIPTU claimed that in community care, employees would indicate to employers their periods of availability for work but that employees could be called into work with as little as one hours' notice. It argued that an employee can be penalised for refusing work on a number of occasions by not being offered work again for a few months. SIPTU claimed that, because employers are not compelled to schedule working hours in advance, "everything is an emergency". Similarly the INMO argued that 'bank nurses' could be

called into work with as little as two hours' notice and may be sent home during a shift. The unions also argued that there are often no 'fair systems' for distributing work to If and When staff and it can be open to significant subjective behaviour. The NHI stated that rosters in nursing homes are scheduled on a monthly basis by the Director of Nursing. In intellectual disability, the NFVB stated that three weeks' notice for shifts are common except in exceptional circumstances such as sick leave replacement.

### Exclusivity Clauses

The HSE and INMO were not aware of exclusivity clauses being used in contracts. The MRCI reported that some migrant workers in homecare services have exclusivity clauses in their contracts. SIPTU was not aware of exclusivity clauses in contracts, but believed there is an expectation of exclusivity amongst some employers in the health sector. It argued that the lack of predictability of hours means employees have to be available for work and suggested that some employers may view having a second job as breaching the 'If and When element' of the employment contract, resulting in negative repercussions for the employee.

### Social Welfare Entitlements

Employees in community care on If and When contracts or low hours frequently access social welfare entitlements and, being on low incomes, SIPTU claimed they are "very sensitive" to changes in entitlements especially housing assistance and the medical card. It argued that some employees could refuse additional hours of work if it endangered welfare entitlements and if they believed that the increased hours were not a permanent arrangement. The HSE did was not aware of problems issues arising from employees accessing social welfare entitlements but were aware of instances where individual employments facilitate employee requests to schedule hours in a particular pattern so they can access benefits like Jobseeker's Allowance. The MRCI noted that non-EU migrant workers are less inclined to access social welfare entitlements in case doing so would negatively affect future citizenship applications.

## ADVANTAGES TO EMPLOYEES

In the view of the HSE, If and When contracts are beneficial to employees because they offer flexibility and they can accept or reject offers of work. As such arrangements are not a predominant feature of direct HSE employment, it does not view them as problematic. The NFVB argued that because If and When staff in intellectual disability are often recruited through community employment schemes, such arrangements provide an opportunity for people to enter and re-enter the workforce at a community level and this also benefits service users who are based in communities.

## DISADVANTAGES TO EMPLOYEES

SIPTU, the MRCI and the INMO were very critical of the use of If and When contracts. They point to a number of negative implications: the lack of predictability of the number and scheduling of hours, the lack of a stable income, a belief amongst some employees that working hours are distributed unfairly, the lack of employee benefits such as sick pay in some employments and difficulties in planning family life around unpredictable hours. In addition, interviewees in these organisations argued that there is a significant imbalance in power between someone on If and When hours and an employer. In this regard, they referred to the lack of input by employees into scheduling of hours, the power of the employer to change working patterns, a belief that some employees are penalised for refusing work and the adversity employees' face in asserting their rights. The INMO claimed that nurses' fear of penalisation could have negative repercussions for whistleblowing. Nurses have a responsibility to report safety concerns under the Nursing Code of Professional Conduct and Ethics by An Bord Altranais but the INMO argued that nurses may be cautious in doing so for fear of being penalised by an employer.

SIPTU argued that If and When jobs are part of the "*legitimate casualisation of the workforce*" and that people in community care can become trapped in low-paid and insecure work. It argued that the HSE should place greater weight on employee rights in criteria for awarding tenders. The INMO stated that If and When contracts can be "*extremely exploitative*" particularly for nurses in temporary roles in rural areas who would be particularly "*vulnerable*" if they refused work. The INMO also argued that 'bank nurses' do not feel

integrated into their workplace, for example, by being excluded from up-skilling opportunities or ward reports.

## **DISADVANTAGES TO ORGANISATIONS**

From the perspective of employer organisations, If and When contracts are critical to the operation of health and social services in the context of current funding models. The HSE and NFVB noted a disadvantage of If and When working is the administration burden associated with monitoring the variable working hours of employees but the latter stated that the flexibility of these contracts outweighs the administrative burden. The MRCI and SIPTU both commented on high employee turnover in community care and believe that if the labour market improves, employees will move to jobs in other sectors with better conditions.

## **CONCLUSION**

Zero hours contracts, where an employee is contractually required to make themselves available for work with an employer, are not prevalent in the health sector but there are If and When contracts, hybrid contracts and low hours of work. The health sector is characterised by female employment and employers argued that If and When working provides women with flexibility to accommodate their caring responsibilities. Trade unions referred to the unpredictability of If and When hours, the lack of a stable income and the imbalance of power in the employment relationship. Community care was highlighted as an area of particular concern by unions for the prevalence of If and When contracts. Community care is likely to be an area of significant job expansion in the future due to predicted large increases in the population age profile and in the level of community care services. All organisations emphasised the need for high quality patient care to be the priority in health policy and SIPTU and MRCI argued that such patient care can be delivered by trained employees with “decent” employment standards.

## THE RETAIL SECTOR

The QNHS data for the sectoral studies are depicted in Figs. 5.1-5.6 at the end of this Section and expanded tables are available in Appendix 3.

### Sectoral Context

The retail sector is the largest industry in Ireland and the largest private sector employer (Retail Ireland, 2015). At the end of 2014, there were 276,700 employees in the wholesale and retail sector<sup>6</sup> (QNHS). According to Retail Ireland, the branch of IBEC that represents retail employers, the retail sector accounts for over 10% of Ireland's GDP, a total of some €16 billion. The sector is made up mostly of Irish-owned businesses (90%), family-owned firms (77%) and small enterprises (86% have less than 10 employees).

In recent years, the sector has undergone a number of significant changes. Consumer demand has led to extended trading patterns over seven days a week, particularly for larger retailers. During the economic boom, many larger supermarkets operated on a 24-hour basis, although the extent of this has decreased somewhat. There are challenges for the sector in the form of online retailing. The grocery retail sector has also seen increased competition from large international discount retailers such as Aldi and Lidl whose market shares have been steadily increasing in recent years. As with all sectors, the economic recession has impacted on the retail sector with employment declining by over 40,000 from its peak in 2008 and sales declining by over 25% from their peak in 2008 (Retail Ireland, 2015). Changes in employment within other sectors are also significant when considering issues around low hours work in the retail sector. According to Mandate trade union, reliance on income from (primarily female) retail work within the family household is becoming more important because of the loss of jobs from other traditionally 'male dominated' sectors such as construction. Similarly, the NRF noted that issues around low hours work have become more important since the recession with more pressure on employees' financial stability and increased importance of income from jobs which may previously have been secondary household jobs.

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<sup>6</sup> This group includes the repair of motor vehicles and motorcycles in the CSO NACE Rev. 2 economic sector.

These changes have had a significant impact on employment within the sector. Business groups such as IBEC<sup>7</sup> and the NRF highlight the need for flexibility for employers to operate within changing patterns of consumer demand. Changes in consumer patterns require longer opening hours and more evening and weekend work. Changes in the wider labour market including greater female participation have meant that there is not “*the same number of people who want to be in the store at 2 o’ clock on a Tuesday afternoon*” (IBEC). Because of these changes, IBEC noted that “*it’s very important for businesses to be able to flex up and down and to be able to manage that flexibility and be able to roster people more flexibly because it’s a business demand*”. The reality is that “*when consumers want to shop is when you need the majority of your staff to be on the floor and to be available*” (IBEC). However, Mandate contests these justifications for the extent of non-guaranteed hours in the sector. It claimed there is no business need for “*complete open-ended*” flexibility. It argued that modern technology means demand is predictable in retail, and employers can predict customer and sales trends accurately, for example, customer loyalty cards which enable retailers to track customer spending habits in detail. In Mandate’s view, predictable business should lead to predictable staffing requirements.

### Working Hours

Data from the CSO show that 2% of full-time and 4% of part-time employees in retail work constantly variable hours (Fig. 5.2). This proportion of variable hours is higher than in education and health but lower than in accommodation/food. In terms of regular working hours, a small proportion (3%) of those working in retail regularly work 1-8 hours while 11% regularly work 9-18 hours. The majority of employees regularly work either 19-35 hours (28%) or over 35 hours (53%) a week (Fig. 5.1). In terms of all employees in the country, retail accounts for 15.8% of all employees whose hours constantly vary and approximately a quarter of employees working 1-8 hours (25%) and 9-18 hours (26.6%) (Fig. 5.2). At the higher end of the working hours scale, 17.5% of all employees who regularly work 19-35 hours a week are in retail while only 12.6% of those who work over 35 hours are in retail. Given the higher proportions generally working in retail, as it is the largest

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<sup>7</sup> Retail Ireland was invited for interview and nominated IBEC to represent employer views. IBEC was interviewed about issues relating to zero hour contracts, If and When contracts and low hours generally in the economy, including retail.

private sector employer, these figures demonstrate the concentration of employees with part-time hours in the retail sector. Research commissioned by Mandate suggests employment in retail may not be short-term, with over 70% of respondents to its survey having worked in the retail sector for at least five years.

Mandate estimated that over 70% of all retail employees are not full-time. This contrasts somewhat with the CSO data which shows that 53% of employees in the retail sector usually work over 35 hours a week (Fig. 5.1). The difference in these figures possibly reflects differences in the number of hours employees are contracted to work (Mandates' estimate) compared to the number they usually work, as reported in the QNHS. It may also reflect the fact that CSO data captures all those employed in retail, including managers who would tend to work higher hours, whereas Mandate's members would typically comprise non-managerial staff. The breakdown of gender within the sector shows that 53% of employees are women while 47% are men. Again the inclusion of management positions within the CSO data must be borne in mind. The breakdown of occupations across all sectors shows that the majority (82%) of managers regularly work over 35 hours per week. The data also shows that 69% of men in retail regularly work over 35 hours a week compared to 38% of women. Given that higher percentages of both men and managers generally work over 35 hours per week, it is possible to infer, that women in retail are concentrated in non-managerial positions and lower hours working. The majority of women in the sector usually work less than 35 hours per week with higher proportions than men working 9-15 hours (15% of women and 6% of men) and 19-35 hours (38% of women compared to 17% of men) (Fig. 5.4). Both IBEC and Mandate noted that employees on full-time contracts tend to be those on older contracts who have long service in the sector. Both acknowledged that as these employees exit the sector, their replacements are not been employed on similar full-time contracts.

### Employees' Choice

In IBEC's view, the main benefit of 'flexible' contracts is that businesses have access to certain sectors of the labour market that they otherwise would not have, such as older workers, students and those (typically women) with caring responsibilities. They argued that many of these employees choose flexible types of employment arrangements to suit their

personal circumstances as they either cannot or do not want more hours and thus are suited to flexible or low hours working. In regard to age, Figure 5.4 shows that 18% of those working in retail could be classified as ‘older workers’ aged between 50 and 65, and 18% are aged between 15 and 24 (the vast majority of all employees in this age group are in education according to the QNHS). The majority of employees in retail (65%) are outside the categories of student and older worker.

While recognising a certain cohort of employees may have a preference for low or flexible hours, Mandate claimed that, even within this cohort, employees have limited control over when hours are scheduled. Mandate argued that flexibility within contracts “*is entirely in favour of the employer, with maximum flexibility demanded from the workers’ point of view and minimum commitment from employer (in terms of number of hours guaranteed)*”. Examples of provisions on working hours in retail contracts are provided in Table 5.2.

**Table 5.2 Sample of Working Hours Provisions in Employment Contracts in Retail**

Contract Example 1 – If and When Contract

“Your start and finish times will be explained to you by your Line Manager or will be in accordance with the rota displayed at your Place of Work. The Company reserves the right to change your normal hours of work, start and finish times at its discretion so as to meet its business needs and/or improve operational efficiency”.

Contract Example 2 – Hybrid If and When Contract

“Your minimum hours of work are 15. You are employed on a flexible hours basis and your hours can be changed to suit business requirements and needs at any time in the future. You are asked to take particular note of this requirement. You are required to work Sundays/Public Holidays as part of your working week”.

With regard to employees with caring responsibilities who do not seek more hours, this may be a constrained choice due to the high cost of suitable childcare and the practical difficulties of arranging childcare for irregular or unpredictable working hours. Mandate described this ‘trap’ for many workers; “*It’s predominantly female workers in these sectors who are constrained by childcare. So they have no choice but accept hours and low pay and ‘keep the*

*head down' for fear hours may be changed or fear they'll lose [Family Income Supplement (FIS)]. So they're in this 'trap' all the time".*

In interviews, the Department of Social Protection noted that 70% of those on FIS are working in the retail sector, and commented that many recipients of FIS are lone parents. The large size of the industry gives some explanation for the high levels of FIS receipt but it nonetheless gives an indication that many retail employees are reliant on the state to subsidise earnings. This would indicate that many working in the retail sector are reliant on their job as a family income (or part of a family income).

## **RELEVANT EMPLOYMENT ARRANGEMENTS**

Most large retailers employ people on If and When or hybrid contracts (which have a minimum number of hours guaranteed and additional hours offered on an If and When basis), depending on the needs of the business. Contracts typically include clauses to this effect as outlined in Table 5.2 above. The main issue for employees in the retail sector is uncertainty and unpredictability around both the number and scheduling of working hours on a week to week basis. Research commissioned by Mandate showed that working hours are subject to frequent change. Almost half of part-time workers have their working hours changed at least once a month, while only a third have stable working hours (Behaviours and Attitudes, 2012).

Regardless of contractual obligations, Mandate argued that the reality for employees is that they have to accept any hours offered in order to try to earn a living wage and due to the fear that work would not be offered to them in the future if they refused. The INOU also commented on people being "*penalised for not being available for work*". Mandate noted that while some employees' contracts state a number of working hours, working hours provisions could be phrased in the following way: 'your hours are between 4 and 39 hours, 5 days over 7'. It argued that an employee has no choice but to make themselves available 24-7.

## Banded Hours

Banded hours arrangements have been introduced in a number of major retailers. Tesco, Penneys, Marks and Spencer and SuperValu have all collectively agreed banded hours agreements with Mandate. Mandate claimed banded hours agreements give “*some element of control back to workers and challenging complete open ended flexibility*”. Banded hours place each employee within a set guaranteed ‘band’ of hours e.g., 15-19 hours. A periodic review takes place on an annual basis and if any employee continuously works above the band they are in, they are automatically lifted into the next band (i.e., the higher number of hours that they have actually been working now becomes their new guaranteed band).

IBEC claimed that banded hours have “*given a certainty to what was already happening*” but did not think it has “*resolved any mass problem that was there in the first place*”. They also argued that some employees do not want to commit to ‘flexing’ regularly 3 or 4 hours in a week and want only to commit to the number of hours specified in their contracts. The excerpt from the banded hours agreement highlighted above, however, allows the opportunity for staff to be assimilated on to one of the new bands of working hours or to stay on their existing arrangement. Banded hours agreements still provide significant flexibility for employers in terms of excluding peak and trough trading periods from calculations of weekly average hours and allow employers to move employees to lower minimum bands during the quieter months of January and February. The banded hours agreements give guarantees in relation to the number of hours but not the scheduling of hours.

**Table 5.3 Excerpts from a Banded Hours Agreement**

<p>This agreement applies to all store based staff (with over 12 months service at 19<sup>th</sup> September 2013 and who have consistently worked in excess of weekly contracted hours) that are collectively represented by, and are members of, Mandate Trade Union, save for those whom are already in possession of a full-time contract. Staff who, for whatever reason, have set mutually agreed working hours can opt to be assimilated on to one of the new bands of working hours, or can stay on their existing arrangement. *Notwithstanding the foregoing any staff member for whatever reason can decide not to assimilate to one of the new bands. (Opting out would guarantee your current contractual minimum only)</p> <p>Minimum weekly working hours will be rostered within the range below (which may include late night trading / Saturday / Sunday) subject to the needs of the business and availability of employees:</p>	
A	11.5 – 14 hours per week
B	15-19 hours per week
C	20-24 hours per week
D	25-30 hours per week
E	31-35 hours per week
F	36-37 hours per week
<p>Individual assimilation onto the new band of hours will be determined by a weekly average based on the hours worked over the 12 month period excluding the 14 weeks of peak and trough trading as follows:</p> <ul style="list-style-type: none"> <li>a) Six weeks of Peak ... circa 6 weeks before Christmas</li> <li>b) Eight weeks of Trough ... circa 8 weeks post-Christmas</li> </ul> <p>Once assimilation has occurred, the hours range in which the employee falls becomes their new minimum hours range save for the trough months of January and February where it is agreed that the employee will be guaranteed hours that fall no lower than the bottom of that range below which they currently sit (save for employees in range A).</p> <p>The new banded hours system will be reflected in a revised written contract of employment.</p>	

## **DRIVERS OF IF AND WHEN CONTRACTS, HYBRID CONTRACTS AND LOW HOURS WORK**

Mandate noted that stable employment and “*decent hours*” are possible in the retail sector and that most retail companies, particularly larger employers, are profitable. The union recognised that retail was not a high-paying sector but argued that, in the past, it was possible for people to develop a career by progression through the service scale and could supplement their income with overtime. They argued, however, that this is no longer the case given the increase in use of low hours and If and When contracts and the fact that older full-time contracts are not being replaced. Changes in the sector in terms of customer

spending patterns, longer opening hours and increased competition have meant most employees in retail now work less than 35 hours per week across a great number of days with many subsidising income through social welfare support. QNHS data show the shift towards non-standard work in retail. Since 2001 there have been significant increases in evening work (32%), Saturday work (16%) and Sunday work (17%). The only other sector with a larger rise in evening and weekend work is accommodation and food (Fig. 5.6). For many, according to Mandate, retail jobs mean a lack of career prospects, poverty and welfare traps and possibly underemployment.

## **OPERATION OF IF AND WHEN TYPE CONTRACTS AND LOW HOURS WORKING**

### **Contracts of Employment**

Both employer and union interviewees agreed that all employees get written contracts of employment outlining relevant details of employment. Neither employer nor union interviewees saw the issue of exclusivity clauses as particularly prevalent. While Mandate noted exclusivity clauses written into contracts of employment were not common, they referred to the reality of not being able to work for another employer given the unpredictability of when hours are scheduled. They also noted contracts sometimes include clauses whereby employees have to inform their employer, or get written consent from a line manager if they take up work from another employer. From an employers' perspective, however, this information is necessary to ensure they do not breach working time legislation with regard to rest periods etc.

