Zero hours and the UK social care sector

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What is a zero hours contract and how common are they?

Zero hours contracts occur when ‘people agree to be available for work as and when required, but have no guaranteed hours or times of work’ (ACAS, 2012).

Active debate in UK started after publicity that Sport Direct, a sport clothing manufacturer was paying its staff a £75k bonus per person - but then it transpired that this was to 2000 permanent staff- the other 21,000 staff were on zero hours and not in receipt of benefits.

Since then:

• Many efforts to determine how many are on zero hours- uncertain but rising- from 250k to >500k on a labour force survey basis to 1-1.5 million according to employers ( a further 1.5million on contracts not activated in period)
• Government consultation on zero hours
• Labour promising reforms as part of manifesto
What are the consequences of being on a zero hours contract?

Immediate consequences:

• Employment and income insecurity- unable to turn work down even if not on exclusivity contracts
• Contribution record may be interrupted
• Vulnerable to work being cancelled at short notice or being called in at short notice

Consequences for employment rights depends on employment status and continuity

• Few zero hours staff are self-employed- from both employer and worker perspectives
• Most will be workers (EU definition) of which employees are a subset-significant differences between employment rights for workers and employees
<table>
<thead>
<tr>
<th>Employment right</th>
<th>Eligibility</th>
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<tbody>
<tr>
<td>National minimum wage</td>
<td>E W</td>
<td>Right not to be unfairly dismissed (after two years’ service except for automatically unfair reasons such as discrimination)</td>
<td>E</td>
</tr>
<tr>
<td>Protection from unlawful deduction from wages</td>
<td>E W</td>
<td>Right to written statement terms and conditions</td>
<td>E</td>
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<td>Paid annual leave</td>
<td>E W</td>
<td>Itemised payslip</td>
<td>E</td>
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<td>Maternity, paternity, Adoption leave and pay</td>
<td>E</td>
<td>Pension auto-enrolment</td>
<td>E W</td>
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<tr>
<td>Part-time status - no less favourable</td>
<td>E W</td>
<td>Right to be accompanied at a disciplinary/grievance hearing</td>
<td>E W</td>
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<tr>
<td>Fixed-term status - no less favourable</td>
<td>E</td>
<td>Rights under data protection legislation</td>
<td>E W SE</td>
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<tr>
<td>Rest breaks</td>
<td>E W</td>
<td>Whistleblowing protection</td>
<td>E W SE (possibly)</td>
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<tr>
<td>Right to request flexible working</td>
<td>E</td>
<td>Statutory sick pay</td>
<td>E W (possibly)</td>
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<tr>
<td>Right to request time to train</td>
<td>E</td>
<td>Unpaid time off to care for dependants</td>
<td>E</td>
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<tr>
<td>Protection from discrimination</td>
<td>E W SE</td>
<td>Time off for antenatal care</td>
<td>E</td>
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<tr>
<td>Minimum notice periods</td>
<td>E</td>
<td>Time off for trade union activities</td>
<td>E</td>
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<tr>
<td>Collective redundancy consultation</td>
<td>E</td>
<td>Health and safety in the workplace</td>
<td>E W SE</td>
</tr>
<tr>
<td>Statutory redundancy pay</td>
<td>E</td>
<td>Transfer of undertakings protection</td>
<td>E</td>
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</tbody>
</table>
What are the consequences of being on a zero hours contract?

Even employment rights for both workers and employees are not respected according to CIPD survey:
• only 59% of organisations / 46% of zhc staff believed these staff to be entitled to annual paid leave

Most organisations (64%) say they treat zhc staff as employees but do not provide employee benefits:
• all employees should have redundancy rights, statutory maternity and paternity, unfair dismissal protection after two years – but only 31%, 40% and just over 50% of employers said their zhc staff were eligible.

This discrepancy may be explained by:
• Employers may treat zhc staff as employees while working but deny that a contract of employment exists between periods of employment

An umbrella contract or global contract is vital to establishing continuity of employment – again vital for social protection
• Paradoxically requirements for exclusivity may help the case in the courts as implies a global contract in existence

But thresholds for employee rights means that
• zhc vulnerable to hours being reduced when pregnant or before redundancies so that rights eroded just as being claimed.
What are the consequences of being on a zero hours contract?

