

New forms of employment

Casual work, Ireland

Case study 61: Company Case Study Ireland

The Irish Company Case Study is of a private company offering residential care to young people with behavioural and emotional difficulties.

Introduction

This case study examines the practice of casual or on-call work in Ireland. A main finding is that it is defined in different ways by different stakeholders. Respondents reported being uncertain regarding what legislation governs this type of work. There are many types of on-call work in Ireland and the one that was most prevalent in this research was zero hours work.

The terminology used to refer to on-call work in Ireland is variable; for example, respondents referred to full-time staff as ‘contracted’, ‘permanent’ or ‘core’, while on-call workers are often referred to as ‘on-call’, ‘relief’, ‘temporary’ or ‘part-time’. A difference between those employees that are called when needed, and those that are regularly required to show up for work, is not well defined in the Organisation of Working Time Act 1997. This report will use the term ‘on-call’ to refer to ‘on-call’ and ‘relief’ work, and the term ‘permanent’ to refer to ‘permanent’ or ‘core’, workers, who are regularly required to be present at work.

‘Zero hours’ work refers to the type of contract which does not guarantee an employee any working hours, but which still requires an employee to be available for either:

- a predetermined amount of hours in a given week (referred to in section 18 of the act as ‘the contract hours’);
- as and when required by the employer in a given week;
- a combination of both (Citizens Information Bureau, 2014).

This definition of on-call work in Ireland is outlined in Section 18 of the act, which was developed in response to two strikes in the mid-1990s at a major retailer in Ireland (Parliamentary Debates, 1995). It 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 they get any work. Zero hours employment practices were the subject of poor representations in the media in 2013 in response to their use in the fast food industry (*Irish Examiner*, 2013) and the public healthcare sector (*Irish Independent*, 2013).

There are types of work in Ireland that are of a similar nature to on-call work which would not be defined as zero hour work under section 18 of the act. This would include payments made to doctors who must remain available to work outside normal hours but who have standard working relationships and receive remuneration, as is the case for doctors who work as consultants in hospitals (Health Service Executive, 2014). This case study is of an Irish company which employs

on-call workers in Ireland. The report is based on interviews with two managers and two on-call workers.

General characteristics of Irish Company Case Study

The company is a private Irish-owned company that was established in the mid 2000s in response to a growing need for residential placements for young people aged 7–18 who have severe behavioural and emotional difficulties, and who are not well suited for the existing options of residential placements. They have a small number of residential units across the southern provinces of Leinster and Munster. Each has a unit manager and there are also regional managers and company directors at national level. The company is run by a board of directors, including an executive chairperson, two non-executive directors, three executive directors, and a company secretary. The board's role is to agree the strategic direction of the company, as well as detail the pay and performance conditions for company directors and senior management, and to look after the interests of employees, clients and shareholders. There are also staff representatives (one from each service indicated below) who meet monthly with the company's directors. While these staff representatives are permanent employees, managerial interviewees noted that relief staff are welcome to attend these meetings, and sometimes do, in order to keep up to date with the training profile (described below) of the organisation.

Interviewees noted that since its establishment, the company has grown its share of the private residential childcare market in Ireland. The administrative manager noted that, as of spring 2014, the company is among four to six companies that provide similar services. The Health Service Executive (HSE) contracts residential childcare from them on an individual (child-by-child) basis.

The company employs roughly 80 permanent staff, with 15 of these being in managerial or administrative positions. They also retain 40 to 60 on-call workers, designated as 'relief staff'. Respondents indicated that workers range in age from 23 to 50 among both the permanent and relief staff. They also mentioned that most employees are women, and have some type of third-level qualification, mostly in the area of social care and education. While the core staff are specifically assigned to an individual workplace, relief staff are required to work between multiple sites, in response to demand for their services. As of spring 2014, respondents stated that approximately 80% of the firm's permanent employees had, at some time, been employed as relief staff. On-call workers are hired as independent contractors (see below). Interviewees said some employees also work elsewhere, while others work exclusively for the company. Although relief workers make up about 30% of the company, they account for only about 10% of active employees.