### **Terms and Conditions**

Both employer and union interviewees stated that, in the unionised sector, employees receive the same terms and conditions (rates of pay, holiday pay, sick pay) as other employees, *pro rata*. With regard to rates of pay, Mandate pointed out rates of pay increase for employees as they progress up the service scale. Where contracted hours are minimal (and often less than actual hours worked), it is possible for employers to reduce hours from an employee on the higher-pay scale and give them to a new entrant or employee on the lower-pay scale or to offer any additional hours to those on lower rather than higher pay

scales. Those on higher pay scales are more experienced employees, however, their capacity to develop a career is constrained by the possibilities open to employers to change working hours. The union claimed that this results in an unfair employment relationship and allows “*abuse of power*” by employers.

### Notice of Work

IBEC claimed employees get notice of working hours as required under the Organisation of Working Time Act 1997. Mandate stated “*we’d like to think that everyone gets their roster a week in advance and it doesn’t change unless there’s an emergency but it often doesn’t happen that way. It’s less likely to happen in the unionised sector than the unorganised sector*”. In terms of offering additional hours to employees when they become available, both employer and union groups stated there are no set procedures to be followed and allocation of additional hours depends on the availability of employees. Where collective agreements are in place, they would state that additional hours should be offered to existing staff in the first instance. However, recruiting staff on the first point of the pay scale is cheaper and more flexible for employers at the expense of the existing staff.

### Social Welfare Implications

The link between social welfare and low hours work is an important consideration. Where low hours jobs are a source of family income, employees may have little choice but to rely on state subsidies to supplement low wages. The structure of contracts means that employers can influence social welfare entitlements through the way in which they schedule hours e.g., scheduling the same number of hours over a different number of days or reducing hours below the 19 hours threshold required for FIS. There may also be situations where an employee is worse off if they gain additional hours above 19, making them ineligible for FIS. Mandate described this situation as a “*perverse kind of poverty trap and welfare trap*”. The Department of Social Protection noted that “*employment should be sustainable in the long-term*” and that the Departments’ aim was to “*get people out of low hours, not support them to stay in it*”.

## **ADVANTAGES TO EMPLOYEES**

Part-time working is not a new phenomenon and there have always been workers who choose not to work full-time. Employer organisations argued that low and flexible hours can suit some groups especially students and those with caring responsibilities e.g., mothers working while children are at school. They also referred to older workers who wish to remain in the labour market but not on a full-time basis. For these workers, employer organisations pointed to benefits such as income from hours worked and some level of employment if full-time work is not available so there is no gap on a CV. Contracts may give workers the opportunity to explore work options before committing to full-time employment.

## **DISADVANTAGES TO EMPLOYEES**

The most significant negative impact on employees of If and When or hybrid contracts was described by Mandate as “*lack of control over their working lives*”. While pay was a concern, security and stability of hours were also considered important issues. If hours remain unguaranteed or variable, then even when wage increases are secured, employees cannot predict earnings. Many working hours in the sector are scheduled during non-standard hours such as evenings and weekends but employees do not generally receive shift premiums. The lack of predictability and certainty can impact on many aspects of employees’ lives and can lead to stress due to the inability to make any financial commitments from week to week. A survey by Mandate of its members noted that over a quarter reported wanting more certainty from their employer in relation to their working schedule (Behaviours and Attitudes, 2012). Employees are often unable to access credit (e.g., for mortgage applications) as assessments are based on guaranteed contracted hours only even where employees may normally work in excess of those hours. Employees may be willing and available to work more hours but may suffer underemployment if hours are not available or employers choose to allocate hours across larger numbers of employees rather than increasing hours of existing employees. Even where low or If and When contracts are chosen by employees, they are dependent on the goodwill of management to schedule hours to suit employees’ needs. They may get ‘trapped’ in low-paid retail jobs and career planning is very difficult with Mandate arguing that retail jobs now often have no training or

career paths. Employees may not have pension coverage so the negative effects of these contracts continue through their lifecycle, particularly where they are not transient in the sector. The NWCI also noted that for women, variable hours inhibit their ability to take up extra work or to upskill and so they become trapped in a cycle of poverty. In contrast to the argument on unpredictability, IBEC argued that people generally work the same number of hours.

## **ADVANTAGES TO EMPLOYERS**

Representatives from IBEC argued that flexibility and the need to match staffing requirements to customer demands and shopping patterns is the main advantage of low hours, If and When and hybrid contracts for employers in the retail sector. Often cost savings can result from these contracts as employers are able to schedule more employees during busy times but not have as many during quiet periods. Mandate claimed one of the major advantages for employers is the level of control they can have over employees working lives made possible by the weaker position of employees and their dependence on employers' goodwill to schedule hours "fairly". The NWCI also noted hours can be used as a method of control by employers particularly for women with caring responsibilities. IBEC however, noted that a significant concern for employers is that low hours are labelled as precarious work when, in its view, such work can be quite a positive situation for employees and employers. In relation to employers regularly cutting hours to minimal contracted hours or using hours allocation as a disciplinary tool, IBEC claimed this does not make good business sense. From IBEC's perspective, most employers, particularly in small retail environments rely on their staff in customer facing roles. There is a heavy reliance on the relationship between the person spending money in the establishment and the staff member so would not be beneficial to put an 'aggrieved employee' in a front-facing role.

## **DISADVANTAGES FOR EMPLOYERS**

IBEC noted the disadvantages to employers of low hours and If and When contracts are the costs of managing them. In relation to rosters, they noted rosters are costly to 'build out' and are quite a labour intensive issue for management so with "*waves of people who are part-time casuals, it can become quite complex. It's more efficient to have a regular cohort of people and*

*to be able to manage rosters*”. Another disadvantage may be that an employer can lose a good employee if they do not have enough hours to offer. In relation to zero hours contracts within the meaning to the Organisations of Working Time Act 1997, IBEC noted the costs of paying compensation under Section 18 of the Act would be a disadvantage for employers but the fact that such contracts are not widely used, mitigates this. Both employers groups and Mandate stated that Section 18 is rarely utilised either due to lack of knowledge about entitlements, the fact that generally employers use hours contracted or because contracts are written in such a way that Section 18 would not apply i.e., workers are not contractually obliged to make themselves available for hours. Other disadvantages to employers include higher costs spent on uniforms and training costs where there is a large workforce or where there is high staff turnover.

## **CONCLUSION**

As with most sectors, zero hours contracts, where employees are not guaranteed hours of work but are contractually required to be available for work are not evident in the retail sector. Most employees in retail work on minimum guaranteed hours contracts with additional hours being offered as and when required by employers. Changes in the sector have meant longer opening hours and a shift towards non-standard hours for employees to provide flexibility for employers. Many employees are women and a significant number access social welfare support to subsidise earnings. Good practices have developed in the sector with the introduction of banded hours in a number of major retailers which can improve predictability of hours and maintain flexibility for employers.

## THE HOSPITALITY SECTOR

The QNHS data for the sectoral studies are depicted in Figs. 5.1-5.6 at the end of this Section and expanded tables are available in Appendix 3.

### Sectoral Context

The hospitality sector comprises a range of services including accommodation and food<sup>8</sup> and tourism related businesses. According to CSO data, accommodation includes hotels, bed and breakfasts, holiday and camping parks and hostels while food includes restaurants, bars and catering. The drop in domestic demand and tourist inflows during the recession negatively impacted the sector. At the end of 2014, there were 137,500 employees in accommodation and food service activities (QNHS). The IHF reports some recovery in recent years in tourism with 33,000 new jobs created since 2011 and revenue increases of 9.4% in 2014 to €6.45 billion, accounting for 4% GNP (IHF, 2015). The Restaurants Association of Ireland (RAI) notes that hospitality is a transient industry and that many employees are young or want a second income. Demographically, accommodation and food has a similar proportion of employees between the ages of 25 and 49 as the other three sectors studied but has a higher proportion of 15-24 year olds and a lower percentage of older workers in the 50-65 age bracket (Fig. 5.3; 5.4). Female employment outnumbers male employment by 11 percentage points (Fig. 5.3) and accommodation and food has a much higher proportion of non-Irish workers than the other three sectors, accounting for a third of employees (Table A5.4, Appendix 3).

### Working Hours

Accommodation and food has a relatively low level of full-time employment and high level of part-time employment (Fig. 5.1; 5.5). More than half of employees work either constantly variable hours or regular part-time hours. Of the four sectors examined, accommodation and food has the highest proportion of employees working constantly variable hours (9%), 1-8 hours and 9-18 hours (Fig. 5.1). A further 28% of employees regularly work 19-35

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<sup>8</sup> The hospitality sector can also comprise of other tourism related services but the QNHS only reports data on hotels and restaurants (Rev. 1 code) or accommodation and food (Rev. 2 code). In reporting CSO data, we use the term 'accommodation and food'.

hours. The RAI reports that split shifts are common (e.g., four hours in the morning and four in the evening) and stated that the “*vast majority of people have no problem working such hours*”. Higher proportions of women than men work variable and part-time hours in accommodation/food while men are more likely to work more than 35 hours per week (Fig. 5.3). QNHS data show that, at the end of 2014, 3% of all employees in the country were defined as casual and, of these, 13,700 (25%) worked in accommodation/food.

## **RELEVANT EMPLOYMENT ARRANGEMENTS**

There was consensus amongst SIPTU, IHF and RAI that zero hour contracts, within the meaning of the Organisation of Working Time Act 1997 whereby employees are contractually required to be available for work, are not prevalent in hotels and restaurants. The IHF noted that hotels use full-time, part-time and seasonal contracts. It stated that it is also familiar with contracts that do not guarantee hours but which stipulate a maximum number that could be worked. The RAI differentiated restaurants from in-company catering, the latter of which are likely to have more predictable levels of demand and therefore have more predictable working hours.

There was no consensus as to what constitutes low hours work. SIPTU commented that low hours could be 1-15 hours a week while the RAI stated it is unfamiliar with the term ‘low hours contracts’ and that it considers staff to be either part-time or full-time. Interviewees indicated that certain occupations in hotels and restaurants are more likely to work full-time: those who are professionally trained and developing a career in the industry such as managers and chefs and long-term employees. SIPTU claimed that, for the vast majority of new employment in hotels and restaurants, contracts stipulate If and When hours and it argued this is particularly the case for occupations most prone to fluctuations in service, such as leisure staff, housekeeping, bar and waiting staff. While SIPTU, IHF and RAI noted examples of agency working in hotels and restaurants, there was agreement that the majority of staff are employed directly by firms. According to QNHS, agency workers account for 0.6% of employees in accommodation/food or 10% of all agency workers.

**Table 5.4 Sample of Working Hours Provisions in If and When Contracts in Hospitality**

**Contract Example 1**

“Due to the nature of the business your hours of work will vary from week to week. As such, your exact working hours will be advised to you on a weekly basis by your manager in advance of the weekly roster”.

**Contract Example 2**

“Your hours of work will vary according to the level of business but in any case will not be more than 78 hours in any two week period. You will be rostered over a 7 day period which may include a Saturday and Sunday.

**Contract Example 3**

“Your work is of a casual nature and as such your hours of work and payment are not guaranteed. You will only be offered work as and when the employer requires it and you are entitled to accept or refuse the hours of work, when offered.

**Contract Example 4**

“Hours of work are flexible 10 over 14 days. Full-time or part-time hours may apply as agreed locally with management”.

**Contract Example 5**

“Your working hours will be in accordance with the rota by your direct supervisor. In the event of you not being able to meet the required working hours, notification must be given to your supervisory as soon as the rota is issued. All hours worked will be in accordance with the Organisation of Working Time Act 1997. A flexible attitude towards hours worked and rotas is expected due to the nature of the business”.

**Contract Example 6**

“Your working hours will normally be between the hours of 7am and 12am Monday to Sunday. These may vary subject to the needs of the business. These hours shall be given in accordance with the Organisation of Working Time Act 1997. The work is expected to be regular but you are not guaranteed hours... You have the right to refuse or accept hours of work offered to you”.

## DRIVERS OF IF AND WHEN CONTRACTS AND LOW HOURS WORK

If and When contracts and part-time work offers flexibility to organisations to meet demands over a 7-day week. The RAI noted that firms increase their workforce as needed during business peaks on Thursdays, Fridays and Saturdays. The QNHS data show accommodation and food has the highest levels of employees working part-time, evenings, Saturdays and Sundays and it had the largest increases in Saturday and Sunday work between 2001 and 2014 (Figs. 5.4; 5.5; 5.6).

SIPTU claimed that having people on If and When and low hours is a mechanism for reducing employer costs. It argued that a “*defining factor*” contributing to If and When contracts was a cut in the employers’ PRSI contribution rate from 8.5% to 4.25% for employees earning less than €352 gross per week between 2011 and 2013. It argued the cut incentivised employers to provide fewer hours as a method of reducing employers’ costs. In addition, SIPTU stated that employers have sought to reduce labour costs by hiring new employees on If and When hours and replacing longer serving employees who had contractual rights to the minimum pay and conditions that were set by Joint Labour Committees<sup>9</sup>. In contrast, the IHF argued that its members would prefer to have a smaller number of employees on full-time hours than larger numbers on part-time hours and that “*nobody is trying to minimise hours people work*”. It stated that hiring a larger workforce on fewer hours does not reduce costs since each person has to undergo training such as health and safety. In addition, it claimed that employees have been resistant to increasing their hours because they are satisfied with their current part-time hours and commented that part-time work can facilitate the childcare responsibilities of women. The RAI commented that businesses cannot afford offering full-time jobs.

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<sup>9</sup> Joint Labour Committees (JLCs) are tripartite bodies which were established in sectors where collective bargaining was weak and pay was relatively low. They set minimum pay and conditions of employment for workers in particular sectors including hotels and catering. A constitutional case to the High Court by an employer against the Catering JLC resulted in the JLC being found unconstitutional, thereby rendering the regulations set by all JLCs as illegitimate. New employees hired in sectors previously covered by JLCs are entitled to the national minimum wage and other employment legislative rights but employees hired prior to the High Court case are entitled to the former JLC pay and conditions as they formed part of their contract.

## OPERATION OF IF AND WHEN CONTRACTS AND LOW HOURS WORK

### Terms and Conditions

In SIPTU's view, "most people" on If and When hours "have no conditions of employment other than hourly rate of pay". It argued that terms and conditions have deteriorated in hotels and restaurants since the Joint Labour Committee regulations effectively collapsed, with wage rates falling to the national minimum wage, fewer paid sick pay schemes or over-time pay rates including Sunday premiums. In contrast, the IHF stated that it categorises everybody in hotels as an employee and that part-time employees have the *pro rata* terms and conditions of full-time employees. It argued that there are significant protections available for employees and it promotes best practice beyond legislative minima. The RAI stated that Sunday premiums should be scrapped because Sunday is a "day of work not worship". From RAI's perspective, it has no issue with employment legislation but has concerns about the "implementation of the law", the interpretation of the law by NERA and is critical that "the employer is weighted with the responsibility of complying with employment law while the employee has no responsibility".

### Written Contracts

According to the RAI and IHF, their members provide staff with written contracts. SIPTU argued that written contracts are the norm in the hotel sector, which is characterised by a number of larger chains with human resource staff, but said that written contracts are rare in the food sector where there are smaller establishments with no human resource staff.

### Notice of Work

The RAI noted that rosters are developed a week in advance in the restaurant sector. In hotels, rosters are scheduled a "few weeks in advance" with additional hours offered during significant peaks in business, according to the IHF. SIPTU argued that workers may get more or less than 24 hours' notice for work and it noted worker experiences of being sent home during a shift. It believed employees have no discretion or input into scheduling of work hours. Conversely, the IHF argued that working hours are "typically dictated by employees".

## Social Welfare Entitlements

SIPTU argued that a significant number of employees in hospitality are reliant on social welfare, claiming that 12.5% are receipt of benefits, excluding the Family Income Supplement (FIS). It stated that a particular concern for employees is being able to get at least 19 hours work per week in order to access FIS. The IHF noted that many part-time staff access social welfare benefits but choose to work part-time and refuse additional hours of work.

## Exclusivity Clauses

There was consensus amongst interviewees that exclusivity clauses are not prevalent in employment contracts in hotels and restaurants.

## ADVANTAGES AND DISADVANTAGES FOR EMPLOYERS

SIPTU argued that If and When contracts offer a flexible and cost effective source of labour for employers. Both the RAI and IHF stated that a level of flexibility is required in terms of employees due to the peaks and troughs in demand during the week and year, especially with business peaking in the summer. The IHF noted that flexible and part-time work also allows employers access to quality staff that they might not have access to otherwise. However, it cited a significant administrative burden for employers in trying to manage additional staff and believes its members have a preference for more full-time staff.

## ADVANTAGES FOR EMPLOYEES

The IHF argued that “*part-time and flexible work*” are demanded by many employees, such as students or women with caring responsibilities, who may only want to work a certain number of hours or days a week e.g., 3 days a week or on weekends, to suit their “*life balance choice*”. It also believed that such work allows people to develop skills.

## DISADVANTAGES FOR EMPLOYEES

In the view of interviewees from employer organisations, there are no negative implications for employees on If and When contracts and regular part-time contracts with low hours. SIPTU stated that while If and When contracts may suit some, such as older people with

less debt, they do not suit the majority of employees and it termed them as “*completely exploitative*”. It referred to the “*unequal relationship*” between people on If and When hours and employers and claimed employees are fearful of taking employment law cases against their employer in case it will lead to negative repercussions. SIPTU claimed that people on If and When hours are penalised if they refuse work, get inferior terms and conditions and “*do not get a chance to build up skill or expertise*”. The MRCI was also critical of If and When contracts because of the associated unpredictable hours, unstable income and incompatibility with family life.

## **CONCLUSION**

SIPTU was highly critical of If and When contracts and noted the benefits of banded hours contracts used in the retail sector where there is a degree of flexibility for the employer and employee. The IHF and RAI believed there are no negative implications for employees working any number of part-time hours. Their concerns relate to a current lack of State investment in employee training and the shortage of skilled labour. Both organisations emphasise that hotels and restaurants need employee flexibility to meet the service demands of a 7-day week business and that it suits employees to be able to accept or refuse work offered.

## THE EDUCATION SECTOR

The QNHS data for the sectoral studies are depicted in Figs. 5.1-5.6 at the end of this Section and expanded tables are available in Appendix 3.

