

Resolution Foundation

A Matter of Time

The rise of zero-hours contracts

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Executive Summary

“Zero-hours” (or occasionally “nil hours”) contracts are anything but a new phenomenon. Employment contracts of this kind have been around for many years. Yet the use of zero-hours contracts has risen sharply in recent years. According to the Office for National Statistics the number of people employed on zero-hours contracts rose from 134,000 in 2006 (0.5 per cent of the workforce) to 208,000 (0.7 per cent) in 2012.

While the clear upward trend is not in dispute there are reasons to believe that these headline figures are a substantial under-estimate of the true scale of the use of zero-hours contracts across the UK. We know, for example, that around 150,000 domiciliary care-workers alone are employed on zero-hours contracts. The true scale of zero-hours contract use is likely to be far higher than official estimates suggest because statistics relating to such contracts are likely to suffer from a significant degree of reporting error for two reasons. First, many of those working under such contracts fail to accurately self-identify themselves as doing so and second, there is widespread ignorance among those on such contracts about their contractual situation.

Beyond the upward trend in zero-hours contract use our research suggests that:

- Those employed on zero-hours contracts receive lower gross-weekly pay (an average of £236 per week) than those who are not (an average of £482 per week) and workplaces that utilise zero-hours contracts have a higher proportion of staff on low pay (between the National Minimum Wage (NMW) of £6.19 per hour and £7.50 per hour) than those who do not. While we cannot say with certainty, increases in the number of people employed on low pay zero-hours contracts may partly explain the ability of the UK labour market in recent years to combine high employment levels with an unprecedented squeeze on real wages.
- Those employed on zero-hours contracts work fewer hours on average (21 hours per week) than those who are not (31 hours per work). The growing use of such contracts may therefore be a contributory factor in rising rates of under-employment since 2008. However, those on zero-hours contracts are also less likely to prefer this situation: 18 per cent of those on zero-hours contracts are actively seeking alternative employment or additional hours compared to 7 per cent of those who are not.
- The prevalence of zero-hours contracts is higher among young people than other age groups, with 37 per cent of those employed on such contracts aged between 16 and 24.
- Those employed on zero-hours contracts are less likely to have a degree (21 per cent) than those who are not (31 per cent) and are more likely to have a GCSE as their highest level of education.
- The employment of non-UK nationals is higher among workplaces utilising zero-hours contracts (48 per cent) than those who do not (25 per cent).
- 8 per cent of workplaces across a wide range of sectors now use zero-hours contracts. 20 per cent of those employed on zero-hours contracts are to be found in health and social work, 19 per cent in hospitality, 12 per cent in administration, 11 per cent in retail and 8 per cent in arts, entertainment and leisure.
- Zero-hours contracts are over-represented in the private sector, with private workplaces employing 85 per cent of those on such contracts compared to 76 per cent of those who are not on zero-hours contracts.

- Those employed on zero-hours contracts are more likely to be working in smaller workplaces (those with less than 50 employees) than large workplaces. They are also more likely to have been with their employer for a short time: 35 per cent of those on zero-hours have been with their current employer for less than a year compared to 15 per cent of those who are not.

It is not hard to see why zero-hours contracts can appear attractive to employers. They allow for maximum flexibility to meet changing demand. They can facilitate the management of risk, reduce the costs of recruitment and training, and they can, in certain circumstances, enable employers to avoid particular employment obligations.

Yet it is clear that the benefits these contracts provide for employers come at too high a price for the majority of those employed on them. For many, the ostensible freedom and choice these contracts offer is more apparent than real. This is particularly the case in workplaces where power imbalances are acute. For those individuals who require a minimum number of working hours per week to ensure their family is financially secure or who fear that turning down hours will result in future work being withdrawn (what is known as being “zeroed-down”), life on a zero-hours contract can be extremely difficult. For many, a zero-hours contract means a working life permanently “on-call,” uncertain as to whether a sufficient number of hours will be offered in any given week or whether a decision to turn down hours will lead to future work being withdrawn as a penalty. As a result, zero-hours contracts have serious implications for the management of household budgets, family and caring commitments, employment rights and relations, and access to tax credits and other benefits. They also have profound implications for those who depend on the services that zero-hours contract workers provide given their potential to negatively impact on morale, team cohesion, staff turnover and service quality.

