

## ZERO-HOURS CONTRACTS IN ENERGY AND INFRASTRUCTURE PROJECTS: THE FUTURE IS CONFUSED

### Introduction: The need for an occasional workforce

Statistics released last month show that zero-hour contracts were greatly [on the rise last year](#), including in the energy and infrastructure sectors. Although the government is criticised for doing little to tackle the perceived exploitation of workers on these contracts, they remain just as popular, if also as divisive, as ever.

These controversial [“no-ties” agreements](#), which allow employers to contract whenever and for however long they want, with no guarantee of work, are not suitable for everyone. But for a proportion of the workforce, the flexibility these contracts allow makes them appropriate and convenient.

The oft repeated refrain from critics of zero hours contracts is that employers have no obligations to workers and take advantage of them, bringing them on board when they want them only to spit them out when they've gained what they need. Indeed, some zero-hour contract employees report a vulnerability that renders them unable to speak up when treated unfairly, but employment lawyers will tell you there are plenty of employees with “rights” who are the same. Employees may be protected on paper but when it comes down to a dispute, for example, who holds the cards? It's often a game of chess rather than a legal fight, zero-hours or not.

### The need for an occasional workforce The ‘Uber’ Case

Some businesses need workers irregularly. These contracts provide these firms complete flexibility over when and how they utilise their workforce whilst giving them no obligation to actually offer work. Now that a change in the law means [that “exclusivity clauses” are unenforceable](#), workers can turn offers of work down without fearing the loss of future work from that company. Some industries may find a series of fixed-term contracts, consultancy agreements or engaging agency staff more suitable, however any business that does not know from one day to the next how many staff they need will still find zero hours' arrangements useful.

There are [reports](#) that the use of zero hours contracts is levelling out, and may even be likely to decrease. Companies develop relationships with certain workers but, now that they cannot guarantee the availability of preferred workers, will zero hours' contracts be used less?

Those companies that are already using zero hours' contracts will have a good bank of contacts, so will be more likely to have immediately available back-up - not unlike under consultancy agreements. Now that workers do not have to take on work when it is offered, businesses will necessarily be looking at ways of getting a better bank of different people to rely on whilst maintaining, wherever possible, the flexibility to take on staff only when they require their services. This approach lessens the risk from the employer's viewpoint of deemed “employment status” (i.e. mutuality of obligation) evolving in due course between employer and worker.

### The ‘Uber’ Case

With the ground-breaking “Uber” case finding that [drivers are “workers”](#), people who hold mid-way status between employees and the self-employed and benefit from some of the main worrisome claims for employers such as unfair dismissal and sick pay, and with certain faces naturally becoming more and more established at one location, mutuality of obligation may in fact be developing in any event.

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Are the lines between employee / worker and / or free to choose becoming blurred and leading zero-hours' contracts to their natural end?

There will still be obligations on companies, of course. Companies need to keep track of which members of staff are working and when, whilst making workers aware that they need to be informing the firm of what else they are doing and for how long. Companies should be able to ensure that they do not fall foul of Working Time Regulations, since unless workers opt out of the 48 hour working week, this part of the Regulations applies to all their jobs as if they are one.

As always, the most effective way to ensure this and other vital information is recorded properly and that other important issues are dealt with at the same time is to have good, solid terms and conditions agreed from the outset.

### About the Author:

*Philippa Wood is a solicitor with many years' experience advising on all areas of contentious and non-contentious employment law. Her clients include individuals and companies of all sizes from entrepreneurs to global brands. She advises on the full range of employment issues: defending all types of discrimination claims including maternity, stress & bullying; unfair and wrongful dismissal; directors' disputes; whistleblowing; agents and agency regulations; redundancy, restructuring and outsourcing including TUPE claims; remedies hearings and contributory costs; collective bargaining; arranging and heading up employer and employee training days and sessions; drafting executive service, consultancy and fixed term and permanent contracts of employment, staff handbooks and sickness policies; advising on how to implement service provision changes; flexible working and statutory leave requests; and employee monitoring and data protection issues.*

*Prospect Law is a multi-disciplinary practice with specialist expertise in the energy and environmental sectors with particular experience in the low carbon energy sector. The firm is made up of lawyers, engineers, surveyors and finance experts.*

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