### Sectoral Context

There were 154,000 employees in education at the end of 2014 (QNHS). The Irish education system comprises of primary education, secondary education, third-level or higher education and further education. At primary level, schools are generally privately owned (run by religious orders or boards of management) but are State-funded. In 2014 there were 3,286 primary schools aided by the Department of Education and Skills (DES). At second-level there are three types of schools – secondary, vocational, and community and comprehensive. Both secondary and community and comprehensive schools are run by boards of management whilst vocational schools are established by the State and run by Education and Training Boards (ETBs). In 2014 there were 373 secondary, 256 vocational and 94 community and comprehensive schools aided by DES. Third-level education consists of universities, institutes of technology and colleges of education. In 2014 there were 7 universities, 14 institutes of technology (IoTs), 6 teacher training institutions and 4 other colleges aided by DES. There are 22,544 whole time equivalents (WTEs)<sup>10</sup> in third-level education (Higher Education Authority Key Facts & Figures 2013/14). There are also a number of privately-run independent colleges. Finally, further education takes place post-second-level but is not part of the third-level system. Programmes include post-leaving certificate (PLC) courses, adult literacy, and self-funded courses.

According to the latest official DES statistics, there are 96,010 WTE positions in the publicly-funded education sector. The majority of staff are employed as teachers, followed by staff in third-level institutions (universities and institutes of technology). The figures do not include categories of workers who are not considered public servants, for example workers in privately-run schools, and clerical, cleaning and caretaking staff. IMPACT estimated that there are approximately 11,000 ancillary staff in the education sector.

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<sup>10</sup> Whole time equivalent (WTE) is a unit that indicates the workload of an employed person. More than one person could make up one full WTE position.

Employment relations within the public sector including education are regulated by legislation and collective agreements between government, employer bodies and trade unions. The economic crisis has had a significant impact on workers in the public sector including education. The Government committed to a reduction in the public sector pay bill by reducing employment numbers and wage expenditure. As a result, since 2009, public sector workers have had pay cuts (ranging from 12%-22%), incremental pay freezes, reduction in numbers, restrictions on promotion and the renewal of fixed-term contracts and an increase in working hours. Of particular relevance to this report is the most recent collective agreement, The Haddington Road Agreement (The Public Service Stability Agreement 2013-2016), which has made a number of changes specific to the education sector. For example, the agreement provided for the establishment of expert groups to consider and report on the level of fixed-term and part-time employment in teaching and lecturing. At the time of writing, the Expert Group on Fixed-Term and Part-Time Employment in Primary and Second-Level Education in Ireland (also referred to as the Ward Report) has completed its report and issued a number of recommendations to address the issue of casualization at second-level, which are being implemented by the DES. The Expert Group considering third-level issues, under the Chair of Michael Cush, S.C. is in the final stages of completing its report. The main issue under consideration is the casualization of labour in third-level education, similar to the Ward Report.

### Working Hours

Drawing on data from the CSO, we find that the majority of employees in education (52%) regularly work 19-35 hours (Fig. 5.1) and this group consists of teachers and Special Needs Assistants (SNAs) at both primary and secondary level. A third of employees regularly work over 35 hours, mostly from third-level education. Less than 10% of employees regularly work 9-18 hours. This group consists of teachers who are job-sharing (11-hour contracts) and ancillary staff (cleaners, clerical staff and caretakers). The remaining 5% work either variable hours or less than 9 hours and this group would predominantly consist of ancillary staff and casual teachers.

Of the four sectors in the report, the education sector has the lowest level of constantly variable hours (Fig. 5.2). It also has the lowest proportion of employees regularly working 1-

8 and 9-18 hours per week with the majority working 19-35 hours (52%). It has the lowest proportion of employees regularly working over 35 hours (34%)<sup>11</sup>. In terms of non-standard working, education has one of the lowest levels of evening and weekend working in the country, though it recorded one of the highest increases in evening work between 2001 and 2014 (by 21%) (Figs. 5.4; 5.5; 5.6).

### Relevant Employment Arrangements

In interviews, a number of occupations were highlighted as having If and When hours or low hours – teachers, third-level lecturers, SNAs, adult education tutors and ancillary staff (secretaries, caretakers and cleaners). The focus in this report is on second and third-level education although many of the issues may also apply at primary-level and in further education. For teachers we found evidence of the use of If and When contracts, regular part-time contracts with low hours and a hybrid arrangement of guaranteed minimum hours and additional If and When hours. In relation to the use of If and When contracts, a typical scenario is where a school calls a person and asks them if they are available to cover a teacher's absence. In most instances these people would be qualified teachers. The use of If and When contracts are regulated and restricted to emergency relief, i.e., they can only be used to cover sick leave or maternity leave. Teachers are under no obligation to accept hours offered and refusal generally does not rule them out of being offered hours again in the future. The Ward Report suggests that there are 2,600 teachers (7.1%) at primary-level and 1,500 (4.7%) at post-primary-level that are substitute teachers who are employed as and when required by a school.

We noted earlier that education has a very high level of part-time hours. Regular part-time contracts are used particularly at second-level where a full teaching post (22 hours) is not available. For example, for a school to fulfil its curriculum needs, it requires a teacher to cover a small number of hours and will therefore only be in a position to offer a regular part-time contract with low hours. Relatedly a popular arrangement in teaching is job-sharing where teachers work half a full-time contract; at second-level this would be 11

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<sup>11</sup> When employees are asked in QNHS about whether they work full-time or part-time, 23% of employees in education describe themselves as part-time. However, based on the number of hours employees work, 63% of employees in education regularly work 35 hours or less (excluding constantly variable hours).

hours. We also find evidence of a hybrid arrangement with guaranteed low hours and additional If and When hours. This arrangement tends to be quite common among teachers at second-level.

As noted in the Ward Report, an estimated 35% of post-primary teachers are employed on a part-time or fixed-term basis (or are both part-time and fixed-term), with the corresponding figure in the primary sector at 9%. At third-level, there are no accurate figures available but estimates were supplied by trade unions and employer organisations. Some interviewees estimated that approximately 10% of employees in institutes of technology are part-time while a group known as Third Level Workplace Watch<sup>12</sup> estimated that up to 40% of teaching hours at third-level are delivered by part-timers, while most researchers are on temporary contracts.

There are over 11,000 WTE SNAs employed in the education sector with the majority employed at primary-level. An SNA's hours of work cover the full school day of the child with extra time at the beginning and the end of the day. For the purposes of calculating part-time hours, a divisor of 32 hours as a full-time SNA is used so SNAs receive the full 32 hours or a divisor of this – 8, 16, or 24 hours. The allocation of special needs hours is the responsibility of the National Council for Special Education (NCSE) whilst the distribution of those hours to SNAs is the responsibility of the school principal. Traditionally, employment was linked to the child they were assigned to, so once the child completed or left the school, the SNA's job was redundant. That situation has now changed with the introduction of a voluntary redeployment panel and voluntary redundancy package. For example, an SNA may opt to be put on a redeployment panel for a maximum of two years and they get first refusal on available hours or they may avail of the voluntary redundancy scheme.

For lecturers we find some evidence of If and When contracts but specific data as to the number of people on such contracts is unavailable. The Institutes of Technology Ireland (IoTI) said among their group (they represent all but one of the IoTs in Ireland) they do not have 'zero hour contracts' but that a very small number have variable hours contracts and a number of people are kept 'on the books' with the possibility of being offered hours in the

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<sup>12</sup> Third Level Workplace Watch describes itself as 'a collective of precarious workers organising to defend our rights to fair wages and working conditions' (<https://3lww.wordpress.com/>).

future. In such scenarios employees could have contracts of indefinite duration and would be notified of hours at the start of the academic year. We also find evidence of regular part-time contracts with low hours among this group. For example, employees could be offered a contract guaranteeing 2-5 hours per week to teach a particular course/module/programme and these hours would only refer to actual teaching time. In IoTs these hours would predominately be scheduled during the 'standard' working day whereas in universities they may also be during non-standard hours of evenings and weekends. In the IoT sector there are two types of arrangements - a *pro rata* contract and hourly paid assistant lecturer (HPALS). Two particular issues were raised by the trade unions in relations to HPALS – (1) the growing number of people employed as HPALS in the IoT sector and (2) a belief that little progress has been made on the commitment in The Haddington Road Agreement for the phased conversion of HPALS to *pro rata* Assistant Lecturers. We also find some evidence of the hybrid model of guaranteed low hours and additional If and When hours but data is unavailable on the numbers employed on hybrid contracts.

Adult education tutors were reported in interviews as having If and When contracts or hybrid contracts, with the latter more commonplace. As noted, there are approximately 2,000 WTE adult tutor posts and they predominantly work in further education, teaching FETAC courses, self-financing programmes, back-to-education programmes, PLC courses, and adult literacy. Working hours vary depending on the programme, the hours required, and the subject area. SIPTU noted that tutors often do not know how many hours they are going to work from week to week; these are very much as and when required contracts. It cited the example of a tutor who could be on If and When hours for many years. At the beginning of a teaching cycle, they are employed to teach a programme, which could involve for example 240 hours teaching, but the programme could be discontinued at any time if there is insufficient demand and funding to sustain it and the tutor most likely reverts to social welfare payments.

The final category of workers within the education sector includes ancillary staff such as school caretakers, cleaners and secretaries. Historically, people were employed by the government department and paid on nationally agreed rates of pay in line with rest of the public sector. However under the 1991–1994 Programme for Economic and Social Progress (PESP) agreement there was a shift to increase the grant funding to schools to allow them

introduce more secretarial, caretaking and cleaning services. The vast majority of ancillary staff are now employed via grant funding rather than the government department. This funding is a per capita grant. The effect of this is that ancillary staff are not public servants (except when it comes to public sector agreements and the Financial Emergency Measures in the Public Interest (FEPMI) legislation) and therefore there are no nationally agreed terms and conditions. The terms and conditions are effectively a local negotiation between such staff and the school. Secretary contracts are based on a 37-hour week whereas cleaners and caretakers would be based on a 39-hour week. However, it would be rare to have full-time secretaries; it is estimated that at primary-level secretaries work approximately 40% of full-time hours. Interviewees reported that caretakers and cleaners are more likely to work low hours in primary schools but there may be greater likelihood of full-time work in secondary schools. A common practice is that ancillary staff are employed under a hybrid model of guaranteed minimum hours and additional If and When hours.

### **DRIVERS OF IF AND WHEN CONTRACTS AND LOW HOURS WORK**

There were a number of drivers identified in interviews influencing If and When contracts, hybrid contracts and regular part-time contracts. For teachers both the Joint Managerial Body (JMB) and the Education and Training Boards (ETBs) outline that the driver of such arrangements is to ensure that the school meets its curriculum needs. If a teacher is sick or on maternity leave, schools need flexible arrangements to ensure substitute teaching. In other instances the only option for a school to meet the curriculum needs of the school is to offer a regular part-time contract with a low number of hours because a full set of teaching hours is unavailable. Another driver mentioned by interviewees is the supply of teachers. It was suggested that private colleges are producing too many teaching graduates, unlike public colleges which have restrictions, and that this has resulted in an oversupply of teachers and knock-on effects in terms of fewer hours available for teachers in employment.

Another driver of such arrangements noted by both employer groups and trade unions has been the move away from traditional full-time permanent posts towards fixed-term contracts (full-time and part-time) and contracts of indefinite duration. Interviewees commented that since the introduction of the Protection of Employees (Fixed-Term Work) Act 2003, employers are more cautious in recruitment decisions and it has become normal

practice to employ people in the first instance on a temporary, fixed-term basis rather than to permanent positions. The ETBs noted that since 2001, no permanent teachers have been recruited. Thus the career path for many teachers is to be offered a low number of hours (for example on a fixed-term contract) and hope to be offered further hours over time and reach a full teaching load of 22 hours. Trade unions argued that full-time work should be the 'norm' and any alternative contractual arrangements should be exceptional and justifiable.

From the employer perspective at third-level, the drivers of such arrangements relate to the need for flexibility for organisations and also the constraints within which they operate. Employer groups referred to the need for a flexible cohort of lecturers to meet the flexibility and diversity of programmes that are offered at third-level. Interviewees stressed that the provision of education at third-level is more diverse and complex than second-level and that, in some instances, the only way to meet those demands is through 'atypical' employment arrangements. For example, in the IoT sector, it was noted that for the types of programmes they deliver which are often very technical and specialised, there is a need to have people who are working in the subject area, such as an engineer, to teach. Interviewees from employer organisations argued that another driver of such arrangements is the lack of management tools such as compulsory redundancy which means that management must juggle part-time contracts.

Another key driver of such arrangements at third-level in particular has been the Employment Control Framework – this is a policy document on employment numbers and terms and conditions of employment issued by the Government to public sector organisations. The restrictions do not apply to primary and second-levels due to the use of pupil-teacher ratios to determine employment numbers. However, in third-level interviewees claimed that there has been a trend towards increasing student numbers but decreasing staffing levels. Under pressure to reduce headcount, and without the discretion and autonomy to manage numbers, employer organisations noted that this created a barrier to creating permanent contracts for non-core staff and led to an increase in hourly-paid contracts.

Employer groups highlighted that funding was a factor influencing the nature of employment contracts. They noted that non-exchequer funding has been increasing because exchequer funding has been decreasing and permanent staff cannot be employed on non-exchequer

funding. A typical example is the case of a lecturer who wins a large research grant from non-exchequer sources. This funding allows for the recruitment of an employee on a fixed-term contract to cover the teaching of the lecturer who undertakes the research but this employment. Thus, non-exchequer sources of funding are generating employment but not permanent positions. Funding is also the driver of If and When contracts, hybrid contracts and regular part-time contracts with low hours for adult education tutors and school ancillary staff. For example for adult education tutors, the programmes that they deliver are demand-led and for the purpose of meeting community needs. However, in some instances, courses are cancelled because the funding are not available to resource them. The ETBs noted the difficulties in managing the employment of tutors through tight budget constraints. Similarly, for the employment of ancillary staff, interviewees argued that the funding received from the Government is insufficient to cover their work and schools are compelled to fundraise from alternative sources. This in turn puts pressure on the terms and conditions schools can offer ancillary staff including the number of working hours.

## **THE OPERATION OF IF AND WHEN CONTRACTS AND LOW HOURS WORK**

In regard to schools, the JMB and ETBs noted that they encourage schools to provide letters of appointment with terms and conditions to teachers on If and When hours on their first day though trade unions argued that not all schools do this. Teachers on regular part-time arrangements also get contracts. In terms of the rate of pay, this is set out by the DES and a specific hourly rate applies. This rate applies up to 150 hours and is claimed on an online system. If a teacher works above this, they receive a non-casual rate of pay – all of which is laid out by the DES.

The notice given to teachers working on an If and When or hybrid contracts can often be very short. For example, a school requiring cover to replace sick leave would contact substitute teachers on the day of work. Other occasions when substitute teachers are required, such as to cover maternity leave, are more predictable and schools can give longer notice periods. Substitute teachers are sourced through various methods: (i) a principal may know of teachers in the area that are available to be called at short notice; (ii) some trade

unions have a panel of substitute teachers that schools use and; (iii) through websites such as [www.educationposts.ie](http://www.educationposts.ie).

Interviewees from employer groups and trade unions stated that schools often do their best to increase the number of hours for teachers on If and When and hybrid contracts. Trade unions highlighted the critical role of the school principal in establishing hours and noted examples where the principals have increased or decreased hours of teachers in the year leading to an entitlement to a contract of indefinite duration. Schools must offer increased hours to an existing teacher with 'less than full hours' before they can advertise for additional staff. In terms of working time, the hours of teachers on If and When arrangements and the additional hours for teachers on hybrid arrangements may be irregular, as it would be difficult for the school to predict sick leave or when the hours might be available. In interviews, there were reports of a growing trend towards teachers working in more than one school to increase their hours.

At third-level, those employed on a *pro rata* basis are likely to get a written contract. However, divergent opinions were articulated by the TUI and IoTI on whether or not HPALS get a written contract. The significant concern expressed by unions in regard to HPALS is that they only get paid for time teaching and not for preparatory work. According to trade unions, they do not enjoy such benefits as annual leave, sick leave or over-time pay and they have no access to an incremental scale or pension. The IoTI acknowledged that the HPAL contract is underdeveloped as they are not part of superannuation or ancillary benefits. However, they argued that the rationale for the difference between HPAL and *pro rata* contracts is that people on the *pro rata* contracts are expected to perform the full range of duties of a lecturer whereas the HPALS do not. This however was contested by the trade unions who argued that HPALS do, in many instances, have the full workload of a lecturer. The IoTI noted that this issue is likely to be addressed by the Expert Group on employment in third-level education. In terms of working time, lecturers are generally informed at the start of the academic year of their teaching hours.

In relation to exclusivity clauses the TUI noted that they were not aware of such clauses but suggested that, in reality, people do not have enough time for a second job due to the workload associated with the hours they have. The IoTI outlined that there are standard clauses in contracts in IoTs which stipulate that people on *pro rata* contracts cannot take up

a second job without the permission of the President of the IoT. Generally, however, the ability of the person to take up a second job is not unreasonably upheld. Instances where it might be upheld include working for a competitor or where the other job is full-time and there may be potential breaches of working time legislation. In addition, for HPALS, they cannot work at something that would bring the institute into disrepute but they do not need to be available outside of the agreed hours and do not need permission to take up other employment.

In regard to adult education tutors, the trade unions and the ETBs believed there should be nationally agreed terms and conditions. In relation to pay, interviewees noted that some tutors get paid a rate of €40 per hour, some get paid the national minimum wage (€8.65 per hour) and others work on a voluntary basis. Some tutors are part of a pension scheme (funding provided by the Government) whereas tutors teaching self-financed programmes are often excluded from the pension scheme. Recent changes in sick leave arrangements have meant that some tutors now have access to sick leave. As mentioned above, tutors are offered a number of hours but these may be discontinued cut at any stage.

There is a standard written national contract for SNAs outlining their terms and conditions, however, they are not considered public servants and therefore do not enjoy the same benefits as other public sector workers. For SNAs the critical concerns relate to redundancy and variability of hours. SNAs are liable for redundancy, however, the introduction of the redeployment and voluntary redundancy scheme has addressed some of the issues around this. In relation to the variability of their hours, IMPACT noted that the effect of the change in policy in the allocation of SNAs allows for the fragmentation of SNA hours – they cited the example of an SNA that may be on three quarters of a full-time SNA contract (24 hours) but could have their hours reduced to half of a full-time SNA (16 hours) the next year to allow for hours to be allocated to other SNAs. In IMPACT's view, the uncertainty of hours year-on-year for SNAs is a critical issue. Another issue highlighted by IMPACT in relation to SNAs was the lack of investment in their continuing professional development.

