

## **New forms of employment**

### **Casual work, Ireland**

#### Case study 62: Policy analysis

*This research suggests that the best way of solving the debate about on-call work and zero hours contracts is by trying to ensure that employers and employees both benefit. This case study examines the implementation of the Organisation of Working Time Act 1997 and its suitability in regulating on-call work in Ireland.*

### **Introduction**

‘On-call’ work takes many forms and is interpreted differently by the different employers and employees interviewed in this research. According to both parties, on-call work is not clearly defined in Irish employment legislation and its implementation.

In the opinions of the interviewees, the terminology used to describe on-call work differs according to the specific form of the work and its context. It was suggested in the interviews that it is common for individuals to refer to full-time staff as ‘contracted’, ‘permanent’ or ‘core’, while on-call workers can be referred to as ‘on-call’, ‘relief’, ‘temporary’ or ‘part-time’. For this reason, this report will use the terms ‘on-call’ to refer to work where an employer is not obliged to provide a worker with working hours, but instead calls the worker in when needed; and will use the term ‘permanent’ to refer to those who are required to be present regularly at work.

The type of on-call work most referenced in this research is ‘zero hours’ work, which refers to the type of contract which does not oblige an employer to provide an employee with a specific number of working hours. This kind of work is clearly defined under Ireland’s Organisation of Working Time Act 1997. Section 18 of the act reduces the potential for workers to be exploited by this kind of contract, by providing that an employee must be paid for a set number of hours per week, regardless of whether an employee receives any working hours (Citizens Information, 2013).

Zero-hours contracts received some bad press in 2013 due to their use in the food service industry (*Irish Examiner*, 2013) and in the public healthcare sector (*Irish Independent*, 2013). While zero-hours working arrangements are typically associated with these sectors, these types of contracts are also common in the retail sector, the hotel industry, catering, and contracted services such as cleaning (Parliamentary Debates, 1995).

This case study examines the implementation of the Organisation of Working Time Act 1997 and its suitability in regulating on-call work in Ireland. It also provides an overview of how on-call practices are used in Ireland. It is based on interviews with representatives from a state agency, an employer organisation, a trade union, an employment agency, and an affected worker.

## **Background and objectives of legislation regulating on-call work in Ireland**

Zero hours contracts are defined in the Organisation of Working Time Act 1997 as a contract of employment whereby the employee is not guaranteed any working hours, but is still required to be available for either:

- a predetermined amount of hours in a given week (referred to in Section 18 as ‘the contract hours’);
- as and when required by the employer in a given week;
- a combination of both (Citizens Information, 2013).

There are other types of on-call work in Ireland which, according to interviewees, are not clearly outlined by the act.

One respondent said the act was passed in response to two high profile labour strikes in the mid-1990s by workers at Dunnes Stores, a prominent Irish retailer (Parliamentary Debates, 1995). The respondent said employees here were not guaranteed any work, but were contractually obliged to be available for it, which meant they could not obtain other employment. If these on-call workers did obtain other employment, they lost their jobs with Dunnes Stores as a penalty for not being available for work. Although a number of other issues also contributed to the strikes, interviewees said the primary cause was the use of zero-hours contracts.

It is not known who was involved in initiating and designing the legislation, as information pertaining to this is not freely accessible in Ireland. However, the topic of zero-hours contracts was of political importance in 1995, as evidenced by Ireland’s Minister of State at the Department of the Taoiseach including it in his statement to Ireland’s then Minister for Enterprise and Employment (now Minister for Jobs Enterprise and Innovation) (Parliamentary Debates, 1995). During these debates, parliament was asked to pass legislation to make zero-hours employment practices illegal, due to the way they exploited employees.

Interviewees suggested that these events were a major catalyst for the implementation of section 18 of the act, which was based on Directive 93/104/EC of the Council of European Communities from 1993. The employer organisation representative mentioned that section 18 is intended to discourage employers from using pure zero-hours contracts, while still allowing for some flexibility in terms of working time. The trade unionist interviewed suggested that section 18 was broadly based on the idea that more reliable and predictable work would have a longer lasting positive influence on the labour market and economy, and also a positive impact on workers’ psychological wellbeing. The trade unionist also said that trade unions would have played a general role in the establishment of section 18 as they have always actively opposed zero-hours contracts.

Although the act has been revised (most recently in 2013), section 18 has not been altered.

## **Characteristics of on-call work and legislation in Ireland**

The representative from the employer organisation said there are three types of on-call work in Ireland:

- zero hours contracts;
- if and when required contracts;
- general on-call/standby work.