Design and implementation process

The company's business model requires a pool of flexible workers to meet variable demand for the provision of their services. The company established contractual arrangements that would satisfy this requirement. The company's HR policy, therefore, has always been to hire relief workers as independent contractors under an Independent Contractors Agreement (ICA). The administrative manager agreed this was being used instead of the zero hours legislation to better meet the needs of the company's business model, which would otherwise have to pay a 25% pay floor (as required by section 18 of the Organisation of Working Time Act 1997) and this would place an unsustainable financial burden on the company's business model. This allows the company to employ relief staff as on-call employees (on zero hours contracts). All relief staff are hired with an ICA agreement. This worked well initially, giving the organisation flexibility to manage the changing nature of staffing requirements common in the residential childcare sector. However, the manager noted that the company has experienced administrative difficulties since 2012 due to the implementation of the Protection of Employees (Temporary Agency Work) Act,

which states that temporary agency workers are entitled to the same statutory entitlements and working rights as permanent employees in similar positions. According to a company manager, another outcome of this legislation was that locum pharmacists and other independently contracted workers were to be considered employees (and not defined as self-employed) for the purposes of taxation. This means the employer now has to pay Payment Related Social Insurance (PRSI) and pay as you earn (PAYE) tax for them. The administrative manager noted that this has placed a substantial and unsustainable financial burden on their organisation, and since this change two years ago, the company has devoted considerable time and resources to finding a new HR strategy that would satisfy the unique needs of this niche care sector.

The independent contractor agreements, described as permanent (indefinite) stipulate that the company is not obliged to provide relief staff with shifts. The administrative manager interviewee noted that although workers are hired on a per-shift (16 hours) basis, this in no way guaranteed that the worker would receive subsequent shifts. Clauses relating to training and performance management are determined by the employer and are the same as those for core staff. It was also reported that these contracts oblige the employer to provide the worker with adequate, regular and up-to-date training, but no sick pay or entitlement to annual leave for on-call staff.

The company employs its on-call employees:

- to provide cover in the absence of a permanent staff member;
- if a new child arrives or leaves at short notice.

The company representative stated that they had considered using agency staff, but that retaining on-call workers was more cost-effective. The managerial interviewee reported that having the same relief workers increased familiarity with both children and staff and ensured continuity of care. Lastly, respondents indicated that having a pool of on-call workers meant they could be trained in crisis intervention, which is part of the company's service. The training also meant that the workers would be considered employable on a permanent basis within the organisation.

Working method, processes and procedures

Respondents indicated that recruitment practices for relief workers are similar to those used for permanent staff, as these two groups perform similar roles and are therefore expected to have similar levels of training and expertise. The administrative manager noted that relief staff are required to adapt to new situations at short notice. It was reported that a list of all active on-call workers is maintained on a database, which is accessed by unit managers in case a core staff member is absent or there is a sudden need for more employees in a particular unit due to a new child arriving. Relief workers are paid €240 for a 24-hour shift where eight hours at night are considered inactive on-call hours (relief staff sleep during this time, but must still be available if needed), and on-call workers are never given more than 24 hours of work in one call. On-call employees noted that relief workers are typically given one to three weeks' notice when a shift has come up, although they reported that at times if, for example, a core staff member is unexpectedly absent, they may be asked to attend for work that day.

While employees can refuse a shift, it was reported that this sometimes results in them being offered less work. Respondents suggested that managers are likely to offer work to individuals who are the most flexible and who most frequently agree to work at short notice. Consequently, respondents indicated that some employees feel that they cannot refuse a shift when offered one. However, this interpretation may differ by employee type. For instance, one respondent noted that this is a less commonly held view among relief workers who have worked at the company for longer and have more established relationships with permanent staff. Managers who were interviewed indicated that their preference was to hire new permanent staff internally by promoting relief staff members to full-time permanent contracts. The manager of the unit where

there is a vacancy can decide whom to hire, and this decision is based on the manager's assessment of the performance of the employee.

The relief staff interviewed reported that they are treated as equally as permanent staff, although managerial interviewees noted that they are not considered to have the same statutory working rights and are not entitled to social protection as they are considered self-employed. The administrative manager indicated that there are fewer formal mechanisms to cope with conflicts among relief staff, as many of the rights afforded to permanent workers (for example, protections under the Unfair Dismissals Act 1993) are not given to relief staff in their contracts.