As noted above, the operation of employment arrangements for ancillary staff is very much dependent on grant funding received by the schools and local negotiation over terms and conditions. There are a small number of staff paid by the DES which are paid based on

nationally agreed rates in line with the rest of public sector but, for the vast majority of ancillary staff, there are no nationally agreed terms and conditions and they are generally not considered public servants. IMPACT argued that their public service role should be acknowledged by their inclusion into the public sector. Ancillary staff are generally paid for hours during the school year and would then often revert to social welfare payments during the summer.

There were reports that some schools use agencies and outsource the work of ancillary staff, largely driven by budget constraints. QNHS data show that agency work is low in education, accounting for 0.9% of employees or 17% of all agency workers.

## **ADVANTAGES TO EMPLOYEES**

The benefits of the arrangements discussed (If and When contracts, hybrid contracts and regular part-time contracts) were largely offered by the employer side in this study. For example, the IoTI and Irish Universities Association (IUA) commented that these contracts may suit people given their personal or family circumstances or where they already have a full-time job. The ETBI outlined that these arrangements were viewed as something of a stepping stone in the teaching profession whereby a person would teach a small number of hours, accumulate experience and hope that they impress the principal to be offered a full-time post. Similarly, the IoTI claimed that such arrangements are useful for people who are considering a change in careers into academia and allow them to gain experience. For lecturers and adult education tutors, these arrangements were also seen as offering an opportunity for a second, additional income. The unions interviewed overwhelmingly argued that while such arrangements may suit some people, such as those who work in education as a second job, they do not benefit the majority.

## **DISADVANTAGES TO EMPLOYEES**

A number of negative impacts of If and When and low hours were identified in interviews. The insecurity and lack of predictability of hours was a key negative implication which was facilitated by employees' lack of control over hours. The IFUT, IMPACT and the TUI argued that the insecurity of hours and pay makes it difficult for employees to plan a future. ASTI made reference to the impact of If and When hours on personal or leisure time as it is not

possible to predict working hours. A second issue raised by some unions was in relation to underemployment. The IFUT suggested that “99%” of people in “*precarious*” arrangements wanted to be full-time employees and it was critical of the trend towards so-called “*taxi-cab academics*” whereby academics are forced to juggle working in a few nearby universities. The IFUT suggested that an employee may not be dissatisfied with the number of hours but with the lack of predictability of when they are scheduled. They cited the example of ‘split shifts’ whereby somebody may be assigned one hour in the morning and one hour in the afternoon and they described this as being the worst of worlds as the employee may have to pay a child minder for a full day.

A second negative implication raised by interviewees related to financial implications, specifically, that a lack of predictable hours leads to unstable income. The IFUT argued that insecure workers cannot access financial credit, i.e., mortgages and loans. The ASTI, IFUT, ETBI and the TUI all emphasised the negative consequences of unstable earnings and lack of credit on employees’ personal lives. The IFUT outlined that this lack of financial security comes at a crucial age for employees when income is needed to fund major life events, such as buying a house, getting married or starting a family.

Unions argued that the uncertainty of hours and lack of job security was prohibitive to career planning. TUI referred to people “*putting their lives on hold*” until they get job security. Furthermore the ASTI commented that many teachers have left the country to pursue a career in teaching as it was not possible to have one in Ireland. ASTI noted the number of Irish nationals teaching in the UK, many of whom were forced to relocate because they had no career prospects in Ireland.

Another negative implication noted by trade unions is the lack of integration of employees on If and When and low hours into the working environment. IMPACT suggested that people on If and When and low hours felt like “*second class citizens*” and they perceived a lack of respect for their role. The IFUT argued individuals on these contracts are not treated as co-workers and they do not feel part of the team, department or school. This feeling of exclusion can be reinforced if individuals are asked to undertake duties outside of the normal role which the IFUT and IMPACT called “*donkey work*” or “*dirty work*”. As noted, interviewees highlighted that some employees are not classified as public sector workers,

e.g., SNAs, secretaries, caretakers and cleaners and they do not enjoy the same benefits as other public sector workers.

The issue of whether or not people on If and When contracts are protected by employment legislation was raised. While some interviewees said they did not know whether people on If and When contracts are entitled to employment rights, SIPTU believed they have no protection under employment law because of the absence of mutuality of obligation between employers and people on If and When contracts (i.e., no obligation to provide work or perform work).

Employer groups acknowledged that while If and When and low hours are suitable for people as a supplementary income, they are problematic if they a main source of income. For example prior to the economic recession, some employees had main jobs in other sectors and second jobs in education providing supplementary income. However, since the recession, some employees became redundant in their main jobs and now relied on lecturing jobs as a source of income. While these employees seek more hours of work, the IoTI argued that their lecturing jobs were always intended to be casual or part-time.

### **ADVANTAGES TO EMPLOYERS**

The main advantage identified by employer interviewees is that If and When contracts and regular part-time contracts with low hours allow organisations access to 'flexible' staff to match the flexibility of service delivery. They are tools which address increasing demand and fluctuations in demand. In particular, they are advantageous for schools that require cover for unexpected absences by teachers and have to find substitutes often on the day. The IoTI also noted that offering such arrangements allows them access to people who are working full-time, particularly in specialised areas, but can share their skills with students.

Trade unions were also keen to stress, as they see it, the benefits to employers. These include cost savings (SIPTU) and more engaged employees as people are much more willing to do whatever management request (ASTI, TUI, and IMPACT). The ASTI suggested that some schools may favour giving several people low hour contracts rather than a smaller number of people a high number of hours because they can ask those people to do more. Teachers with If and When hours may feel obligated to perform tasks outside their normal

duties because a position may become available in the school. Trade unions referred to teachers undertaking duties previously done by post-holders in the school (as noted above one of the impacts of the cutbacks in the education sector has been the ban on promotions so schools cannot fill particular posts). The TUI made reference to this in terms of identifying a growing trend of the fragmentation of hours – giving hours to two or three people rather than one person. They believed this has the effect of keeping those people in competition with each other. The rationale, according to trade unions, is that an organisation can potentially attain greater productivity from two teachers on 11-hour teaching contracts than one person on a 22-hour contract. Similarly, IMPACT commented that SNAs can feel compelled to undertake tasks outside their duties such as cleaning and painting. Trade unions suggested requests by schools for staff to do work outside their role has become “*normative behaviour*”. The IFUT argued that universities are primarily driven to recruit low hour and If and When staff because of pressures from the DES and the Higher Education Authority (HEA).

### **DISADVANTAGES TO EMPLOYERS**

Employer organisations and unions both acknowledged the disadvantages of If and When and low hours. The IUA noted that valid questions arise about student engagement when people are only paid for the hours they are actually teaching. Some employer groups (DES, JMB and ETBs) noted the difficulties and complexities of administering such arrangements. There is more administrative work involved in managing a larger workforce, particularly in relation to completing forms for social welfare entitlements such as Jobseeker’s Allowance. However, some organisations noted that whilst managing these arrangements certainly involves a cost, it is not a huge cost.

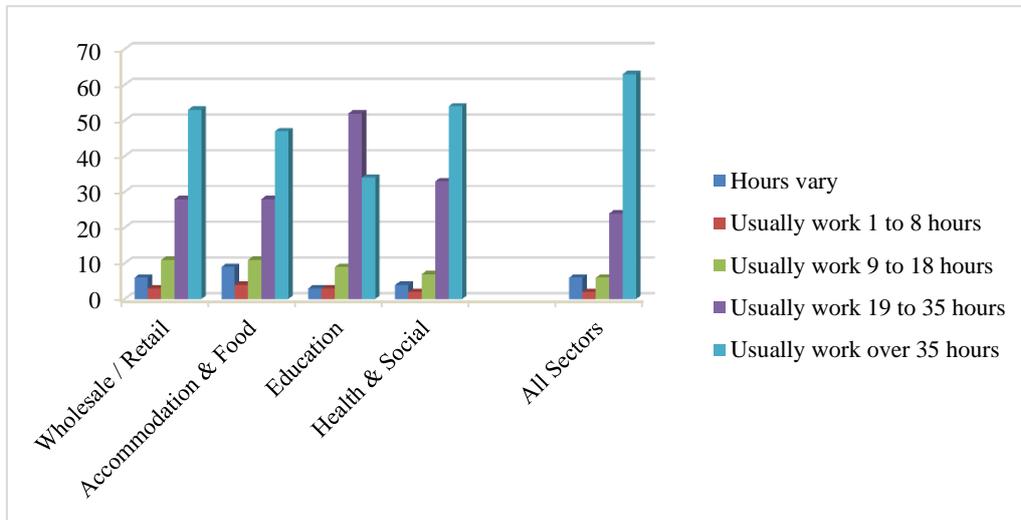
According to employers, it can be difficult to gain employee commitment from people on If and When and low hours, which in some ways contradicts the trade unions’ view that such arrangements result in employees doing more work, though for negative rather than positive reasons. The IoTI noted that it a factor inhibiting employee commitment is the employer’s lack of commitment to the employee. The issue of quality was mentioned by interviewees. For example, the IUA expressed concern about the quality of teaching if a large proportion of teaching is carried out by casual staff and not by full-time academics that

are research active. However, they noted that the preference of universities is not towards casualization but to attain the right staff mix to fulfil the business and educational needs of their institution. Trade unions cited the short-termism of such arrangements. The IFUT argued that insecure contracts discourage lecturers from challenging opinions and using academic freedom and that this would be to the detriment of students' education and universities' reputation.

### **CONCLUSION**

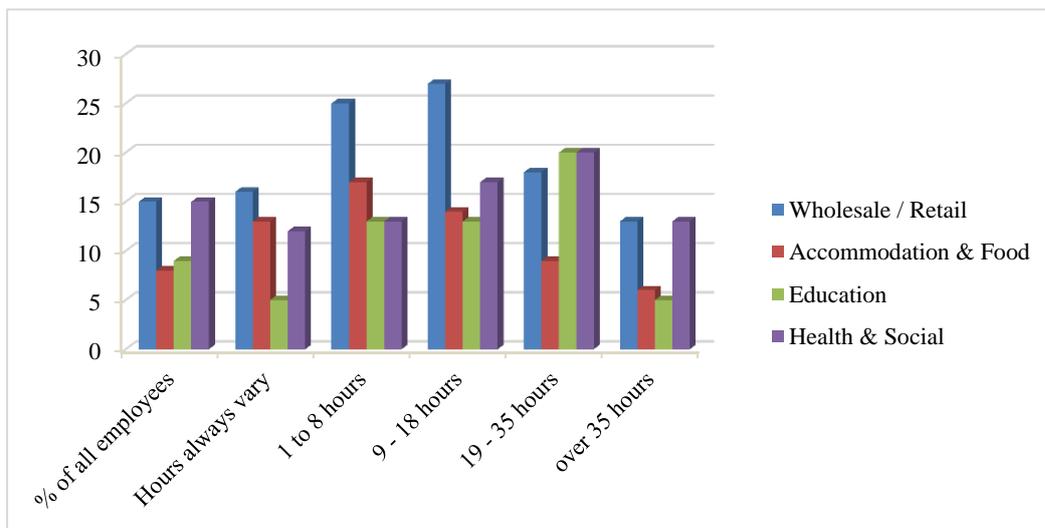
If and When contracts, hybrid contracts and regular part-time contracts with low hours are prevalent amongst substitute teachers, SNAs, school ancillary staff, adult education tutors and third-level lecturing. Employer organisations argued that such employment arrangements are necessary due to fluctuations in demand or funding for services. They believed such hours provide an opportunity for some employees to develop skills and can meet employees' demand for 'flexible' hours. Trade unions highlighted the negative effects of unpredictable work for employees in terms of unstable income, a lack of integration into the workplace and an imbalance of power in the employment relationship. In addition, trade unions noted that, in the case of second and third-level teaching, the pay for teaching hours does not compensate for the actual hours worked.

Figure 5.1 Percentage of Employees in Each Sector by Working Hours



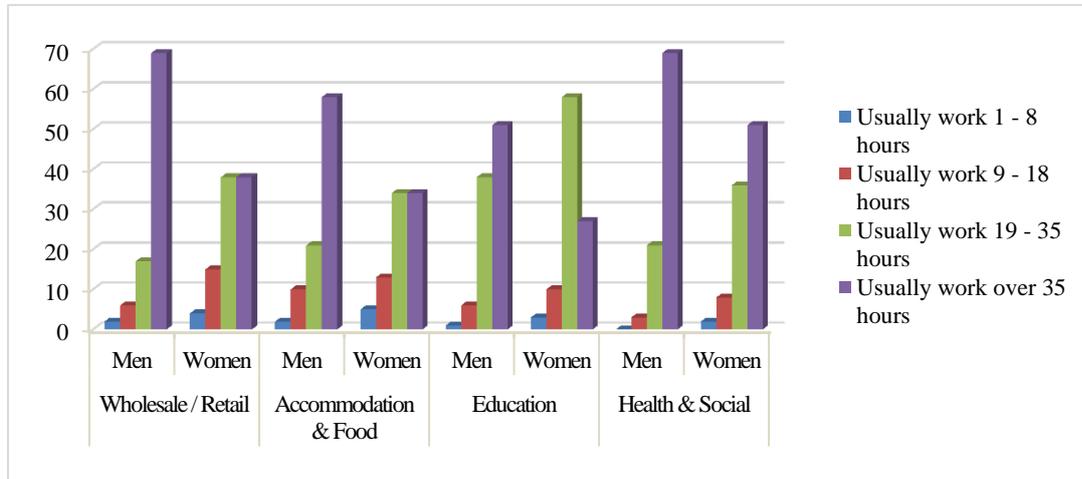
Source: QNHS 2014

Figure 5.2 Percentage of Employees in Different Hours Categories by Sector



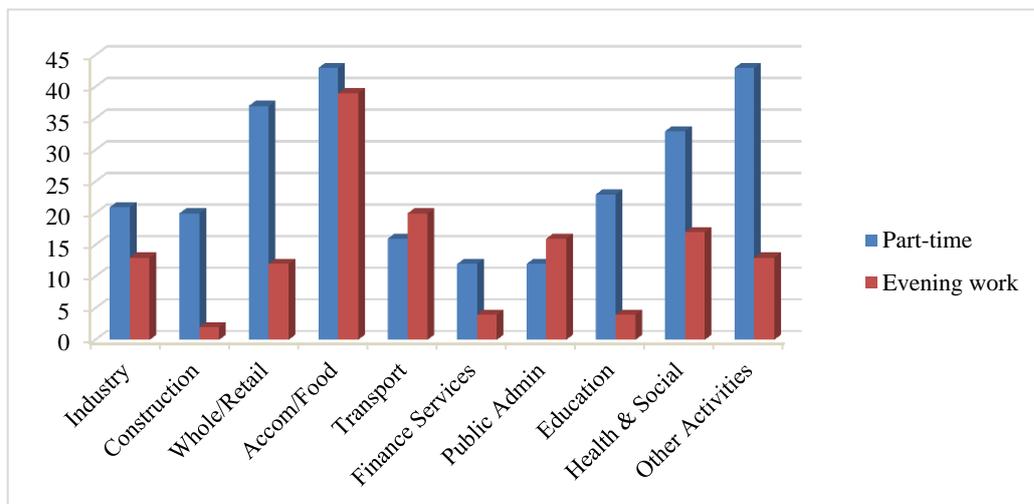
Source: QNHS 2014

Figure 5.3 Percentage of Men/Women in Each Sector by Regular Working Hours



Source: QNHS 2014 (Q4)

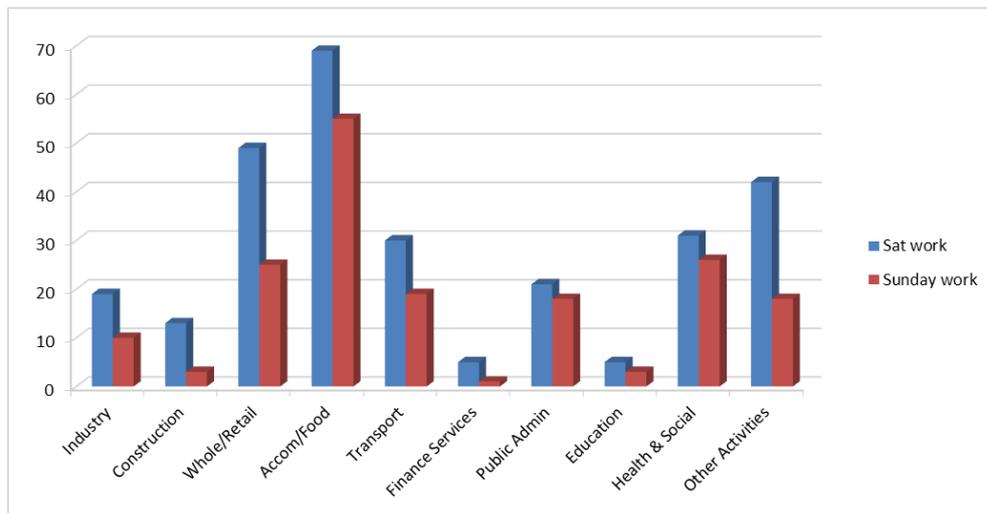
Figure 5.4 Part-Time and Evening Work by Sector



Source: QNHS 2014 (Q4)

Note: Excludes Agriculture, Forestry & Fishing, Information & Communication, Professional, Scientific & Technical Activities, Administrative & Support Services.