The factor that distinguishes zero-hours contracts from other types of contracts is that the employee must be available to work when called. The employer representative noted that zero-hours contracts are typically used in the retail sector and in jobs prone to seasonal demand. Both

the employer organisation representative and the trade unionist noted that businesses they were connected with did not use pure zero-hours contracts, instead using a variation of part-time contracts that guarantee that employees would not fall beneath a certain amount of hours, referred to as ‘banded-hour contracts’ (the term used when a minimum floor of hours in any working contracts is established as part of a collective bargaining agreement). The trade union representative noted that in most cases member organisations’ contracts were banded at 15 hours. The employer organisation representative defined ‘if and when required’ contracts as similar to zero-hours contracts in that they do not guarantee any working hours, but differ in that they stipulate that there is no requirement for the employee to be available when called for work. These contracts are typically used in residential or other health-care settings in both the public and private sector where there is a need for 24-hour service provision. Lastly, the employer organisation representative defined *general on-call/standby work* as when an employee is required to be available for work and also present at a workplace during the on-call period. This occurs in settings such as industrial work where a skilled tradesman is required to be on standby throughout the day, to be called in when he is needed.

Section 18 stipulates that employees with a zero hours contract must be compensated if they work less than 25% of their allotted hours in any given week, provided that this percentage is less than 15 hours. If an employee is not called into work at all in a given week, they are entitled to be compensated for:

- 25% of the contract hours;
- 25% of the hours given to other employees for doing similar work;
- 15 working hours, (or whichever of these options amounts to less) (Citizens Information, 2013).

Section 18 is brief, and addresses only the issues of compensation in the circumstances listed above. The employer organisation representative noted that the other two types of on call work (‘if and when required’ and ‘general on-call’) are not specifically outlined by any legislation.

The act does not:

- contain zero hours-specific provisions with regard to a minimum wage requirement;
- indicate how compensation payments for breaches of Section 18 should be realised;
- provide social protections for workers employed under zero-hours contracts.

There are also no zero hours-specific regulations with regard to work organisation (such as the coordination between employer and workers, requirement for an employer to obtain any sort of approval before instituting an on-call contract or stipulations that clarify an appropriate distribution of work between on-call and core employees). The trade union representative indicated that, due to the lack of publicity, zero-hours working practices are more common in the non-unionised sector.

While the trade unionist was clear that he viewed any type of employment which did not supply workers with a minimum amount of hours (‘zero hours’ and ‘if and when required’) as unnecessary and exploitative, the employer organisation representative suggested that ‘if and when required’ contracts, in particular, are used by some companies because there is no cost-effective alternative. In these cases, the employer organisation representative noted the certain services would become unworkable if employers were required to retain full-time staff working on an on-call basis.

The employer representative stated that there is less debate about general on-call/standby work as it is typically highly incentivised by shift premiums in the industrial sector. However, the employer organisation representative did note that the issue of ‘inactive on-call’ was key in a 2013 case in which Ireland was referred to the European Union’s Court of Justice for non-compliance with EU regulations on working time (European Commission, 2013). Although

Ireland's law complies with the EU Working Time Directive, the Directive itself was not being obeyed in practice, particularly in relation to the 48-hour working week.

The state representative and employer organisation representative each indicated that government agencies themselves, such as the Health Service Executive (HSE), have traditionally used on-call contracts. For instance, in 2013, a labour court decision forced the HSE to end the zero-hours contracts used to employ more than 10,000 at-home carers (*Irish Independent*, 2013). No data was available about the use of on-call contracts in other areas of the HSE. The trade union representative said that, although trade unions have always opposed the idea of zero-hours contracts, trade union activity has been aimed at employment rights more generally.

There are differences between the way unionised and non-unionised sectors of employment are affected by this legislation. The trade unionist said that, at the collective level, trade unions challenge employers to give good reason for using zero-hours contracts, particularly considering the impact this type of work arrangement has on the quality of work in the sector as a whole. However, he added that, in the non-unionised sector, section 18 is the only way of preventing employers from using these types of contracts.

The National Employment Rights Authority (NERA) and the Labour Courts monitor compliance with Irish employment laws and prosecute employers who violate them. A respondent from NERA suggested that half the inspections they carry out reveal some form of non-compliance. Notably, NERA does not conduct inspections aimed specifically at working contracts, but at the general compliance with employment law, which include zero-hours working practices. The state representative interviewee also stated that data in relation to violations and prosecutions would not be specific to zero-hours legislation, but rather pooled amongst all violations of all labour laws. Violations of labour laws in Ireland, under the Employment Law Compliance Bill 2008, carry penalties of up to €250,000 or imprisonment.

In relation to zero hours rights and reporting or claiming for breaches of these rights, supports are available to workers through trade unions and state organisations that support workers' rights and employers' rights. Similar to NERA, these bodies act in a general capacity with regard to employment rights, and so their areas of expertise and action extend beyond section 18. Employer organisations also give advice and information to employers to help them comply with the act.