The company provides training for relief workers and permanent staff, mostly in the area of therapeutic crisis intervention in applied behaviour analysis. The managers interviewed clarified that when an employee did not meet any of the contract stipulations, especially those regarding training or performance, this may result in the termination of the worker's employment. The administrative manager did not indicate whether this type of termination was formalised or implicit, but did state that performance reviews are part of the contract. The employee can also terminate this arrangement, although the unit manager interviewed noted that an employee rarely does this since the contract exists indefinitely, and the employee can maintain the status of the contract as a means of receiving some paid employment while looking for other, more regular work.

External support

The company had previously sought advice and clarification from external sources, including the Irish Revenue Commission (IRC), employer organisations and HR consultants, with regard to the financial requirements mandated by the Protection of Employees (Temporary Agency Work) Act 2012 and Section 18 of the Organisation of Working Time Act 1997. The company representatives interviewed reported that they did not feel that they could access appropriate and detailed advice from the IRC and are currently using the services of a recruitment/HR consultant and an employer organisation when managing the implementation of this legislation.

Outcomes

Both employees interviewed said that the temporary and part-time nature of the employment suited their external personal commitments. However, the respondents also indicated that these working arrangements would probably not suit workers who are seeking job stability.

Interviewees noted that the local labour market benefits from on-call work as it provides a flexible alternative to full-time work for people with competing personal commitments. They also highlighted that on-call work suits a variety of individuals with specific requirements, such as students, those in the early stages of their career or re-entering employment, allowing them to gain experience before entering full-time employment. In this way, it is a bridging mechanism to full-time employment within the organisation and to opportunities outside the company. It represents a mutual benefit to employer and employee by establishing a track record of experience for candidates seeking full-time employment.

One managerial interviewee indicated that while there is a high degree of administrative burden associated with these contracts, mostly due to the legislative aspects of designing and implementing the contracts, the relief staff performed to a high standard, and that the system works well in practice.

Strengths and weaknesses

The administrative manager interviewed indicated that the lack of information and guidance about legislation and alternative forms of employment represented major challenges in trying to

address the financial repercussions of the implementation of Section 18 of the Organisation of Working Time Act 1997 and the Protection of Employees (Temporary Agency Work) Act 2012. The interviewee said that the state needed to address the contradiction inherent in the legislation where self-employed people are entitled to both social and tax-related employee benefits. This contradiction could be seen in the way that workers perceived themselves to be employees of the company, which the administrative manager says is not accurate, as the nature of their contracts state that they are self-employed.

Employees interviewed stated a preference for better regulation favouring the worker. They argued that it can be difficult to reconcile differences as contracts do not clearly identify their rights. While state bodies such as the National Employment Rights Authority (NERA) and employer organisations such as the Irish Business and Employers Confederation (IBEC) provide support to organisations through their advice centres, clarity around the contractual implications of the nature of these contracts is still inadequate. Specifically, one worker affected highlighted that the lack of regular working hours in residential care work presents a challenge to effective domestic planning. For example, when a child enters or leaves a residential care unit, core staff are reallocated, which results in on-call workers being removed from active rosters in favour of core staff rescheduling with little notice, including when the working shifts had been planned weeks in advance. One employee suggested that using part-time contracts that guarantee a minimum amount of weekly hours with additional on-call provision may provide some job security for employees while also allowing for the flexibility provided by the nature of on-call work, which would be of benefit to the employer.

Line managers interviewed suggested that the on-call system works well from a service delivery standpoint. However, one unit manager said that workers may frequently be unavailable for work when it is offered and that this can mean that the company has to resort to hiring agency staff. The manager added that employees can flow freely in and out of periods of working for the organisation and this makes it difficult to effectively schedule work with relief staff.

The perception of on-call contracts varied among the respondents. Interviewees noted that employers benefit by being able to examine the capabilities of relief workers before hiring them on a permanent basis. The flexibility of these contracts was a key benefit for some individuals. However, many respondents said that this 'flexibility' was overstated, as not being available to work on some occasions may result in a reduction of future offers of work. This, combined with the unpredictability of shifts and lack of job security, were key issues raised by those interviewed who reported aspects of on-call work with which they were dissatisfied.