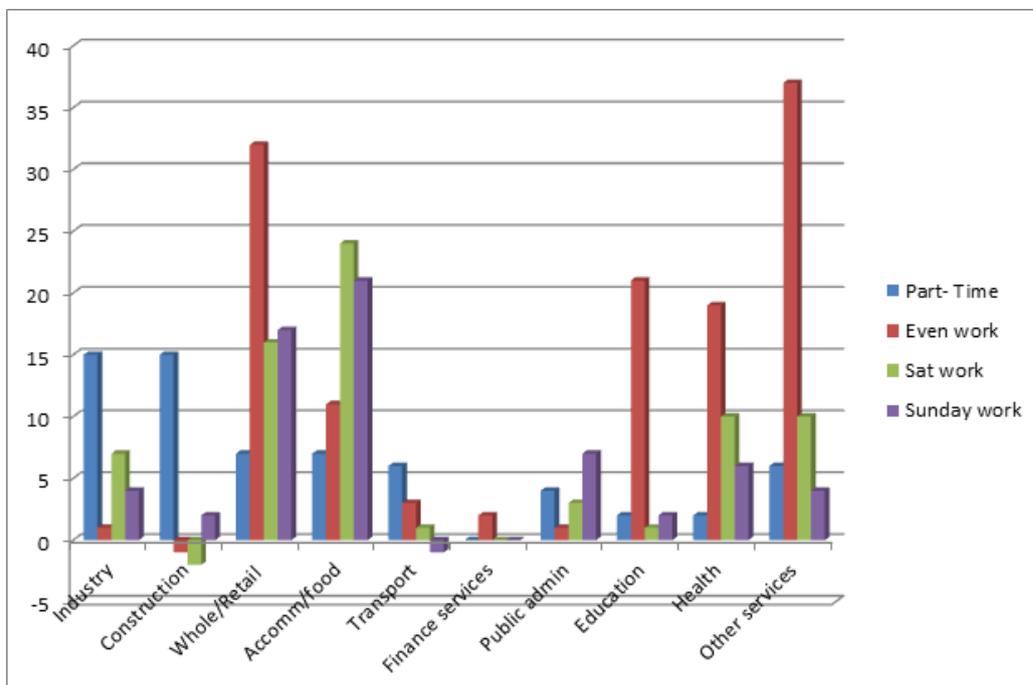
Figure 5.5 Weekend Work by Sector



Source: QNHS 2014 (Q4)

Note: Excludes Agriculture, Forestry & Fishing, Information & Communication, Professional, Scientific & Technical Activities, Administrative & Support Services.

Figure 5.6 Percentage Changes in Non-Standard Working by Sector 2001-2014



Source: QNHS 2001 (Q2) and 2014 (Q4)

Note: Sectoral data reporting on changes over time from 1998-2014 use NACE Rev. 1 codes. Sectoral data for 2014 only use NACE Rev. 2 codes.

## SECTION 6: THE LEGAL POSITION ON ZERO HOURS CONTRACTS AND IF AND WHEN CONTRACTS

### INTRODUCTION

The purpose of this Section is to assess the legal situation pertaining to If and When contracts and zero hours contracts. The Section presents an overview and analysis of types of contract that come within the terms of reference of the study. In analysing the legal position of an employment contract, the starting point is to establish the employment status of the individual. Irish case law pertaining to employment status has established the centrality of the concept of mutuality of obligation. This section pays particular attention to the concept of mutuality of obligation with regard to If and When contracts and zero hours contracts. A useful example of this is the 2008 case of *Minister for Agriculture and Food v Barry and Ors*<sup>13</sup> which will be discussed in more detail below. Whilst recognising that mutuality of obligation is not of itself ‘determinative’ of employment status, this case clearly established that mutuality of obligation is the first essential test of the existence of a contract of employment. Jurisprudence in the fundamental area of employment status with respect to contracts off/for service is well developed through cases such as the *Barry case*, *Henry Denny and Sons (Ireland) v Minister for Social Welfare*<sup>14</sup> and *Castleisland Breeding Society Ltd v Minister for Social and Family Affairs*<sup>15</sup> and many others. To date, there have been a limited number of cases relating to the specific issue of If and When contracts in Irish courts and other institutions dealing with employment rights. From the cases that do exist, an emergent issue is the lack of clarity around employment status for individuals working under these contracts. Thus, in this Section we make reference to UK cases which are particularly insightful as jurisprudence in the area of zero hours/If and When-type contracts is more developed there<sup>16</sup>. The discussion in this Section has also been informed by interviews with nominees of the Employment Law Association of Ireland and international legal experts on zero hours contracts in the UK.

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<sup>13</sup> [2008] IEHC 216

<sup>14</sup> [1997] IESC 9

<sup>15</sup> [2004] IESC 40

<sup>16</sup> As noted in Section 1, a zero hours contract in the UK could require an individual to be available for work or not require them to be available for work.

## ZERO HOURS CONTRACTS IN THE IRISH CONTEXT

The Organisation of Working Time Act 1997 is the only Act that refers to zero hours contracts. Section 18 states:

This section applies to an employee whose contract of employment operates to require the employee to make himself or herself available to work for the employer in a week—

- a. A certain number of hours (“the contract hours”), or
- b. As and when the employer requires him or her to do so, or
- c. Both a certain number of hours and otherwise as and when the employer requires him or her to do so.

Under Section 18 an employee with a zero hours contract is entitled to compensation if the employer does not require them to work in a given week where they are required to be available. They are entitled to compensation amounting to 25% of the time they were required to be available or 15 hours pay, whichever is the lesser. The fundamental issue is that zero hours employees have an obligation to make themselves available to an employer. With respect to notice given by the employer regarding work, Section 17 of the Organisation of Working Time Act 1997 sets out the requirements regarding notification to the employee of the times at which he/she will be required to work during the week. Generally, an employee is entitled to a minimum of 24 hours’ notice of his/her roster for the week, although Section 17(4) allows for changes as a result of unforeseen circumstances.

A person on a zero hours contract who comes under the scope of Section 18 (thus deemed an employee) should also be covered by the raft of employment legislation. This is because of the existence of mutuality of obligation, i.e., the obligation of an employer to provide work and the obligation of an employee to perform work. This would also imply that such employees would be entitled to a contract of indefinite duration (CID) once they fulfil the criterion of length of service stipulated by the Protection of Employees (Fixed-Term Work) Act 2003. However, it would also seem to be open to the employer to give a CID with no guaranteed hours, as per the terms of the employee’s original contract. This could be in spite of the fact that the employee may in actuality work a regular number of hours. As previous sections in this report have shown, zero hours contracts within the meaning of the Organisation of Working Time Act 1997 are not common. There is evidence of what are

commonly known as If and When contracts and the remainder of this Section focuses on their legal position.

## IF AND WHEN CONTRACTS

Generally speaking a person employed on an If and When basis will be offered work if and when the employer requires them. The employer is under no obligation to offer work to an individual at any time and the individual can refuse or accept the work as they choose. Thus, the individual is also under no obligation. Such contracts usually stipulate the rate of pay that will apply when the individual does accept and perform the work but do not guarantee any set number of hours. Effectively this means that hours can fluctuate and an individual may be called upon for no hours or a number of hours in a given week. The available work can vary from day-to-day, week-to-week and month-to-month. The period between assignments can also vary. It has been established that people on If and When contracts may not be entitled to the compensation under Section 18 of the Organisation of Working Time Act 1997. Entitlement to claim hinges on whether the employer ‘requires’ the individual to be available, or if the contract provides for a set number of hours (or a combination of both) (Grogan, 2014). An illustrative case in this instance is that of *Contract Personnel Marketing Ireland v Marie Buckley* (DWT1145)<sup>17</sup>. A fundamental issue that arises in *Buckley* and other cases is that of ‘mutuality of obligation’ (the obligation of the employer to provide work and the employee to perform that work). If such mutuality does not exist then the individual may be deemed not to be an employee. This was clearly highlighted in the 2011 High Court case of *Brightwater Selection Ireland v Minister for Social and Family Affairs*<sup>18</sup> where Gilligan J stated:

‘The mutuality consideration is by no means a determinative test, but is an irreducible minimum of a contract of service. Although the existence of mutuality of obligation is not determinative, without mutuality no contract of service can exist. It would be logical, therefore, for a court or tribunal to begin their analysis of the employment relationship by determining whether such mutuality exists and then inquire further into the relationship’.

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<sup>17</sup> Labour Court in *Contract Personnel Marketing Ireland vs Marie Buckley* (DWT1145, 19<sup>th</sup> April 2011)

<sup>18</sup> [2011] IEHC 510

The issue of employment status thus underpins the issues that arise with respect to If and When contracts. If a person on an If and When contract is deemed not be an employee, then the question arises as to what exactly their status is. This is important as a person's employment status has implications for the protections they may or may not enjoy under various pieces of employment legislation. We turn now to a discussion of employment status.

## **THE IMPORTANCE OF EMPLOYMENT STATUS**

An important distinction in employment law is the contractual status of a person with respect to their employment. Traditionally a person could be deemed to be either an independent contractor working under a contract for services or an employee working under a contract of services. An independent contractor would not normally be covered by much of the protective employment legislation (Cox *et al.*, 2009) such as relating to statutory notice periods, unfair dismissal, redundancy, working time, maternity protection, adoptive leave, carer's leave, parental leave, and transfer of undertakings. In recent years the situation with regard to contractual/employment status has become more complicated with the emergence of varying forms of contracts in the workplace. This has coincided with a demand by employers for more flexibility with regard to employment most notably in relation to numerical flexibility, i.e., the ability to increase/decrease workforce numbers in line with fluctuating demands. Thus, a wide range of contract types and categories of contractual status has developed over time. This led to the European Commission developing a Green Paper on modernising labour and it stated:

'The traditional binary distinction between "employees" and the independent "self-employed" is no longer an adequate depiction of the economic and social reality of work' (Commission of The European Communities Brussels, 2006: 10).

The following section explores and explains in more detail the types of contracts that are prevalent in Ireland and how they affect the rights and obligations of employees and employers.

## Genuine v 'Dependent' Entrepreneurs

A question that has arisen in recent years is to what extent are many individuals contractually defined as self-employed really self-employed? A person may sign a contract stipulating that they are an independent contractor or they may be labelled as such by a contracting company or agency but the reality of the situation may be that the individual is in fact very dependent upon work provided by a single employer. In some situations the designation of self-employed seems clear and accurate. For instance, an electrician may provide services to a large number of clients utilising his/her own equipment, be responsible for the economic risk and benefit from the profits and may provide a substitute when not available. In other situations the designation is not as clear-cut: another electrician might provide their own equipment and be responsible for their own tax and financial affairs but might for many years work only for one business and have to comply with instructions from that business, i.e., they may be economically dependent on that employer. In Ireland and other countries there is a growing cohort of workers who do not actually own a business but who are being classified as self-employed or contracting for services. The implication of such a situation is that such people sit outside the protection of much of the employment legislation. Commentators (Collins *et al.*, 2012; Barnard, 2012; Leighton and Wynn, 2011; Albin, 2013) and experts interviewed for this study (Kerr, Grogan, Deakin, Ewing) have questioned the idea that such individuals genuinely fit the category of 'self-employed'. In many cases they could not be said to be truly 'in business on their own account', for example, they do not possess business assets, they work under the 'control' of the employer, they pay tax through PAYE and they may not send a substitute to replace them. In some cases they are required to sign exclusivity clauses preventing them working for other companies. Thus the 'economic reality' is that they are in fact often very *dependent* upon the contracting employer. Indeed in Germany the nomenclature of 'dependent entrepreneur' has been used to describe this category of workers.

## Contractor or Employee?

A situation can arise where there is a dispute between parties as to whether a person is in fact an employee or an independent contractor/self-employed. In the past such cases were most often taken by the Revenue Commissioners or Social Welfare for tax and social insurance purposes (see for instance *Henry Denny and Sons (Ireland) v Minister for Social*

*Welfare and Castleisland Breeding Society Ltd v Minister for Social and Family Affairs*). In other countries however, alongside the development of more atypical employment forms, there is an increasing number of cases being taken by individuals or groups seeking to clarify their employment status from a rights point of view even in situations where an individual has signed a contract expressly indicating their status as self-employed. In these situations courts have examined the reality of the situation to determine status. There are a number of tests that have been developed over time through case law that are utilised in this regard. Examples of these are: the control test, integration test, economic reality test, entrepreneur test and test of mutual obligation. In Ireland there is also a code of practice for determining the employment or self-employment status of individuals<sup>19</sup>. A key test in this regard seems to be that of mutuality of obligation. In the 2008 case of *Minister for Agriculture and Food vs Barry and Ors*, Edwards J stated:

*'The requirement of mutuality of obligation is the requirement that there must be mutual obligations on the employer to provide work for the employee and on the employee to perform work for the employer. If such mutuality is not present, then either there is no contract at all or whatever contract there is must be a contract for services or something else, but not a contract of service. It was characterised in Nethermere (St Neots) Ltd v Gardiner,[1984] ICR 612 as the "one sine qua non which can firmly be identified as an essential of the existence of a contract of service". Moreover, in Carmichael v. National Power PLC, [1999] ICR, 1226 at 1230 it was referred to as "that irreducible minimum of mutual obligation necessary to create a contract of service." Accordingly the mutuality of obligation test provides an important filter. Where one party to a work relationship contends that that relationship amounts to a contract of service, it is appropriate that the court or tribunal seized of that issue should in the first instance examine the relationship in question to determine if mutuality of obligation is a feature of it. If there is no mutuality of obligation it is not necessary to go further. Whatever the relationship is, it cannot amount to a contract of service. However, if mutuality of obligation is found to exist the mere fact of its existence is not, of itself, determinative of the nature of the relationship and it is necessary to examine the relationship further'.*

The above quote is important as sets down the importance of the mutuality test and notably it draws on key principles set down in two leading UK cases. The principle of mutuality was

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<sup>19</sup> Code of Practice for Determining the Employment or Self-Employment of Individuals. Available [<http://www.revenue.ie/en/practitioner/codes-practice.html>].

reaffirmed in the 2011 High Court case of *Brightwater Selection Ireland v Minister for Social and Family Affairs* as noted earlier. In both cases the judgements consolidated an aspect of the earlier *Denny* case; that each case must be considered in the light of its particular facts and of the general principles which the courts have developed and that there is no 'one size fits all' test, thus the area of employment status remains complex.

### Implications of Employment Status for If and When Contracts

While the above employment status issues have not been tested extensively in Ireland specifically with respect to If and When contracts, these cases establish the fundamental principles by which any contract is assessed. The principles suggest that an individual on an If and When contract will almost certainly not be deemed an 'employee' within the accepted legal definitions that exist. This is because If and When contracts fall short of fulfilling the mutuality of obligation test. This has already been presented above in relation to the case of *Minister for Agriculture and Food vs Barry and Ors* and the *Brightwater* case. Thus an 'employee' will be covered by employment legislation such as unfair dismissals and redundancy payments whereas someone not deemed to be an employee, on the basis of an If and When contract, will have no such protection. It is interesting to note, however, that the Employment Equality Acts 1998 to 2011, the National Minimum Wage Act 2000 and the Payment of Wages Act 1991 utilise wider definitions and thus confer rights to a broader spectrum of individuals than just employees with a contract of service. For example, the Employment Equality Acts 1998 to 2011 covers contracts whereby an 'individual agrees with another person to personally execute any work or service for that person'.

A secondary issue is that some employment laws require continuous service, however, if someone is deemed not to be an employee they can never satisfy the test of continuity of service. A recent illustrative case is that of *Contract Personnel Marketing Ireland vs Marie Buckley* (DWT1145). In this case Ms. Buckley sought to take a claim under Section 18 of the Organisation of Working time Act 1997. Her trade union argued on her behalf that, contrary to the Act, she was not paid for a period when she was required to be 'on call'. However, the Labour Court deemed her not to be an employee on a zero hours contract as defined by the working time legislation but to be in 'casual employment'. There was a clause in the contract which indicated that she was under no obligation to accept work

offered by the company and the company did not undertake to guarantee any hours to her. Thus, she was deemed not to be covered by Section 18 of the Organisation of Working Time Act. The implication of this is that individuals working under contracts in Ireland that have a specific clause indicating a lack of 'mutuality of obligation' will not be covered by the Organisation of Working Time Act 1997. There are also many illustrative cases in which the mutuality test has been applied in cases involving If and When contracts in the UK. For instance, the *O'Kelly and Others v Trusthouse Forte plc*<sup>20</sup> and *Carmichael and Leese v National Power plc*<sup>21</sup>. In the latter, Carmichael was deemed not to be an employee due to the absence of 'that irreducible minimum of mutual obligation necessary to create a contract of service' (Lord Irvine of Lairg in Carmichael).

The issue of testing contractual status has already been discussed above with respect to those people who are contractually defined as self-employed. In Ireland, this also has relevance for If and When contracts. Thus, if a court can determine that, notwithstanding the If and When element, mutuality *actually* exists in the relationship, then the person may be deemed to be an employee. It would seem from the decision in *Barry and Brightwater* that to establish mutuality is the first hurdle and once this is established then a court would apply the other relevant tests to determine status. For instance, a person may contractually agree that they must make themselves available for an agreed minimum of hours even if it transpires that no work becomes available, or they may contractually agree that they will not undertake to work for anyone else in an agreed period and will only be available for work for the particular employer with whom they have the contract. In such an instance the person may be deemed to fulfil the test of mutual obligation as they are displaying an obligation to take the work.

A recent illustrative Irish case is *Ticketline trading as Ticketmaster v Sarah Mullen*<sup>22</sup>. In this case the Complainant Sarah Mullen commenced working for Ticketline trading as Ticketmaster as a box office assistant in June 2012. She signed a contract stating that she was working under an If and When-type contract. She continued working until January 2013 after which she was assigned no further work. The claimant appealed a Rights

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<sup>20</sup> [1984] QB 90 (CA)

<sup>21</sup> [1999] ICR 1226 (HL)

<sup>22</sup> Labour Court, *Ticketline trading as Ticketmaster v Sarah Mullen* DWT1434 10<sup>th</sup> April 2014

Commissioner decision to the Labour Court and there was a hearing in November 2013. The complainant alleged that the respondent infringed Section 18 of the Organisation of Working Time Act 1997 in not giving her compensation for hours she maintained she was required to be available. She alleged that although there was no requirement to be available in her written contract, the actuality of the situation was that there was a verbal condition agreed between her and a Ms. Anderson that she was required to be available. She had records of correspondence between herself and the company in which she cited the alleged verbal agreement and in which she queried why work was not been provided to her. Ms. Anderson never replied to her. Instead a Mr. Kavanagh replied and contradicted her assertion of a requirement to be available. At the Labour Court hearing Ms. Anderson was not present. Mr. Kavanagh represented the company and contradicted the claimant's assertion of a verbal agreement that she was required to be available. In finding for the claimant, the Labour Court held that Mr. Kavanagh was not party to the discussions between the claimant and Ms. Anderson and was therefore not in a position to give evidence contradicting the claims. The Labour Court held that on the basis of uncontroverted evidence, it accepted that the claimant's contract was administered as though she was required to be available for work at all times. Thus she was covered by the Act.