Social protection depends on interpretation by state officials

• In principle unemployed not expected to take zero hours jobs as might involve moving back and forth between in-work (>16 hours) and out of work (<16 hours) benefit systems

• In practice under pressure to take on these jobs

• Unclear what happens if refuse or if quit

• New universal credit system will abolish thresholds allowing for unemployed to take zhcs (and will be required so to do)

• But outcome may be increased costs to the state if more employers move to zhc or away from standard guaranteed hours
Why and what kinds of firms use zero hours

Intermittent/lumpy demand e.g., concerts/events

Seasonal demand e.g., tourism

Weekly demand e.g., Restaurants/shops
But social care is one of the main areas of use and none of these reasons explain its use in social care

- Need care every day
- Not very seasonal
- Fairly even over seven days
- Most care staff working >20 hours sometimes very long hours but still on zero hours

*Key reasons in domiciliary social care:*

- Care is time and location specific
- Peaks and troughs over the day
- Changing composition of clients leads to changing volumes, locations and schedules
- Care is commissioned and paid for face to face care time only
The main reason in social care to organise work into short and fragmented visits. We call this a *fragmented time contract*.
Benefits from zero hours for employers

Zero hours contracts facilitate:

• No minimum work periods
• Unpaid breaks between calls
• Non payment of travel time
• Compliance with constant changes to schedules by time/place
Our research

Survey of 52 independent sector domiciliary care providers across 14 local authorities for Department of Health

Objective: to explore the problems in the recruitment and retention of a care workforce for older adults – covered residential and domiciliary but only reporting on domiciliary here.

89% hours domiciliary care undertaken by private or voluntary sector but most commissioned by public funds.

Underlying hypothesis for study was that employment conditions influenced both by care commissioning and by employer HR policies.

In practice found rather high degrees of similarity in

• commissioning strategies (all relatively low fee and only paying for direct contact time)

• and in employer HR practices - all towards fragmented time arrangements and low pay

• Some tendency for better commissioning to improve HR but within narrow range
### Table 1. Indicators of non-payment for work-related activities

<table>
<thead>
<tr>
<th>Percentage of private and voluntary sector domiciliary care providers who:</th>
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<tbody>
<tr>
<td>Only offer zero hours contracts to all staff</td>
<td>69%</td>
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<tr>
<td>Do not pay for time spent travelling</td>
<td>81%</td>
</tr>
<tr>
<td>Do not pay for breaks between clients</td>
<td>88%</td>
</tr>
<tr>
<td>Do not have a minimum work period</td>
<td>71%</td>
</tr>
<tr>
<td>Use electronic monitoring to pay only for face-to-face care time</td>
<td>29%</td>
</tr>
</tbody>
</table>
What does this mean for care workers’ experience of work?

- Not being paid for all the time spent in work activities (when cannot use time for oneself)
- High risk of loss of pay due to changes in clients
- Working very extended hours—over the day and week—just to earn a full-time wage at minimum wage rates
- Constant pressure when not working to take on new client visits
Council commissioning versus employer HR policies

Councils
• only pay for face to face care time - at fee levels often close to NMW
• do not pay for travel time, training time or unsocial hours premia
• cancel payments for care not provided due to hospitalisation etc.,

Employers use zero hours to
• maximise flexibility and control
‘People who are not flexible, they don’t get so many hours’ (Manager TE.Dom.1)
• Minimise costs (flat rate pay/ minimise paid hours)
• Pass risks on to employees (together with LAs)

Outcome
• Major shortages of labour
• No major initiative to change HR policy to reduce shortages
• Even when commissioning more generous, limited and variable impact on pay (average 18p uplift per £ increase in fee)
Do zhcs provide flexibility for employees/fits personal circumstances

ZHC often justified as means of flexibility for employee

Employers
• Use flexibility needs as basis for recruitment- local/ flexible/ interested in extra earnings
• Use adjustments to flexibility requirements to retain (but often initiated by staff)
• Reliance on new starters or office staff/ coordinators/ senior carers to fill the gaps

Care workers
• Those who stay may have specific needs which are met by zhc- e.g. need to return home to check on sick adult during day/ need to pick kids up form school
• But convenience comes at heavy price –e.g. other family member takes kids to school/ late evening work to avoid school holidays or weekend work
• Grateful for adjustments but all made within framework of very flexible hours, extended days and fragmented time

Outcome
• Limited pool of staff where this kind of ‘flexibility’ suits- only local and only those willing to work extended days for limited pay
Implications

For social care

Better enforcement – e.g. national minimum wage for all work-related time

Change to funding model for social care
• Need sustainable commissioning (e.g. at least £15.19 per hour UKHCA) and a commitment to ethical commissioning (Ethical care charter UNISON)

For zero hours generally

Need regulations/incentives to:
• Establish minimum work periods/maximum unpaid break times
• Require reimbursement of travel costs for short hours/short notice work
• Guarantee hours –after one year (Labour Party policy) or based on past work history (e.g. no less than 75% of previous 3 months)
• Reduce focus on continuity and hours/earnings thresholds for employment and social rights
• End universal benefit plan