One manager reported that legislation does not effectively support on-call work, as there is a conflict in the definitions of an employee and a self-employed person that is not clearly outlined in law. This has led, it is felt, to the provisions on zero hours contracts in section 18 of the Organisation of Working Time Act 1997 presenting significant operational and financial challenges for organisations who operate within specific sectors where inconsistent shift work is prevalent. The employees interviewed reported little knowledge of on-call legislation, or the potential impact of section 18 on their contracts.

On-call contracts are an essential form of employment for the company operating in this sector. However, respondents indicated that the means by which these contracts are facilitated could be improved through improvements in legislation to allow their use in sector-specific cases, and/or through changes in the type of contracts used to ones which are more beneficial to both employers and employees.

Future plans

The administrative manager mentioned that company is investigating new means through which they may hire on-call staff. The manager reported that a zero hours model for relief staff is the

most effective model by which the company can deliver its particular services in a financially viable manner. Unfortunately, it was reported that at present other options, such as giving relief staff a set number of minimum hours, using agency staff, hiring more full-time employees and having them 'float' between units, were not a sustainable financial model under which the company could operate.

Commentary

The respondents' perceptions of on-call contracts vary significantly. There are huge pressures associated with service delivery in the residential childcare sector, and there are consequently substantial operational, logistical, and financial pressures on businesses in this sector to employ workers as flexibly and as cheaply as possible. Current legislation prevents workers from being retained indefinitely with no guarantee of working hours or pay. The company reported that guaranteed hours and pay would place an unsustainable financial burden on the company. Consequently, the company employs the ICA model and not the zero hours contract legislation to sustain the organisation's financial viability.

While the managers interviewed reported that the zero hours working legislation did not represent a viable option for their company, other solutions were suggested such as the use of banded-hour contracts, which place a set minimum number of hours that an employee must receive each week, with the option of being offered additional hours. This was proposed as an option that would benefit both employer and employees. The administrative manager stated that the company would ideally implement a viable zero hours employment model, but has not found one which is sustainable, although it has been actively investigating options for the past three years.

A key observation from the study reported by employees was the suitability of the zero hours work for individuals with different individual circumstances. For example, workers with domestic responsibilities, or other external pressures, view the flexibility of the on-call system as advantageous. However, those who are seeking regular working hours or who are seeking to re-enter the workforce might view this flexibility as unpredictable, lacking in job security and inadequate. Some reported that these positions were based on the perception that there was a power imbalance in the conditions of the contracts which placed few requirements on the employer.

The respondents suggested that provisions within the legislation designed to allow for more efficient zero hours working arrangements may be warranted under specific conditions, and that this may be beneficial to employers and employees whose business includes this type of working arrangement. In addition, employers and employees would benefit from clearer information and support regarding their employment rights from the Department of Jobs, Enterprise and Innovation.

Information sources

Websites

Citizens Information – Agency Workers, available at

www.citizensinformation.ie/en/employment/types_of_employment/full_time_employment/agency_workers.html

Irish Revenue Commissioner, available at www.revenue.ie/en/index.html

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

Irish Statute Book – The Organisation of Working Time Act, 1997, section 18, available at www.irishstatutebook.ie/1997/en/act/pub/0020/sec0018.html#sec18

Jobs Enterprise and Innovation, available at www.enterprise.gov.ie/en

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Health Service Executive (undated), *Terms and conditions of employment*, available at www.hse.ie/eng/staff/Resources/HR/Terms_and_Conditions_of_Employment.pdf.

Irish Examiner (2013), 'Zero-hours contracts are on road to nowhere', 22 August.

Irish Independent (2013), 'Home helps win an end to zero-hour HSE contracts', 19 September.

Parliamentary Debates (1995), *Private Members' Business – Dunnes Stores Industrial Dispute*, available at: <http://historical-debates.oireachtas.ie/D/0459/D.0459.199511290091.html>.

Nolan O'Brien, Robert Mooney, University College, Dublin