



## Employment Law update June 2018

### Zero hour contracts under scrutiny again

New statistics on zero-hours contracts have revealed that more than 50% of those with zero hours' contracts are women, raising concerns that they are being disproportionately affected by the precarious nature of zero-hours work.

An Office for National Statistics (ONS) report estimates that 6% of UK employment contracts were carried out on a 'zero hours' basis in November 2017, equating to 1.8 million contracts, an increase of 100,000 on the equivalent figures for November 2016.

According to a demographic breakdown outlined in the report, more than half of respondents working on zero-hours contracts were women. Almost two-thirds of people on zero-hours contracts work part-time. Younger workers make up the other key demographic of those working on zero-hours contracts, with nearly one in 10 in full-time education and 36% overall aged between 16 and 24.

Employers must balance flexible working, good employment practice and job security in a way that works best for them, the fluctuating demands of their business, client demands and their workforce and flexible contracts offer employers the ability to respond quickly to the fluctuating demands of the economy. When managed well and by choice, these contracts are an important means of offering people increased choice and flexibility in their working lives. They offer a part-time option that people choose to fit around their other commitments, and data has shown that more than half of employees on zero-hours find that it creates a positive work-life balance.

However, whilst some people are happy with zero or nominal-hours contracts, for many – particularly those who cannot find other employment – they are a problem as they find it harder to get mortgages or loans.

### As the holiday season looms, make sure you are paying holiday pay correctly!

The Working Time Regulations 1998 set out that all employees and workers are entitled to 5.6 weeks (28 days) of paid annual leave. If an individual works on a part-time basis they are entitled to the appropriate amount of annual leave on a *pro rata* basis. The 5.6 weeks includes any bank holidays taken.



Although this might sound very straightforward, it has been the subject of much case law over the past few years. It is important to ensure that you pay an employee or worker the correct amount when they take annual leave.

When calculating what to pay an individual who is taking annual leave you should include all the financial elements of their pay, and then take the average over the last 12 weeks prior to the start of the annual leave. That is the amount that you should then pay during the annual leave.

Employees accrue annual leave, and as those who are absent due to sickness or maternity leave are still employees during their absence, they continue to accrue the leave. This means that you must allow an employee to take their annual leave when they return from their absence, because they cannot take annual leave and sickness/maternity leave at the same time.

From a practical perspective, this can be used as a way of phasing an individual back into work. For a period of time you could allow an employee to take a set number of days of annual leave each week while they used up the accrued amount, as part of a phased return.

### **So, what should you do?**

1. Make sure that you check that you are giving paid annual leave to all workers and employees in your organisation. Check that anyone you are treating as self-employed really does have that status.
2. When workers or employees take annual leave, make sure that they are paid their average salary over the previous 12 weeks when taking leave.
3. Ensure that those who are on sick leave or maternity leave continue to accrue annual leave, and allow them to take the leave when they return.

### **Does workplace mediation work?**

Mediation is defined by ACAS as “a completely voluntary and confidential form of resolving workplace disputes between people”. It involves an independent third party considering an employment problem and working with those concerned to try and seek an amicable resolution for everyone. A methodical approach to mediation may help resolve conflicts, improve communication, restore trust and allow the parties to move forward.



It can be helpful in cases where there is a dispute between employees who are both willing to resolve their differences. It can also be used in the early stages of employee grievances or potential disciplinaries to help promote resolutions without the need for formal action or as a formal follow-up to formal proceedings. Mediation can be particularly helpful where the employment relationship is continuing, as the parties will want to ensure there is a good working relationship moving forward.

There are circumstances when mediation is not an appropriate response to dealing with a workplace issue. A situation involving serious misconduct, for example, would need to be dealt with through a formal process.

Discussions that are conducted during mediation are not binding and the whole process is entirely confidential. The outcome will only be binding if it is agreed by both parties; however when both parties agree and an outcome is reached this can be a viable way of continuing a workplace relationship which might otherwise have broken down.

**If you have a particular question that you would like answered email [training@scottishwholesale.co.uk](mailto:training@scottishwholesale.co.uk) or call 0800 9995 121 and we will publish next month – all names will be removed to ensure confidentiality.**