



Supporting the Carer Workforce

NATIONAL ASSOCIATION OF CARE & SUPPORT WORKERS

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An Outline Guide to Zero Hours Contracts

1. What is a zero hour contract?

The term zero hour contract is used where there is a contract between an employer and a worker but where no minimum working hours actually specified. The worker is also not obliged to accept any work offered by the employer and is only paid for hours actually worked.

Employers use zero hour contracts to allow flexibility, workers can be used as and when required, for example to plug unexpected gaps in staffing levels or, as in the case of care workers for on call and bank work.

2. What is a worker's status?

Most zero hours contracts confer the status of being employed. Workers have the same rights as other workers and are entitled to NMW, breaks and leave. However rights that accrue over time can be disrupted if the workers have breaks in their employment status. This usually occurs where a contract only actually exists for the period when the work is done. In these cases a break in employment will happen if there is no work for a full calendar week (Sunday to Saturday.)

3. Can a worker with a zero hour contract gain employee status?

Workers do not usually build up continuity of service and will most usually not gain employee status.

Where a dispute arises about a worker's status, an employment tribunal will look at all the facts surrounding the contract in order to make a decision.

A key deciding factor in whether a worker with a zero hours contract could be an employee is what is known as the notion of **"mutuality of obligation."** This is where, under the contract of employment, the employer is obliged to offer and pay for work and the employee is obliged to both accept and perform the work. Mutuality of obligation must be absent in zero hours contracts, so workers should not be subjected to any detriment or discipline if they fail to accept work. If they are treated in such a way, this would suggest that this is not a true zero hours contract situation and the worker is an employee.

4. What does the legislation say on Zero hours contracts and exclusivity clauses?

Exclusivity clauses, where the worker is obliged to work only for one employer, also fall within the notion of mutuality of obligation. Therefore exclusivity clauses must be absent in zero hours contracts. **On 26th May 2015 exclusivity clauses in zero hours contracts became illegal** – therefore any clause that stops a worker “doing work or performing services” under another contract (with another employer) or stops the worker from doing so “without the employer’s consent” will be **unenforceable** by the employer.

It is also unlawful for an employer to subject a worker to detriment if they work for another employer.

If a worker is dismissed because they have breached a contractual clause that prevents them from working for another employer, then that dismissal will automatically be unfair. No qualifying periods are needed for bringing such claims and the success of such cases hinge upon the Employment Tribunal finding an exclusivity clause within the contract of employment.