An employment agency representative indicated that, as of Spring 2014, there is a high demand for on-call, or otherwise temporary workers. This demand had increased in 2013, and the agency respondent forecasted it would continue to increase throughout 2014, even though there was also an increased demand for permanent employees. She added that many of the posts for permanent employees were for more experienced workers. She believed that the increased demand for on-call workers would be sustained by the long-term unemployed who needed jobs and who would be more willing to work on an on-call basis. A trade union interviewee stated that trade unions would consequently be further promoting 'decent work', which provides job security and 'liveable' wages. He argued that the trade union's position is that decent work is the only basis for sustainable recovery from the recent recession, and that unions would continue to seek to influence national and international debate on this.

## **Outcomes and effectiveness**

### **Macro level**

Eurofound (2010) suggested that there is a lack of hard data in relation to the prevalence of zero-hours contracts in the Irish labour market. None of the respondents could provide an estimate, and the Central Statistics Office (CSO) does not collect specific information about casual work. The CSO does not have specific data about a gender ratio, either, although this report's respondents indicated that these contracts are frequently used in the residential care sector, which, as reported

by the CSO in [a 2013 Quarterly National Household Survey \(QNHS\)](#) employs approximately 25,100 workers in Ireland. While the QNHS survey does not provide a breakdown of these statistics by gender, a respondent in the case study on casual work in Ireland (case study 61) in this research mentioned that most employees in the residential care sector are women (Eurofound, 2015). An affected worker stated that zero-hours work could create problems for workers due to a lack of job security, but agreed with the agency representative that on-call work could enhance a person's employability by providing valuable work experience. The interviewee added that there is also the possibility that such contracts can be made permanent, which is why some people accept on-call contracts.

An employer organisation representative said that on-call work creates jobs in settings (such as residential care) that are dependent on maintaining a flexible workforce. He suggested that on-call contracts support businesses, and that these businesses would not exist without a flexible workforce.

However, the trade union interviewee said these contracts are precarious and will harm Ireland's economic recovery due to the lack of job security.

### **Micro level**

The interviewees differed on whether these contracts achieved their objectives. The trade union representative feels the purpose of employment is psychological and financial wellbeing, and that this is not achieved by on-call contracts. However, the representatives of the employment agency and the employer organisation said many on-call staff were offered full-time employment as a result of their placements and many have flexibility in terms of working hours. A state representative asserted that employers also benefited from the flexibility of on-call working arrangements, which allowed them to deal with sudden shifts in employee demand. The agency representative noted that training may become an issue where large pools of on-call workers are retained to fulfil many positions within organisations as they are needed.

This research suggests that on-call working arrangements benefit employers in terms of business performance, whereas opinions as to the effects on employees were mixed. The affected employee who was interviewed suggested that some individuals, such as students, prefer casual work because the flexible working arrangements suit their work-life balance. He added, however, that other workers might struggle financially as a result of the unreliable nature of on-call work. An employer organisation representative suggested that for some workers, such as skilled tradesmen, on-call work can be highly lucrative and that, in these cases, the remuneration would typically offset any disruption to the employee's personal life. This respondent also mentioned that on-call work could sometimes enhance employability (acting as a 'stepping stone' into full-time employment), although the trade union representative believed that these cases are extremely rare. There are no specific figures available in relation to this.

## **Strengths and weaknesses of on-call work in Ireland**

### **Challenges**

An Irish government interviewee stated that, in Spring 2014, the European Court was investigating several cases that focus on active working hours versus inactive working hours. As 'zero hours' and 'if and when required' contracts, by definition, do not entitle a person to remuneration for waiting hours, these cases would be specific to the subtype of general on-call work. The government interviewee noted that the central challenge here is interpreting working time legislation to determine whether inactive on-call arrangements require remuneration. The employer organisation representative provided an example in the residential health care sector,

where paying inactive on-call workers (who may sleep at night) could place a disproportionate financial burden on employers.

An agency representative suggested that another challenge arises when the quality of the on-call worker is inadequate to meet the needs of the role as, typically, on-call workers are less highly trained than permanent employees. She added that, sometimes, this is as a result of ineffective management, such as when an agency does not adequately vet the quality of an applicant. The interviewee also gave an example of an on-call employee experiencing frustration due to their lack of required skills for the work, and subsequently missing work assignments or performing poorly.

The trade union representative noted that there are challenges for employees in accessing their employment rights pertaining to zero hours contracts. Two barriers in this respect include a lack of basic knowledge of rights, and a reluctance to assert those rights through the mechanisms available for them to do so. He blamed the nature of the contracts for this as 'in most cases (although the contracts vary from employer to employer), the employers (motivated, he said, by greed) were able to dictate all of the terms of the working arrangement, with the employee having little or no say.