Another useful case is the 2012 UK case of *Pulse Healthcare Ltd v Carewatch Care Services Ltd & 6 Others*<sup>23</sup>. In this case Carewatch Care Services were contracted to provide a 24-hour critical care package for a lady with severe physical disabilities. The contract with Carewatch was then terminated and taken over by Pulse Healthcare. The claimants' services were dispensed with. Pulse argued firstly that the claimants were not employees of Carewatch as there was no mutuality of obligation. Secondly, they did not have sufficient continuity of employment to claim unfair dismissal. The claimants had signed an If and When-type contract agreement with Carewatch. However, on appeal to the UK Employment Appeals Tribunal (EAT), it was determined that the contract did not reflect the true nature of the relationship and there was mutuality. On subsequently applying other tests to determine status, the EAT determined that the claimants were in fact employees.

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<sup>23</sup> Appeal No. UKEAT/0123/12/BA

## IF AND WHEN CONTRACTS - ADDITIONAL LEGAL ISSUES

As well as the fundamental issue of employment status, If and When-type contracts have elicited a substantial debate here in Ireland, in the UK and other jurisdictions and there has been interesting analysis of such contracts. Some of this is summarised here.

### The 'Umbrella Contract' and Continuity of Service

Many people on If and When contracts work exclusively but intermittently for one employer. This has given rise to some complexity from a legal point of view. A number of important UK decisions have established that such individuals may actually satisfy the tests to be under a contract of service each time they take up work for an employer (Adams *et al.*, 2015; Keane, 2014). However, in the intervening period between working, they may not satisfy the test for mutuality, or as Deakin (2014) comments, there is no contractual nexus with the employer between assignments. The implication here is that if such individuals can establish a satisfactory level of obligation or a 'contractual nexus' for the periods between the actual work, they may be working under what has been termed an 'umbrella' or global' contract. This is important as many rights conferred by employment legislation require a minimum length of service. However, due to the often intermittent nature of the work and breaks in employment, such continuity can be difficult to establish (Keane, 2014). The leading UK case of *Carmichael and Leese vs National Power plc* is a useful example. In this case tour guides were employed on an If and When basis. The reality of the situation was that they regularly worked on average up to 25 hours a week and rarely, if ever, refused work offered. The House of Lords found that there was an absence of an 'irreducible minimum of mutual obligation' to create a contract of service. The House of Lords did accept, however, that the tour guides may have been under a contract of service each time they performed work (i.e., each assignment), a phenomenon subsequently termed a 'spot contract' (Adams and Deakin, 2014) The House of Lords nevertheless concluded that there could be no overarching or 'umbrella contract' linking the assignments and granting them continuity of employment. Contrast this with the case of *Pulse Healthcare Ltd* which has already been referred to. In this case, the UK EAT examined the reality of the employment relationship, and having found that the claimants were in fact employees, it also determined that they had global contracts and thus continuity for the purposes of claiming protection under relevant legislation.

## Contracts of Indefinite Duration

An interesting potential implication of continuity in the Irish context is the possibility that individuals who could establish continuity under the ‘umbrella’ or ‘global’ contract principle might then be entitled to contracts of indefinite duration under the terms of the Protection of Employees (Fixed-Term Work) Act 2003 providing they met the length of service criteria within that Act (see *HSE vs 90 Named Complainants*)<sup>24</sup>. However the contract of indefinite duration would be based on the hours worked by the individual and this may be no hours or a low number of hours. There is thus the potential that people would get tied into a zero or low hours contract of indefinite duration.

## ‘Boilerplate’ Clauses

Adams and Deakin (2014) refer to the use of ‘boilerplate’ clauses which might be inserted in contracts with the intention of refuting any mutuality of obligation or the existence of an umbrella contract. Indicative of such clauses would be those which make it clear that the employer is under no obligation to provide work and the individual is under no obligation to accept. Similarly clauses can be inserted to indicate that the individual may provide a substitute when they are not available, implying there is no obligation on the individual to provide their personal service. However, it should be noted that the mere existence of a written term does not preclude courts from examining the reality of the relationship to establish status regardless of the written contractual terms. A good example of this is in the Irish High Court case *Electricity Supply Board v Minister for Social Community and Family Affairs and Others*<sup>25</sup>. In this case a group of meter readers had contracts explicitly stating that they were engaged as independent contractors. In finding that the meter readers were in fact employed under contracts of service, Gilligan J. stated:

*‘In the circumstances the fact that the written document describes meter readers as “independent contractors” cannot be regarded as determinative’.*

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<sup>24</sup> *HSE vs 90 Named Complainants*. Labour Court Determination no FTD0611, 16<sup>th</sup> January 2007. In this case the HSE had accepted that the complainants were employees. The issue in dispute was the hours on which the CIDs should be based.

<sup>25</sup> [2006] IEHC 59

In this case (among other factors taken into account) a written statement in the contract allowing the meter readers to provide substitutes was not accepted by the Appeals Officer or the High Court. Among the reasons for this decision were the facts that substitutes had to be approved by the ESB and provided with an ESB ID card by the ESB. A similar case in the UK context is that of *Autoclenz Ltd v Belcher & Ors*<sup>26</sup>. Mr Justice Smith in the UK Supreme Court placed more emphasis on the ‘*actual intentions between the parties*’ and concluded that the written clauses allowing for substitution were in fact ‘sham’ clauses. In this case the claimants, who worked in car valeting, were found to be employees.

### Exclusivity Clauses

Although there is little evidence of these clauses in employment contracts in the Irish context, they have raised debate in other jurisdictions, notably the UK. An exclusivity clause in a contract prohibits the individual from working for others.

## LOW HOURS

As noted in previous Sections of this report, there is no common national legal definition of ‘low hours’. Someone working what they consider to be a low number of hours may have a regular part-time contract, an If and When contract or a hybrid contract with contracted hours and additional hours on an If and When basis. Someone with a regular part-time contract is a part-time employee in Irish law and thus enjoys the protection of employment legislation. As people with hybrid contracts have some guaranteed hours, they are part-time employees. An issue can arise if an employee with a hybrid contract becomes entitled to a CID. It is likely that a CID will be based on the contracted hours rather than regular hours worked. For example, if someone with a hybrid contract is guaranteed 10 hours per week but regularly works 20 hours, they will likely receive a CID based on 10 hours per week. While the CID gives some security of tenure, it can effectively ‘tie’ an employee into a low hours situation.

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<sup>26</sup> [2011] UKSC 41

## DEVELOPMENTS AND COMMENTARY ON IF AND WHEN/ZERO HOURS CONTRACTS

As well as analysing the current situation pertaining to If and When/zero hours contracts and the overarching issue of employment status, a number of commentators have put forward possible ways of encapsulating a wider cohort of people within protective legislation. Some such as Davidov *et al.* (2015) examine the possibility of an intermediate category, others (Keane, 2014; Freedland, 2006) explore the possibility of re-conceptualising what constitutes a contract of employment, while other commentators identify the possibility of regulatory changes limiting contractual freedom with respect to If and When-type contracts (Collins *et al.*, 2012). These are discussed briefly in the following sections.

### An 'Intermediate Status'

In recent times the 'blunt' or binary distinction between a person being deemed an independent contractor or an employee has been examined by commentators (European Commission, 2006; Adams *et al.*, 2015; Davidov *et al.*, 2015; Albin, 2013; Leighton and Wynn, 2011; Freedland, 2003, 2006). The concept of a category of worker that falls between employee and independent contractor has been also recognised by the European Commission (2006) in its Green Paper:

'The concept of 'economically dependent work' covers situations which fall between the two established concepts of subordinate employment and independent self-employment. These workers do not have a contract of employment. They may not be covered by labour law since they occupy a "grey area" between labour law and commercial law. Although formally 'self-employed', they remain economically dependent on a single principal or client/employer for their source of income'.

European countries that have recognised an 'intermediate' category (to varying degrees) in national legislation include Germany, Italy, Canada, Spain and the UK. Davidov *et al.* (2015:14) comment

'Instead of an 'all or nothing' approach, it is acknowledged in these legal systems that some workers present only some characteristics of 'employees' but not others, and that it is justified to apply only some labor laws to them'.

In the UK, for example, the concept of 'worker' is recognised through the Employment Rights Acts 1996. A worker in this instance is defined in Section 230(3) as:

*'An individual who has entered into or works under (or where employment has ceased worked under)*

- a) A contract of employment; or*
- b) Any other contract whether express or implied and (if it is express whether oral or in writing, whereby the individual undertakes to do or perform work personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or undertaking carried on by the individual'.*

Individuals categorised as 'workers' in the UK are covered by limited aspects of protective employment legislation such as the minimum wage and holidays but are excluded from protection relating to unfair dismissals, redundancy and minimum notice. In Ireland there is no specific 'intermediate' category.

### ***Implications of Creating an Intermediate Group***

It could be argued that in the countries, such as the UK, that have adopted some form of intermediate status there is an attempt to separate those 'dependant entrepreneurs' from genuinely self-employed, to recognise that they may be more reliant on a particular employer and to confer them with a certain amount of rights.

*'The "targeted approach" adopted in the UK to establishing differing rights and responsibilities in employment law for "employees" and "workers" is an example of how categories of vulnerable workers involved in complex employment relationships have been given minimum rights without an extension of the full range of labour law entitlements associated with standard work contracts' (European Commission, 2006).*

However, other commentators have argued that such an approach could well render a vulnerable group more vulnerable in the long-term. By statutorily creating a separate group with fewer rights than those with 'employee' status, an incentive might be created for some employers to siphon recruits into this intermediate tier. Thus a 'grey zone' (Burchill *et al.*, 1999) in relation to employment rights would be copper-fastened. A further criticism of

such an approach would be that it could have the effect of rendering a complex area of law with even more complexity (Collins *et al.*, 2012).

### Reconceptualising the Employment Relationship

Some commentators examine the possibility of redefining the legal tests used for determining status. Freedland (2006) presents the idea of simplifying the issue around a single concept such as a 'personal employment nexus' (such as that already used in Irish employment equality legislation). Such commentators assert that while the category of 'worker' in the UK may have limited the size of this group, determining the difference between a genuinely independent contractor and a dependent entrepreneur remains difficult. They conclude that while the test of personal performance of work remains important, the issue of economic dependence on a single employer should also be regarded as 'critical' (Collins *et al.*, 2012: 224). These authors also raise the question as to whether the solution is to abandon the concept of 'employee' and extend the scope of laws such as unfair dismissal to all 'workers'.

Keane (2014) suggests that a possible way forward is that evidence of a commitment to an ongoing relationship should be the key test rather than evidence of an express promise that underlies the test for mutuality. He cites L.J. Stephenson in *Nethermere (St Neots) Ltd v Gardiner*<sup>27</sup>

*'I cannot see why well founded expectations of continuing (work) should not be hardened or refined into enforceable contracts by regular giving or taking of work over periods of a year or more'.*

In other words, where there is a realistic expectation based on a continuing and consistent ongoing situation over a period that work will be provided, and that work will not be refused, then this should be used as a test for an ongoing mutual understanding of commitment/expectation.

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<sup>27</sup> *Nethermere (St Neots) Ltd v Gardiner* [1984] ICR 612,629 (CA)

## Limiting Contractual Freedom

The comparative review in Section 7 notes examples of countries where the use of zero hours work is limited in regards to length of time or group of workers. Regulations in some countries also require some form of justification for using zero hours work.

## CONCLUSION

The European Commission (2006) asserts that

‘the emergence of diverse forms of non-standard work has made the boundaries between labour law and commercial law less clear. The traditional binary distinction between ‘employees’ and the independent ‘self-employed’ is no longer an adequate depiction of the economic and social reality of work’.

The distinction has certainly given rise to greater complexity with respect to newer forms of contract especially If and When/zero hours contracts. A key implication of the uncertainty in this area is that there may be many individuals in the labour force who erroneously think they are employees with access to a raft of legal rights and conversely there may also be individuals who may have employment rights though they think they do not (Burchell, Deakin and Honey, 1999). Collins *et al.*, (2012), in considering the question of status, conclude that there is a substantial group of people who work under contracts that transfer the economic risks to them and they accept the work because they are vulnerable and have no alternatives. This view is echoed by other commentators (Lambert, 2008; Barnard, 2014). The issue for Government is balancing the need to protect such workers against the demands for more flexible forms of work.

## **SECTION 7: COMPARATIVE REVIEW OF THE REGULATION OF ZERO HOURS WORK IN EUROPE**

### **THE INCREASING ATTENTION ON ZERO HOURS WORK**

The issue of zero hours work has received increasing levels of attention in a number of European countries in recent years. In the UK, the significant increases in the numbers of employees reported to be working zero hours (from 250,000 employees in 2012 according to the ONS, to an estimate of 1 million in 2013 according to the Chartered Institute for Personnel Development (CIPD), and subsequently 697,000 according to the ONS in 2014) prompted public debate on the regulation of zero hours work. In Finland, zero hours contracts have not been given recognition in legislation but have emerged in practice in recent years. The Labour Force Survey in Finland found approximately 83,000 employees (4%) were on zero hours contracts in 2014. It has been suggested that the numbers of zero hours contracts (*timanställningar*) have increased in Sweden but they are not accurately measured in national statistics. As zero hours work has received more public policy interest, a number of countries have sought to regulate or re-regulate such working. In 2014, the Netherlands, which has extensively regulated various types of zero hours work, introduced further legislation limiting the extent to which collective agreements can deviate from legislative minima. In 2012 and 2013, Italy introduced a range of provisions on zero hours work (termed on-call) including provisions that only older and younger age groups can be employed on an on-call basis and there is an entitlement to full-time employment once time limits on on-call work are exceeded. In Finland, a Citizens Initiative allows the public to submit a bill to parliament when it has the support of 50,000 signatures. Such an initiative was undertaken in January 2015 and a bill proposing to ban zero hours work and introduce a minimum 18 hours work per week for part-time employment will be considered by parliament. In France, since July 2014, part-time employment contracts must include a legal guaranteed minimum of 24 hours work per week with the exception of students under 26 years of age and agency workers. The UK is somewhat of an outlier in the trend towards regulation because it recognises zero hours contracts, and has recently introduced legislation on the issue, but the regulation is of a relatively minimal nature. In May 2015, the Government introduced legislation to make exclusivity clauses in employment contracts (which prevent someone from working for a second employer) legally unenforceable.

Separately, the Northern Ireland Executive has prepared a set of proposals to regulate zero hours work for approval by the Assembly, including a right of someone on a zero hours contract to request a fixed hours contract where they have been working fixed hours for six months.

## **WHO ARE ZERO HOUR WORKERS INTERNATIONALLY?**

Data is readily available from the UK and Finland on the characteristics of those with zero hours contracts. At a sectoral level, zero hours contracts are prevalent in both countries in accommodation/food, health/social work and wholesale/retail, and are also in transport/arts/other services in the UK. Given the predominance in these sectors, it is unsurprising that personal service and sales workers have higher levels of zero hours work and that these occupations and sectors tend to have low levels of pay. As these sectors tend to be female dominated, higher percentages of women are on zero hours contracts than men. The majority of zero hour workers tend to work part-time hours (averaging 22.6 hours a week in UK, 23 hours in Finland) with a substantial minority working full-time hours (33% in UK, 32% in Finland). Higher proportions of younger age groups work on zero hours contracts in both countries.

## **REGULATIONS ON ZERO HOURS WORK**

There is significant difficulty in analysing zero hours practices and regulations in other countries for a number of reasons. First is the challenge of deciphering the various terminology used to describe such practices in other countries such as on-call, casual, zero hours or standby. For example, on-call work in other countries can equate to zero hours/If and When working or could be used to describe an on-call element to a regular contract such as doctors' on-call. Second, some countries have provided special legal status to a range of 'atypical' contractual arrangements e.g. Norway legally recognises very short part-time contracts of under 10 hours per week and Hungary recognises short-term seasonal and casual work. Third, many European countries have additional regulations on working hours in collective agreements. Lastly, the pattern of working hours across countries is influenced by a range of factors including the economic environment, employment law, tax and social welfare policies, product market policies, societal preferences and unionisation

and these factors can have varying effects on men/women and occupations (see Causa, 2008). For example, in interviews, Deakin noted that collective bargaining has inhibited the growth of zero hours work in Germany but a change in tax policy there incentivised the growth of 'mini jobs' (low wage jobs). Legislation on working time generally in other European countries can be more prescriptive and more restrictive than working time law in Ireland. For example, in France, a part-time employee can only get reduced hours at the employees' request or through collective agreement; in Norway, work schedules must be agreed between the employer and workplace employee representative, and; in Belgium, Austria, France and Germany, Sunday work is only allowed in certain instances. The particular welfare and regulatory contexts influence the extent of zero hours work and the experiences of workers, thus a more comprehensive comparative review would require a deeper analysis of such contexts. Within these limitations, we note in summary form legislative regulation of zero hours work in Europe, for which some information is available.

- (i) Countries where 'zero hour contracts' do not exist and these include Slovenia, Spain, Croatia, Poland, France and Denmark.
- (ii) Countries where zero hour work practices (variously termed) are recognised and significantly regulated and these include the Netherlands, Italy and Germany.
- (iii) Countries where zero hours work (variously termed) are recognised and lightly regulated and these include the UK and Norway.
- (iv) Countries where zero hours work has not been recognised as a separate contractual arrangement but can form part of 'regular' contractual arrangements including Estonia and the Czech Republic.

Where countries have legislated zero hours work, regulations have in general centred on the following (Table 7.1):

- (i) limiting the length of time an employee can undertake such work – Italy, Hungary, Belgium and Slovakia.
- (ii) limiting the scope of zero hours work to certain age groups or sectors – Italy and Hungary.
- (iii) minimum wage/hour guarantees – Germany and the Netherlands.
- (iv) notification procedures to a state body/government – Italy and Hungary.

In addition to legislation, collective bargaining has a significant role in regulating working hours and, in some countries, they can modify legislative minima. On average 62% of employees in the EU are covered by a collective agreement compared to 44% in Ireland (Fulton, 2013), though Ireland's figure is likely to have fallen since the collapse of national wage agreements. Collective bargaining has been used in other countries to regulate non-standard work generally by limiting the extent of non-standard contracts and providing for equal pay and treatment for non-standard workers. Multi-employer collective bargaining is common in European countries at inter-sectoral and sectoral levels. Sectoral level agreements feature in France, Austria, Portugal, Finland, Slovenia, Sweden, the Netherlands, Italy, Norway, Germany, Cyprus and Luxembourg (Fulton, 2013). In some countries, sectoral collective agreements contain the bulk of regulations while in others, they provide a framework for workplace agreements. Adams and Deakin (2014: 36) note that the "use of on-call and other flexible forms of work is subject to regulation through collective bargaining or codetermination-type mechanisms in several European countries". For example, the cleaning sector collective agreement in the Netherlands stipulates that on-call work must be for an indefinite period or for a fixed period of up to six months, and that 8 hours of work must be guaranteed per 4-week period. In Finland, the collective agreement for the hotels, catering and leisure sector stipulates that for part-time employees the employer and employee will either agree the fixed minimum working hours or the average minimum working hours in a 3-week period. If an employee's working hours increase above those in the employment contract, an agreement must match actual working hours to the contract. Additionally, the employer is obliged to pay compensation for the working hours not given to the employee (unless due to employee absence). Collective agreements in Europe have been a key mechanism by which working time flexibility has been introduced (see Keune and Galgóczi, 2006).

