

## **Zero-hours: what employers need to know how**

Government's latest consultation matters because it signals a clear shift of the risk of fluctuating demand to employers using variable labour those potentially impacted now have an opportunity to feed into the consultations and should start preparing now.

The Government has opened a detailed consultation on zero-hours and similar contracts under the Employment Rights Act 202 . The new rights are not yet in force, and the operational detail will be set by regulations after the consultation closes on 2 August 2026. But the direction of travel is clear the government position is that qualifying workers should not continue to shoulder the full burden of uncertain demand.

At a high level, the reform package provides for three things

- a right to a guaranteed-hours offer based on hours actually worked during a reference period
- a right to reasonable notice of shifts and
- a right to payment where shifts are cancelled, curtailed or moved at a short notice.

In the Government's language, the aim is to end "one-sided flexibility" without removing employers' ability to respond to genuine peaks, troughs and seasonal demand. A phrase you will hear is "exploitative" arrangements, but it is important to note that there are many occasions when employees engage on flexible arrangements because it suits their circumstances. This consultation is an opportunity to broaden the debate and recognise that not every flexible contract is aiming to exploit, but is rather a commercially expedient arrangement for all parties.

### **1. Guaranteed hours: a new employer duty**

The most important shift is this the proposed regime is not simply a right for workers to request more predictable hours. The consultation makes clear that the Employment Rights Act 202 places a duty on employers to make guaranteed-hours offers to qualifying workers.

For directly engaged workers, a person will be within scope if they work on a zero-hours contract or arrangement, or if they have guaranteed hours below an hours threshold to be set in regulations. They must also have worked during the reference period, exceeded their contractual hours where relevant, satisfied the regularity requirements, and not fall within any exclusion.

The Government's threshold matters because the threshold will determine whether the regime remains focused on classic zero-hours arrangements, or extends much further into low-hours contracts where staff regularly work beyond their guaranteed minimum.

## **2. Reference periods and regularity will be critical**

The Government's preferred initial reference period is 12 weeks and guaranteed-hours offers would be calculated by reference to the hours worked during that period. Subsequent reference periods may be longer and cannot be used to reduce hours already guaranteed in a worker's contract, save by mutual variation.

Employers should pay close attention to the proposed regularity tests as they will materially affect businesses with seasonal, event-led or otherwise fluctuating labour demand. Employers of variable hours employees will already have systems in place capturing worked hours for pay and holiday pay purposes – these may be capable to adaptation to ensure compliance with this new obligation.

## **3. Agency workers are not a workaround**

The consultation is clear that agency workers are not intended to provide a route around the new regime. For guaranteed hours, the starting point is that hirers — not agencies — will be responsible for making offers to qualifying agency workers based on hours worked under the hirer's direction and supervision.

That has real commercial implications. Hirers, agencies and umbrella businesses will need clearer information-sharing, clearer allocation of cost and contractual responsibility, and reliable audit trails showing who controlled work allocation, shift changes and cancellations. The impact of clauses in agency terms triggering payments where hirers directly employ workers is as yet unclear.

## **4. Shift notice and cancellation payments will matter in practice**

The second limb of the reform is a right to reasonable notice of shifts and shift changes. The Government is not proposing a single fixed rule in every case. Instead, regulations will set a period that is presumed to be reasonable, with consultation options ranging from 1 to 4 weeks for directly engaged workers. Give less notice than that, and the burden is likely to fall on the employer to explain why it was still reasonable.

The third limb is a short-notice payment where shifts are cancelled, curtailed or moved and ministers may define short notice in regulations, but the Act does not permit a period longer than 7 days. The consultation asks whether there should also be a "very short notice" category carrying a higher payment. Payment could be calculated as a percentage of the worker's expected earnings for the shift, or as a percentage of the equivalent amount at the National Living Wage or National Minimum Wage rate.

The regime is not intended to penalise worker-led changes. Where a worker cancels, fails to attend, or voluntarily swaps a shift, a short-notice payment should not be due. Limited exceptions, such as extreme weather or widespread power outage, are also under consideration.

## **5. Enforcement: what employers should do now**

Employment tribunals will remain central to enforcement, particularly for guaranteed hours and reasonable notice claims. The consultation also proposes a role for the recently established Fair Work Agency in enforcing short-notice payments through a Notice of Underpayment regime, on the basis that non-payment is a discrete and measurable breach.

Employers do not need to rewrite contracts yet. But they should start building the evidence base and operational discipline that will be needed when the regime takes effect.

- Map zero-hours, casual, low-hours and agency labour across the business, including workers regularly exceeding contractual hours.
- Test different hours-threshold outcomes against workforce data, particularly 8, 12, 16 and 20 hours per week.
- Review scheduling systems to ensure they can record hours worked, shift offers, acceptances, cancellations, curtailments, movements and the reasons for each change.
- Assess agency contracts for information-sharing obligations, indemnities, recoupment rights and allocation of responsibility between hirer, agency and any umbrella company.
- Prepare a consultation response where the proposed thresholds, reference periods or agency-worker rules would create material operational difficulty.