A central theme emerging through the interviews (and mentioned specifically by the trade union representative) in this research is the need for employers to be accountable for their compliance with employment legislation, such as section 18. The employer organisation representative said it was important to ensure that employers are well informed of zero-hours legislation prior to hiring employees. There is an additional challenge in ensuring that workers and other representative bodies also know about their employment rights.

## **Strengths**

The state representative interviewed felt that on-call working arrangements can benefit both employers and employees in terms of flexibility of working hours, but only if the arrangement is mutually agreed.

The employer organisations' representative suggested that certain industries might not exist were it not for on-call contracts. As an example, he noted that there has been an increase in on-call work in the provision of home care in the private sector, which has resulted in its emergence as an industry. He noted that this model is much cheaper from the state's point of view, and that the rise in the number of on-call contracts in the healthcare sector might be the result of a strategy used to circumvent the current moratorium on state recruitment (which prevents the HSE from hiring new employees). A key strength mentioned by the affected workers in both the case study and the policy instrument analysis was the possibility of employees getting permanent jobs on the strength of their on-call experience. According to the managerial interviewees in the case study most permanent employees were once employed on an on-call basis, although only a small number of on-call employees go on to be made permanent. Managers, as well as the affected employee, interviewed noted that these contracts could help individuals get back into work by helping them to retrain and become more employable.

## **Transferability**

The employer representative remarked that the guiding principle in Ireland is to avoid providing different tiers of employment protection, which would result in the same level of statutory protection (with regard to dismissal as well as entitlements such as sick pay and annual leave) for on-call workers as other categories of workers. He believed that, in other settings where workers are on privileged types of contracts (with regard to working rights), there have been adverse effects on the labour market in terms of flexibility. This is due to these contracts driving down the availability of work, as the on-call model is unable to sustain a large pool of on-call workers

when these workers are afforded the same statutory rights as permanent employees. He proposed that on-call contracts be transferable to other jurisdictions that do not afford the same statutory rights as on-call and permanent contracts because in these settings (as in Ireland) they create and sustain market flexibility that is ultimately better for the local labour market and economy.

In contrast, the trade union representative was adamant that trade unions would be very reluctant to back on-call working arrangements, and felt that they should not be viewed as being transferrable to other settings. However, this respondent did state that, in rare cases, these types of arrangements allow people to move from welfare to work. However, this interviewee said that when individual attempt to move away from social welfare they are at their most vulnerable state (financially and psychologically) and risk being exploited by on-call contracts because they are often powerless to change their working situation.

## **Commentary**

The trend emerging from these interviews is that these types of contracts afford employers' flexibility and pragmatic solutions in sectors where short-term staff are needed at relatively short notice, such as in residential care settings or seasonal work. They provide employers with the ability to respond to a sudden increase in demand without overreaching themselves financially by hiring permanent staff.

The opinion of the employees interviewed for this policy analysis and the employees interviewed as part of the accompanying case study, seems to be that any work is a positive step toward a better economy and will increase the long-term employability of on-call workers. However, this was in stark contrast to the views of trade union representative which, while extreme, were lent some credence by certain interviewees, such as an employee in the case study. While not explicitly mentioning the term 'exploitation', this participant specifically stated that the employer had all of the power in their relationship. However, the other case study employee said this type of contract benefited her, giving her flexibility in terms of her work-life balance. The affected employee interviewed showed an awareness of each as a possible interpretation, again highlighting the importance of individual circumstances in determining the value of on-call contracts. The implication is that on-call work, when appropriately legislated for and properly regulated, is beneficial for those whose lifestyle it suits.

The trade union respondent suggested that non-unionised workers might get little information about their rights and zero-hours legislation, other than, possibly, very basic details from employers. Employer organisations also indicated that better educating employers about the legislation and more clearly defining types of on-call employment in the legislation would decrease the negative repercussions associated with on-call work.

The research suggests that there are certain circumstances in which both employee and employer can benefit from on-call staffing. For instance, if employers were incentivised to hire on-call staff on more regular and predictable contracts in terms of working time, such as banded-hour contracts for on-call employees, it might allow for the flexibility that many employers (and some employees) require, while also providing more stability for employees. As explained by the state representative, the way toward a sustainable solution to the debate about on-call work is through attempts to ensure that employers and employees both benefit.

## **Information sources**

### **Websites**

Central Statistics Office – Quarterly National Household Survey, available at <http://www.cso.ie/en/qnhs/releasesandpublications/qnhs-calendarquarters/>

Irish Congress of Trade Unions, available at <http://www.ictu.ie/about/mission.html>

Irish Revenue Commissioner, available at <http://www.revenue.ie/en/index.html>

Irish Statute Book – The Organisation of Working Time Act 1997, available at <http://www.irishstatutebook.ie/1997/en/act/pub/0020/index.html>

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