In interviews, Deakin, Ewing and Kerr noted that collective bargaining, particularly at sectoral level, is a more effective mechanism for regulating zero hour work than legislation. Deakin cited the example of France which has a minimum income level, sectoral level collective bargaining and workplace bargaining on flexible work practices between either trade unions and employers or works councils and employers. These legal experts argued that sectoral bargaining allows social partners to agree a tailored solution whereby regulations are customised to the needs of an industry and can lead to improved

enforcement. Sectoral bargaining has the benefits of providing stability of conditions for larger numbers of employees and provides a level playing field for employers, by stabilising costs and preventing unfair competition through undercutting of working conditions.

**Table 7.1 The Regulation of Zero Hours-Type Work in Europe**

Country	Zero Hours Work Practice	Key Legislative Regulations
Italy	On-call work	<p>Any use of ‘on-call’ must be justified by reference to production peaks and organisational needs; it may not be relied upon to supply organisations general needs.</p> <p>If contracts have an on-call allowance, the worker must accept the work offered and the allowance is related to the wage set in the national collective agreement.</p> <p>Notice to the employee of work at least 1 working day in advance.</p> <p>On-call contracts cannot be used in public administration.</p> <p>Employers who intend to use on-call contracts are obliged to notify the Ministry of Labour.</p> <p>Only workers aged under 25 or older than 55 can be employed on on-call contracts.</p> <p>On-call contracts cannot be used for work over weekends, holidays and bank holidays.</p> <p>Limits on the use of on-call contracts to 400 working days for each employee over 3 years. The contract then automatically converts into a full-time indefinite contract.</p>
Germany	On-call work	<p>Employers and employees may agree that the employee performs work according to the actual needs of the business.</p> <p>The agreement must specify the duration of weekly and daily working hours. If the duration of weekly working hours is not fixed by the parties, 10 weekly working hours are deemed to be agreed. If the duration of the daily working hours is not fixed by the parties, the employer is bound to call the employee for at least 3 consecutive hours per day.</p> <p>In legal literature it has been argued that section 12 of the Act on Part Time and Fixed-Term Contracts does not apply if under the agreement the person called has a right to refuse work. In that sense one could claim that a zero hour framework agreement is admissible under German law. However, the moment the person starts working an employment contract would come into existence which then</p>

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		would have to comply with the provisions on fixed-term contracts (Wass, direct contact).
Netherlands	3 types of 'on-call' contracts: Min-max; Standby; Zero hours	<p>Min-max – average working hours or minimum and maximum hours.</p> <p>Standby - employee not obliged to be available for work.</p> <p>Zero hours - employee required to work when called.</p> <p>If an employee has worked on a regular basis for his or her employer for a period of 3 months (weekly, or at least 20 hours a month), then the law automatically presumes a contract of employment.</p> <p>If an employment contract has lasted for at least 3 months, the contracted work in any month is presumed to amount to the average working period per month over the 3 preceding months.</p> <p>Minimum wage guarantee for 'on-call' workers for less than 15 hours per week, under which they are entitled to at least 3 hours pay for each work period.</p> <p>Collective agreements regulate on-call work.</p>
France	Na	<p>Zero hours contracts are prohibited for the majority of workers. The Social Chamber of the Court of Cassation has ruled that an employment contract requires an employer to provide work for an employee.</p> <p>Guaranteed minimum of 24 hours work per week for part-time contracts or equivalent in a period provided by a collective agreement. Exceptions are for people under 26 years of age in education and temporary agency workers. Reduced hours available at the request of an employee or by collective agreement. Part-time contract must include the number of worked hours in a week or a month and the distribution of the working time.</p>
UK	Zero hours contracts	Exclusivity clauses are legally unenforceable.
Sweden	On-call contracts	Minimum hours in terms of 'on-call' contracts rarely guarantee a minimum number of working hours per week and are not legally regulated. Legal regulation exists for very short part-time contracts (less than 10 hours per week); short fixed-term contracts and employment without formal written contracts.

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Norway	On-call work	<p>Agency workers can have ‘contracts without any guaranteed income’ and direct employees can have ‘on-call’, zero hours contracts.</p> <p>No legal regulations at present on the above contracts.</p>
Finland	Zero hours contracts not legally recognised but exist in practice	<p>A citizens petition to ban zero hours work, provide a guaranteed minimum of 18 hours work per week for part-timers and improve notice for work is to be considered by the Finnish Parliament.</p>
Hungary	Intermittent casual work known as ‘simplified employment’	<p>Simplified employment covers two types of work:</p> <ol style="list-style-type: none"> <li>1. casual work, with a maximum of 5 consecutive days, 15 days per month and 90 days per year for each employer–employee relationship;</li> <li>2. seasonal work in agriculture and tourism, with a maximum of 120 days per year for each employer–employee relationship.</li> </ol> <p>The maximum number of casual workers a company can employ is limited by the average number of full-time employees it had in the previous six months.</p> <p>Employer notifies tax authority before using simplified employment.</p>
Slovakia	On-call contracts and ‘agreement contracts’	<p>On-call contracts used for a maximum 8 hours per week and maximum of 100 working hours per a calendar year.</p> <p>Agreement contracts for work performed outside an existing employment relationship and are used for work of up to 10 hours per week.</p>

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Belgium	Zero hours contracts not recognised in law. Flexible employment regulated	<p>Minimum 3 successive hours for period of employment and not less than a third of the working time of a full-time worker per week. Exceptions stipulated in law and in sectoral collective agreements.</p> <p>Intermittent work recognised through specific short-term contracts of 2 consecutive days to cover peak periods in the tourism sector. An employer may make use of such contracts for up to 100 days per year, and must pay a lump sum of €7.50 per hour (up to €45 per day) in social security contributions. Each worker may work for up to 50 days per year on intermittent work.</p> <p>Collective agreements can provide for variable working hours although employees must know beforehand when they have to work.</p>
Estonia	On-call as part of a regular work contract, not as a separate type of contract	On-call time only in addition to regular working hours. An employee can be available to an employer to perform work of an unforeseeable and urgent nature for a maximum of 30 hours per month. The employer pays remuneration for on-call time to be determined by collective agreement of an employment contract.

Sources: Direct contact with the international experts (listed in Appendix 1); Adams and Deakin, 2014; Eurofound, 2010, 2015; CESifo, 2006; European Labour Law Network, 2014; Collective Agreement for the Hotel, Restaurant and Leisure Industry 2015-2017, Finland; the Working and Rest Time Act 2001, Estonia.

## **SECTION 8: RECOMMENDATIONS ON POLICY FOR THE MINISTER FOR BUSINESS AND EMPLOYMENT**

### **SUMMARY OF FINDINGS**

Zero hours contracts within the meaning of the Organisation of Working Time Act 1997 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. If and When hours can take different forms in employment contracts: some contracts only provide If and When hours while other contracts have some minimum guaranteed hours with additional hours offered on an If and When basis. The QNHS does not link working hours to types of employment contracts but the data indicate that 5.3% of employees in Ireland have constantly variable working hours. In regard to low hours work, there is no common definition of such work amongst the organisations we interviewed. QNHS data show that 1.8% of employees regularly work 1-8 hours per week, 6% regularly work 9-18 hours and 24% regularly work 19-35 hours. Some employer organisations argued that employers cannot afford to provide full-time work, while others argued that part-time employees do not want additional hours. QNHS data indicate that people working constantly variable part-time hours and people regularly working 1-8 hours per week are the most likely to want more hours.

Employer bodies argued that organisations require If and When hours to meet their flexibility requirements and that such hours suit the needs of people working them. Trade unions and NGOs argued that If and When hours are detrimental for the majority of people working them primarily because of the unpredictability of the number and scheduling of hours. As people working If and When hours can have low or unstable earnings, they can access a number of social welfare supports and the Department of Social Protection has highlighted the rising cost to the State of such supports, particularly Family Income Supplement (FIS). In examining the legal position of people on If and When hours, we found that their employment status is not clear. Legally, they are unlikely to be deemed employees and this raises questions about the extent to which they are covered by employment law.

## **AIMS OF RECOMMENDATIONS**

The overall objectives of the recommendations are to address the key concerns of employer organisations (to retain flexibility) and of trade unions and NGOs (to improve the predictability of hours). The recommendations below have been developed on foot of issues raised by representatives of organisations interviewed, legal experts interviewed and research on working hours regulations in other European countries. There has been a trend in recent years internationally towards increased regulation of zero hours work where they exist. The Irish regulatory framework with regard to working hours generally is currently less prescriptive than in other European countries, many of which regulate hours through social partner dialogue. The recommendations provide a floor of rights for people working non-guaranteed hours as well as the opportunity for social partners to develop working hours practices customised to their industry's needs. We conclude this section with examples of good practice on the scheduling of working hours in fluctuating services in Ireland and abroad.

The recommendations are made in the following areas:

- The provision of a statement of terms and conditions of employment
- Legislation on minimum guaranteed hours, notice of offers of work, notice of cancellation of work and hours of work per employment periods
- Sectoral collective bargaining as a mechanism to regulate working hours
- The employment status of individuals on If and When hours
- Issues for consideration by the Department of Social Protection
- Government policy on childcare
- Policy coordination across Government departments
- Ongoing data collection

## RECOMMENDATIONS

### Statement of Terms and Conditions of Employment

Currently, under the Terms of Employment Information Act 1994 to 2012, employers are obliged to provide employees with a written statement regarding their terms and conditions within 2 months of commencing their employment. The recommendation below aims to enhance the clarity between parties about the nature of the employment relationship from the start of employment and to ensure both parties accurately reflect the nature of working hours in a statement on the terms and conditions.

#### Recommendation 1

We recommend that the Terms of Employment Information Act 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.

#### Recommendation 2

We recommend that the Terms of Employment Information Act 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.

#### *Legislation on Minimum Guaranteed Hours to Reflect Patterns of Work*

The legislative provisions we recommend below on contracted working hours are intended to regularise the pattern of work undertaken by an individual over a period of time to provide some stability to the individual while retaining the flexibility for the employer to offer additional hours of work. The recommendations below are designed to address the two types of employment relationship where If and When working is prevalent, (i) where all hours are If and When and (ii) where an employee has some guaranteed minimum hours with additional hours on an If and When basis.

The recommendations are also designed to address the deficiencies in the operation of Section 18 of the Organisation of Working Time Act 1997. Section 18 provides for a level of compensation for 'zero hours' employees where they are not required by an employer in a week. However, Section 18 is largely irrelevant because people with non-guaranteed hours work under If and When arrangements. The timelines used in the recommendations below are designed to exclude people on a contract for seasonal work so that employers can recruit additional staff for peak business periods. The recommendations also aim to ensure that minimum guaranteed hours do not become static. A periodic review is recommended to ensure that employers and employees have the opportunity to reflect on how employees' actual working hours change over time.

### **Recommendation 3**

We recommend repealing Section 18 of the Organisation of Working Time Act 1997 and introducing 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.

### **Recommendation 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 offered the additional hours for which they are required to be available. The employee should be compensated for 25% of the possible available additional hours or for 15 hours, whichever is less.

#### *Notice of Working Hours*

Employer organisations interviewed noted that in the majority of employments, rosters are scheduled at least on a weekly basis. The recommendation below aims to provide a floor of notice for employees while recognising that there will be instances where minimal notice is unavoidable, such as in the case of sick leave replacement.

#### **Recommendation 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.

#### *Notice of Cancellation of Hours of Work*

Good practice is that employees are provided with reasonable notice of cancellation of agreed hours of work.

#### **Recommendation 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.

#### *Hours of Work per Period of Employment*

Working hours have evolved to become highly fragmented. Employees in some employments, such as in community care, hospitality and education, can work 'split shifts' with a mixture of morning, afternoon and evening work in one day. The next recommendation allows for the employer to maintain such flexible arrangements while

giving some minimum level of certainty to employees as to the length of an employment period.

### **Recommendation 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.

#### *Sectoral Collective Bargaining*

Research concludes that collective bargaining can be a more effective mechanism for regulating working conditions than legislation, the latter of which can be crude and not take into account specific circumstances of industries. We noted in Section 7 that sectoral collective bargaining is extensive in many European countries and provides the opportunity for employer organisations and trade unions to customise employment regulations to the particular needs of a sector. Sectoral bargaining has the benefits of providing stability of conditions for larger numbers of employees and providing a level playing field for employers.

### **Recommendation 8**

We recommend that employer organisations and trade unions which conclude a sectoral collective bargaining agreement can opt out of the legislative provisions included in recommendations 4-7 above and 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.

### **Recommendation 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 (see Tables 8.1-8.3 for examples).

*The Employment Status of People Working If and When Hours*

Section 6 discussed the legal position of zero hours contracts, within the meaning of the Organisation of Working Time Act 1997, and If and When contracts. While employers and state bodies may treat people with If and When contracts as employees, the reality of their status in employment law is not clear-cut. The fact that, under an If and When contract, an employer is not required to provide work and the individual is not required to perform work is critical in the eyes of the law. This absence of mutuality of obligation means the individual is not classified as an employee. Another substantial issue is identifying what constitutes continuous service for people on If and When contracts. We reviewed developments regarding the employment status of If and When contracts in other countries and in legal commentary. The issue of employment status is a complex one and will require further consideration.

**Recommendation 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.

*Issues for Consideration by the Department of Social Protection*

This report pointed to the important interactions between people on If and When contracts and low hours and social welfare benefits<sup>28</sup>. Employer organisations, trade unions, NGOs and Government departments highlighted a number of issues concerning social welfare. In summary, these issues were:

- The use of days rather than hours to calculate eligibility to the Jobseeker's Scheme
- A proposal by a number of trade unions and NGOs that the Government should develop measures to address organisations that have large numbers of employees on state income support
- The impact of changes in employers' PRSI contribution rates on the types of jobs created

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<sup>28</sup> We note the first Report of the Advisory Group on Tax and Social Welfare examined issues of child benefit and family income supports including Family Income Supplement.

- Trade union and NGO concerns that people feel pressured by the social protection system to accept jobs with non-guaranteed or low hours
- Employer organisation concerns that individuals refuse additional hours of work so as to retain social welfare entitlements.

### **Recommendation 11**

We recommend that the Department of Social Protection put in place a system to consult with employer organisations, trade unions and NGOs with a view to examining social welfare issues such as those mentioned above.

#### *Development of Public Policy on Childcare*

The lack of suitable childcare provision in Ireland was repeatedly raised in this study by interviewees. This was identified as contributing to the fact that women in particular work in jobs with non-guaranteed and low hours. Women now account for a majority of employees in the Irish labour market. As such, work-life balance issues, such as the predictability and security of working hours and working time patterns, are an increasingly important issue both from a business perspective and for societal well-being. Interviewees referred to the necessity for employees to seek flexible work to accommodate childcare responsibilities, challenges in organising childcare where working hours are unpredictable and difficulties faced when the cost of childcare exceeds earnings from a low number of working hours. An appropriately funded childcare system provides parents with a choice; employers with a larger, more diverse workforce and; the economy with an expanded available skill base. We note the recent report of the Interdepartmental Working Group on Future Investment in Childcare in Ireland which highlighted the important links between affordable childcare and labour market participation and made recommendations on investment in childcare.

### **Recommendation 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 on If and When contracts and low hours.

### *Greater Policy Coordination across Government Departments*

Organisations interviewed for this study raised issues about the role of State policies in the creation of different contract types, the number of hours people work, and level of job mobility. Relevant State policies include social welfare, childcare, skills training and public sector resourcing models of education and health. There is an interdepartmental Advisory Group on Tax and Social Welfare and a similar group could be suitable forum to examine State policies on working hours.

### **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.

### *Ongoing Data Collection*

Ongoing data collection is required on issues relating to *If and When* work. Data collection requires a range of specific questions to capture a true picture of such work and the variety of working time patterns which employees are engaged in. We offer some suggestions in Appendix 4 for survey questions, including those used in the European Working Conditions Survey, which try to capture the various practices associated with *If and When* working, and we offer to collaborate with the CSO on this issue.

### **Recommendation 14**

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

### **Potential Unintended Consequences of Legislation**

Legislation can have unintended consequences and we highlight a number of potential scenarios which could emerge as a result of the proposed legislation, which policy makers should reflect on when drafting legislation.

First, it is possible that individuals may be employed on very low hours of work in the first six months of their job so that their minimum hours' guarantee, which is triggered at six months of employment, is kept artificially low. It is important therefore that the recommendation for a periodic review of working hours is carefully drafted and considered so that the minimum guarantee reflects the actuality of work on an ongoing basis.

Second, employers and employees may attempt to misclassify their employment relationship as one between a client and independent contractor rather than employer and employee for the purposes of avoiding the minimum hour guarantee and other employment law.

Third, it is possible that individuals' employment could be terminated before six months is reached for the purposes of avoiding the minimum hours guarantee. Individuals could become locked in a cycle of 'continuous seasonal employment' on 6-monthly contracts. As noted, the 6 month time frame in recommendation 4 is used because it is in excess of what is generally considered to be genuine seasonal employment. Policy makers should consider provisions to ensure that successive seasonal contracts are not used for the purpose of avoiding legislative provisions.

## EXAMPLES OF GOOD PRACTICE IN WORKING HOURS

I. Extract from Agreement on Working Hours between Unite trade union and McDonalds Restaurants Ltd., New Zealand

Employee availability is indicated on the employment application form. Unless otherwise agreed, you will not be scheduled to work a shift of less than 3 hours, more than 2 shifts per day, more than 8 hours per day, more than 40 hours per week. From time to time, you may be requested to work hours in addition to your weekly work schedule. Where additional hours become available in a restaurant, current employees will be offered additional shifts before new employees are employed. From October 2015, all McDonalds employees will be guaranteed 80% security of working hours up to a 32 hour weekly cap based on the average of the previous fixed quarterly worked hours. New employees will have their quarterly 80% hours average calculated based on the minimum hours agreed at the time of hiring, until they have worked a full fixed quarter. This clause will not exist where a reduction in working hours is outside the control of a restaurant manager and when hours have been reduced equitably. This includes but not limited to: new restaurants where a pattern of trade has not yet been established, an extraordinary marked and sustained downturn in sales, natural disasters or other extraordinary circumstances.

