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# Zero Hours Contracts

## New Regulations for Schools



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January 2016



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# Changes to Zero Hours Contracts

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The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations (the Regulations) have come into force giving those working under zero hours contracts additional protection from dismissal and detriment.

We have set out below some guidance on the new regulations for schools that use zero hours contracts to engage staff.

## What is a zero hours contract?

A zero hours contract is a term used to describe types of casual agreements between an employer and their staff. Generally, under a zero hours contract employees are not guaranteed any work and are paid only as and when they work.

Individuals working under zero hours contracts are entitled to the national minimum wage, paid annual leave, rest breaks and protection from discrimination. Depending on whether they are an employee or not, they may also be entitled to statutory employment rights such as the right not to be unfairly dismissed.

## When are zero hours contracts used?

Zero hours contracts are frequently used when there is a requirement for a flexible workforce; for example, where workers are required at short notice or the level of work is uncertain. In schools they might be used for supply teachers or where a “bank” of administration workers or midday supervisors is used.

Zero hours contracts are not likely to be appropriate when an individual carries out work for a school on a more regular basis.

## Exclusivity clauses

Exclusivity clauses have been used in zero hours contracts to prevent or limit a worker’s ability to work elsewhere. These types of clauses were considered to be unfair as they prevented those engaged under zero hours contracts from earning money from another employer despite there being no guarantee of any wages being paid to them.

In May 2015 legislation was introduced making exclusivity clauses contained in zero hours contracts unenforceable where they prevented a worker from:

- doing work or performing services under another contract or under any other arrangement; or
- doing work or performing services under another contract or under any other arrangement without the employer’s consent.

## Protection from Dismissal and Detriment

The Regulations, which came into force on 11 January 2016, provide the following new rights for those working under zero hours contracts who have failed to comply with an exclusivity clause in their contract:

1. Where an employee is dismissed because they breached the exclusivity clause that dismissal will be automatically unfair. The employee will be able to make an Employment Tribunal claim against the employer regardless of their length of service. (An employee will usually need 2 years' service with an employer before they are able to make a claim for unfair dismissal.)
2. It is unlawful to subject a worker working under a zero hours contract to a detriment because they have breached the exclusivity clause.

There is no guidance in the Regulations as to what amounts to a detriment but it is likely that the following types of treatment could be considered to be detrimental, depending on the circumstances (this is not an exhaustive list):

- Reduction in pay
- Failure to offer future hours
- Denial of training
- Unrequested reassignment or relocation
- Suspension
- Disciplinary sanctions
- Bullying or harassment
- Failure to provide an appropriate reference

The Regulations make a distinction between employees and workers. Only those classed as employees are able to make a claim for unfair dismissal whereas workers, which has a wider definition, are able to make a claim for

detriment. For further guidance on the difference between employees and workers please see our Employment Status Guide on the FBeducation website.

### Advice for schools

In light of these changes, we would suggest schools consider the following:

1. Review the use of zero hours contracts to ensure they are being used appropriately.
2. When interpreting existing zero hours contracts remember that any exclusivity clauses will be unenforceable.
3. When drafting new zero hours contracts, remove any exclusivity clauses.
4. When dismissing an employee on a zero hours contract, carefully consider the reasons for dismissal. If it is because they failed to adhere to an exclusivity clause, the dismissal will be automatically unfair.
5. When managing workers with zero hours contracts remember that they are protected from suffering any detriment because they failed to adhere to an exclusivity clause in their contract. This can be particularly relevant when deciding which employees or workers to offer hours to as this decision should not be based on whether they undertake work elsewhere.

If you require any further advice on the use of zero hours contracts or any other area of Employment law or HR please contact a member of the team on 01332 226 146.

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