**Source:** Collective Agreement between McDonald's Restaurants (NZ) Limited and Unite Union, 1 April 2015-31 March 2017, New Zealand

## 2. Annualised Hours Agreements

A mechanism for delivering working time flexibility is annualising working hours where hours and pay are averaged across the year rather than the week or month. A salary is paid on a regular basis but hours worked can vary, as required according to season or demand, subject to legal limits. Workers work only when required thereby reducing idle time. Typically, a number of 'reserve hours' are incorporated into contractual hours with some or all of these not being worked. These are essentially 'saved' hours, which can be used to cover for incidents such as absenteeism, holidays, training or sudden increases in demand and as such, eliminate the need for overtime and encourage efficiency (see Naughton, 2000; Bell and Hart, 2003; Arrowsmith, 2007). The benefit for workers is that they get paid for these hours whether or not they are worked, as compensation for being available for work. Reserve hours are typically discounted on a quarterly basis. Annualised hours can in fact refer to *any form* of working where hours are scheduled over a time period of longer than a week (for example over three or six months) (Kouzis and Kretsos, 2003). Schemes are typically agreed through collective bargaining with workers representatives, although the Organisation of Working Time Act 1997 allows for workers to consent individually where employees are not represented by a trade union or excepted body. The benefits for employers are that hours can be matched to organisational demand, costs are stabilised which can lead to improved productivity and efficiency. For workers, annualised hours can offer stable and predictable earnings and improved work-life balance although these benefits for workers are highly dependent on the fair use of reserve hours (see Arrowsmith, 2007; Wallace and White, 2007; White, 2010).

### 3. Extract from a Banked Hours Agreement in the Health Sector

This 'banked hours' collective agreement is an example of local interest based-bargaining. Driven by the organisation, which provides services to people with intellectual disability, requiring certain flexibility from its contracted 'If and When' panel of staff; and their trade union wanting to establish regular hours for its members, thus guaranteeing a regular set income. Staff commit to a contractual obligation to be offered and accept shifts in respect of regular hours, 40 hours over every 2-week period. There is a joint responsibility between staff and management to ensure that the banked hours are offered and worked. Staff will endeavour to be as flexible as possible and management will endeavour to allocate banked hours based on staff preferences as far as possible. Staff are not required to make themselves available for any particular shift other than those encompassed by their regular hours but will not unreasonably refuse. Reconciliation for each member of staff's hours of work will be completed at the end of each quarter. Staff who have not worked their allocation of hours or have worked over their allocation of hours will have the appropriate amount deducted from or added to pay at the end of that quarter. Banked hours may not be carried over between quarters, save by mutual agreement and in exceptional circumstances.

## **APPENDIX I: LIST OF STAKEHOLDERS INTERVIEWED**

### **Employer/Business Organisations**

- Irish Business and Employers Confederation (IBEC)
- Irish Small and Medium Enterprises Association (ISME)
- National Recruitment Federation (NRF)
- Chambers Ireland
- Irish Hotels Federation (IHF)
- Restaurants Association of Ireland (RAI)
- Education and Training Boards Ireland (ETB)
- Joint Managerial Body (JMB)
- Irish Universities Association (IUA)
- Health Service Executive (HSE)
- Nursing Homes Ireland (NHI)
- National Federation of Voluntary Bodies (NFVB)
- Institutes of Technology Ireland (IoTI)

### **Trade Unions**

- Irish Congress of Trade Unions (ICTU)
- Mandate
- Social, Industrial, Professional and Technical Union (SIPTU)
- IMPACT
- Association of Secondary Teachers Ireland (ASTI)
- Irish Federation of University Teachers (IFUT)
- Teachers Union of Ireland (TUI)
- Irish Nurses and Midwives Organisation (INMO)

### **Non-Governmental Organisations**

- Migrant Rights Centre of Ireland (MRCI)
- National Women's Council of Ireland (NWCi)
- Irish National Organisation for the Unemployed (INOu)
- National Youth Council of Ireland (NYCI)

### **Government Departments and State Bodies**

- Department of Social Protection
- Department of Public Expenditure & Reform
- Department of Education and Skills
- Labour Relations Commission
- National Employment Rights Authority (NERA)

### **Employment Law Association of Ireland**

- Tony Kerr, BL, University College Dublin
- Richard Grogan, Grogan Solicitors

### **UK Experts**

- Professor Simon Deakin, Cambridge University
- Professor Keith Ewing, Kings College London  
Email Correspondence with International Experts
- Dr. Steen Erik Navrbjerg, Department of Sociology, University of Copenhagen
- Dr. Ann Cecilie Bergene, Centre for Welfare and Labour Research, Oslo and Akerus  
University of Applied Social Sciences.
- Professor Charles Woolfson, Department of Social and Welfare Studies, Linköping  
University
- European Labour Law Network:
- Professor Dr. Polonca Končar, Faculty of Law, University of Ljubljana
- Dr. Francis Kessler, GIDE, Paris
- Professor Bernd Waas, Faculty of Law, Goethe University, Frankfurt
- Professor Iván Antonio Rodríguez Cardo, Faculty of Law, Universidad de Oviedo
- Prof. Ivana Grgurev, Faculty of Law, University of Zagreb
- Dr. Hab. Leszek MITRUS, Faculty of Law and Administration, Jagiellonian University,  
Krakow
- Professor Catherine Barnard, Faculty of Law, Cambridge University

## APPENDIX 2: DATA FOR SECTION 3

**Table A3.1: Employees with Constantly Variable Working Hours 1998-2014**

Usual weekly hours worked	1998 (Q2) %	2007 (Q2) %	2014 (Q4) %	2014 N (Weighted)
Hours vary-full-time	6.1	3.3	2.7	43,493
Hours vary-part-time	1.6	1.4	2.6	41,355
Total	7.7	4.7	5.3	84,848

Source: QNHS 1998, 2007, 2014

Note: These are employees who cannot estimate their usual hours of work because hours worked vary considerably from week to week or from month to month

**Table A3.2: Regularity of Working Hours**

	% of employees	QNHS 2010 (Q2) number of employees (weighted)
<b>Work same number of hours every day</b>		
Yes	68	1,068,173
No	32	502,656
<b>Work same number of hours every week</b>		
Yes	76	1,193,808
No	24	376,992
<b>Work same number of days every week</b>		
Yes	80	1,256,640
No	20	314,160
<b>Have fixed starting and finishing times</b>		
Yes	67	1,052,436
No	33	518,364
<b>Do changes to working time schedules occur regularly</b>		
No changes occur	68	1,068,173
Changes occur regularly	32	502,656
N	815	1,570,842

Source: EWCS 2010

**Table A3.3: Employees with Regular Hours of Work 1998-2014**

Usual weekly hours worked (Regular hours)	1998 (Q2) %	2007 (Q2) %	2014 (Q4) %	2014 N (Weighted)
1 to 8 hours	1.4	1.7	1.8	28,449
9 to 18 hours	4.9	5.5	6.1	98,414
19 to 35 hours	19.5	22.3	23.9	382,921
Over 35 hours	66.5	65.8	62.9	1,007,572
Total	92.3%	95.3%	94.7%	1,517,356

Source: QNHS 1998, 2007, 2014

Note: The data excludes employees with constantly variable working hours.

**Table A3.4: Hours of Work and Non-Standard Work Patterns 2014**

Usual weekly hours worked	Night Work %	Shift Work %	Evening work %	Saturday work %	Sunday work %
Hours vary- full-timers	11	29	27	56	37
Hours vary- part-timers	13	19	22	48	34
1 to 8 hours	3	8	12	32	16
9 to 18 hours	6	13	19	34	23
19 - 35 hours	6	13	12	24	15
Over 35 hours	8	17	13	26	17

Source: QNHS 2014 (Q4)

**Table A3.5: Part-time Employment and Underemployment 1998-2014 (% of all employees)**

	1998 (Q2) %	2007 (Q2) %	2014 (Q4) %	Number of employees in each category based on QNHS 2014 (Q4) (Weighted)
Part-time working <sup>1</sup>	17.7	19.3	24.2	388,570
Part-time involuntary/ Underemployment <sup>2</sup>	4.6	2.1	9.3	149,043
Average hours worked by part-time workers	19.5	19.4	19.1	

Source: QNHS 1998, 2007, 2014

<sup>1</sup> Excludes employers and self-employed. Respondents are asked whether they have a full-time or part-time job.

<sup>2</sup> A subsequent question details the reasons why respondents chose part-time work. Part-time involuntary refers to those who sought but could not find a full-time job.

**Table A3.6: Percentage of Employees Who Wish to Work More Hours if Available 1998 - 2014**

Usual weekly hours worked	1998 (Q2) %	2007 (Q2) %	2014 (Q4) %	2014 N (Weighted)
Hours vary-full-time	2	0.4	10	4,205
Hours vary-part-time	23	9	39	15,906
1 to 8 hours	18	7	29	8,119
9 to 18 hours	12	5	25	24,916
19 to 35 hours	8	2	21	79,622
Over 35 hours	1	0.2	6	61,405
All employees	3.8	1.1	12.2	194,173

Source: QNHS 1998, 2007, 2014

Table A3.7: Working Hours and Employment Characteristics 2014 (Q4)

	Hours vary full-time	Hours vary part-time	Usually work 1 to 8 hours	Usually work 9 to 18 hours	Usually work 19 to 35 hours	Usually work over 35 hours	
	%	%	%	%	%	%	%
Men	4	2	1	3	13	77	100
Women	1	3	3	9	35	49	100
15-24	2	7	7	17	23	45	100
25-34	2	2	1	3	21	70	100
35-49	3	2	1	5	24	66	100
50-65	3	2	2	7	28	58	100
Managers	4	1	1	9	11	82	100
Professional	2	1	1	4	29	64	100
Ass. Profess	4	1	1	3	13	78	100
Clerical	1	2	1	6	29	61	100
Craft	4	2	0	3	14	77	100
Personal service	2	4	3	11	39	40	100
Sales	2	5	4	14	34	42	100
Operatives	5	3	1	2	12	77	100
Other	3	5	4	11	25	53	100
Union	2	1	0	3	27	67	100
No-union	3	3	2	7	23	61	100
Irish	3	3	2	6	24	62	100
Non-Irish	2	2	1	4	22	68	100

Source: QNHS 2014 (Q4)

**Table A3.8: Who Sets Working Hours?**

	% of employees	QNHS 2010 (Q2) Weighted number of employed labour force
Set by the organisation with no possibility of changing	73	1,146,684
You can choose between several fixed schedules determined by firm	9	141,372
Can adapt working hours within certain limits	16	251,328
Working hours entirely determined by yourself	3	47,124
N	813	1,570,842

Source: EWCS 2010

**Table A3.9: Length of Notice Where Changes to Work Schedules Occur Regularly**

	When informed of changes to your work schedule
Informed the same day	24
Informed the day before	23
Informed several days in advance	38
Informed several weeks in advance	12
Other	3
N	100 (213)

Source: EWCS 2010

## APPENDIX 3: DATA FOR SECTION 5

Table A5.1: Hours of Work and Industrial Sector<sup>29</sup>

	Hours vary full-time	Hours vary part-time	Usually work 1 to 8 hours	Usually work 9 to 18 hours	Usually work 19 to 35 hours	Usually work over 35 hours	
	%	%	%	%	%	%	%
<b>Agriculture, Forestry &amp; Fishing</b>	14	5	2	4	11	64	100
<b>Industry</b>	3	1	1	1	9	85	100
<b>Construction</b>	3	3	1	2	17	74	100
<b>Wholesale/Retail</b>	2	4	3	11	28	53	100
<b>Accommodation &amp; Food</b>	2	7	4	11	28	47	100
<b>Transportation &amp; Storage</b>	5	3	1	2	14	74	100
<b>Financial, Insurance &amp; Real Estate</b>	1	1	0	2	18	78	100
<b>Public Admin. &amp; Defence</b>	4	1	0	3	15	77	100
<b>Education</b>	1	2	3	9	52	34	100
<b>Health &amp; Social Work</b>	2	2	2	7	33	54	100
<b>Other Activities</b>	4	6	3	12	30	45	100
<b>Total %</b>	3	3	2	6	24	63	100
<b>N (weighted)<sup>1</sup></b>	43494	41355	28450	98414	382919	1007942	1602573

Source: QNHS 2014 (Q4)

<sup>29</sup> These figures exclude the following sectors as they have relatively low levels of part-time working: Information & Communication; Professional, Scientific & Technical Activities; Administrative & Support Service Activities. There are slight differences in the naming of economic sectors in some tables. Sectoral data for 2014 only uses NACE Rev. 2 codes for economic sector. Sectoral data which reports on changes over time from 1998 to 2014 uses NACE Rev. 1 codes for economic sector.

**Table A5.2: Proportion of Employees in Each Sector Compared with the Proportion of Employees in Different Hourly Categories**

	Proportion of employees working in each sector %	Hours always vary %	1 to 8 hours %	9-18 hours %	19-35 hours %	over 35 hours %
Wholesale & Retail	15.0	15.8	25.0	26.6	17.5	12.6
Accommodation & Food	7.6	13.3	16.6	13.8	8.9	5.7
Education	9.1	4.6	12.8	12.8	20.0	4.9
Health & Social Work	14.6	12.1	12.8	16.9	20.2	12.5
All other sectors	53.7	54.2	32.8	29.9	33.4	64.3
	100	100	100	100	100	100

Source: QNHS 2014

**Table A5.3: Working Hours and Gender in the Wholesale/retail, Accommodation/food, Education and Health Sectors**

	Wholesale & Retail		Accommodation & Food		Education		Health & Social Work	
	Men %	Women %	Men %	Women %	Men %	Women %	Men %	Women %
Varying hours of work	6	6	9	10	4	2	7	4
Usually work 1 to 8 hours	2	4	2	5	1	3	0	2
Usually work 9 to 18 hours	6	15	10	13	6	10	3	8
Usually work 19 to 35 hours	17	38	21	34	38	58	21	36
Usually work over 35 hours	69	38	58	34	51	27	69	51

Source: QNHS 2014 (Q4)

**Table A5.4: Gender, Age and Nationality by Sector**

	Wholesale and Retail %	Accommodation and Food %	Education %	Health & Social Work %
Men	47	45	28	18
Women	53	56	72	82
15-24	18	26	4	5
25-34	30	36	26	23
35-49	35	28	41	43
50-65	18	10	29	30
Irish	82	67	95	88
Non-Irish	18	33	6	12

Source: QNHS 2014 (Q4)

**Table A5.5: Working Time Patterns by Sector 2001 to 2014**

	Proportion of employees engaged in the following in 2014 (Q4): %					Percentage point change 2001 to 2014			
	Part-time	Even work	Sat work	Sun work		Part-Time	Even work	Sat work	Sun work
Other Production Industries	21	13	19	10		+15	+1	+7	+4
Construction	20	2	13	3		+15	-1	-2	+2
Wholesale & Retail	37	12	49	25		+7	+32	+16	+17
Hotels & Restaurants	43	39	69	55		+7	+11	+24	+21
Transport, Storage & Communication	16	20	30	19		+6	+3	+1	-1
Financial & Other Business Services	12	4	5	1		/	+2	/	/
Public Admin. & Defence	12	16	21	18		+4	+1	+3	+7
Education	23	4	5	3		+2	+21	+1	+2
Health	33	17	31	26		+2	+19	+10	+6
Other Services	43	13	42	18		+6	+37	+10	+4

Source: QNHS 2001(Q2), 2014 (Q4)

Note: Excludes the Agriculture, Forestry & Fishing.

## APPENDIX 4: SUGGESTED SURVEY QUESTIONS FOR ONGOING DATA COLLECTION

**Q. 1 In your main job are you guaranteed a minimum number of hours:**

Monthly      Yes    No    Number of hours      —

Weekly        Yes    No    Number of hours      —

Daily          Yes    No    Number of hours      —

**Q. 2 If you are guaranteed a minimum number of hours in your main job do you usually work these hours:**

At the same time each day:    Yes                      No, differs each day

On the same days each Week:    Yes                      No, differs each week

**Q. 3 In your main job are you contracted to work a set number of hours?**

Monthly      Yes    No    Number of hours      —

Weekly        Yes    No    Number of hours      —

Daily          Yes    No    Number of hours      —

**Q. 4 In your main job what number of hours do you usually work?**

Monthly      Yes    No    Number of hours      —

Weekly        Yes    No    Number of hours      —

Daily          Yes    No    Number of hours      —

**Q. 5 In your main job are there times when you receive no hours of work**

In some months                      Yes                      No

In some Weeks                        Yes                      No

On some days                          Yes                      No

**Q. 6 In your main job does the number of hours you usually work vary?**

Monthly	Yes	No	Range of hours	—
Weekly	Yes	No	Range of hours	—
Daily	Yes	No	Range of hours	—

**Q. 7 If your hours vary from week to week or day to day when are you informed of changes?**

Less than a day

The day before

Two – three days before

More than three days in advance

**Q. 8 Do you work...?**

Daily split shifts (with a break of at least 4 hours in between)

Permanent shifts (morning, afternoon or night)

Alternating / rotating shifts

Other (spontaneous)

No/don't know

**Q. 9 How are working time arrangements set?**

They are set by the company / organisation with no possibility for changes

You can choose between several fixed working schedules determined by the company/organisation

You can adapt your working hours within certain limits (e.g. flexitime)

Your working hours are entirely determined by yourself

Don't know

**Q. 10 In general, do your working hours fit in with your family or social commitments outside work very well, well, not very well or not at all well?**

Very well

Well

Not very well

Not at all well

No opinion

**Q. 11 Can you identify the type of employment contract you believe you have in your main job:**

<b>Type</b>	<b>Description</b>	<b>Hours of work</b>
Full-time	Permanent	Work normal full-time hours
Full-time	Occasional	Work hours when called
Part-time	Permanent	Work a guaranteed set or range of hours every week
Part-time	Occasional	Work a guaranteed set or range of hours when in work
Part-time flexible	Permanent	No guaranteed set or range of hours
Part-time flexible	Occasional	No guaranteed set or range of hours when in work
If and when employer requires	Occasional	Employer sets number of hours worked
If and when it suits me	Occasional	I chose what hours to work

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