It may be too early to move toward an outright ban of zero-hours contracts given that a minority value the flexibility and choice they provide but there is an indisputable case for giving urgent consideration to what safeguards can be introduced to improve things for the majority. The government has recently recognised the imperative for reform¹ and in the coming months we will be turning our attention to measures that will ensure that the use of zero-hours contracts is modified to provide greater certainty and security to those working under them.

This briefing note is an interim publication that forms part of a wider-ranging investigation into current forms of precarious employment and their impact on low to middle income households that will publish in the autumn. This work is kindly supported by Unbound Philanthropy.

¹ <http://www.independent.co.uk/news/uk/politics/zerohours-contracts-for-workers-to-be-reviewed-by-coalition-8656328.html>

Introduction

Despite a sustained increase in the use of zero-hours contracts over recent years – and the corresponding growth in public awareness about the use of such contracts – there has been little detailed exploration of the reasons why such contracts are being more widely used or the implications, for individuals and the UK economy, of any further expansion in their number.

This briefing note – an interim publication that forms part of a wider-ranging investigation into current forms of precarious employment and their impact on low to middle income households – moves beyond the headline rise in zero-hours contracts to explore a number of under-examined questions. It aims to provide:

- A breakdown of the prevalence of zero-hours contracts across the UK labour market; their incidence across different sectors of the economy and an analysis of the personal characteristics of zero-hours contract workers;
- A preliminary exploration of the reasons why a growing number of employers utilise zero-hours contracts and the factors that lie behind the recent sharp increase in their use;
- An anecdotal assessment of the impact of increased use of zero-hours contracts on those individuals working under them.

To provide provisional answers to these questions we analyse existing quantitative data sources and supplement these with an initial tranche of 10 semi-structured interviews conducted between April and June 2013 with individuals employed on zero-hours contracts across a range of occupations and sectors.

What are zero-hours contracts?

A zero-hours contract is a type of employment contract under which an employer is not required to offer an employee any defined number of working hours and the employee is, in turn, neither guaranteed any set number of working hours nor obliged to take any offered. The individual therefore only receives pay for the working hours for which they are required; hours which may be subject to variation on a daily or weekly basis.

Zero-hours contracts are similar to small-hours contracts (where an employee is guaranteed a small number of working hours per week, for example 6 or 8, with scope for further working hours should they be available and offered) but differ in that the latter provide at least a fixed minimum number of working hours per week and therefore greater certainty. There are also a number of similarities between employment on a zero-hours contract and agency temping (indeed the vast majority of agency workers are employed on zero-hours contracts) in that both involve an element of uncertainty about the provision of working hours over extended periods. If anything, agency work is a more precarious form of work in that it involves a tripartite, rather than direct, employment relationship.

Prior to the introduction of the Working Time Regulations (1998)² and the National Minimum Wage Regulations (1999)³ the flexibility zero-hours contracts provide was often used to ‘clock-off’ staff during quiet periods while retaining them on-site so that they could be returned to ‘paid’ work should the need arise. Fortunately, legislation and a subsequent body of case law, clarifying that employees’ time onsite should be paid unless it is a clear rest break, ended the widespread use of this practice but not the use of zero-hours contracts per se.

Despite curtailing exploitative practices such as “clocking-off,” life on a zero-hours contract remains precarious for many. This is not to suggest that all use of zero-hours contracts is inherently objectionable. Some zero-hours contracts may provide individuals with welcome choice and flexibility, allowing them to refuse work when it is unwanted, to take on additional work with other employers if they so desire and to achieve a better fit between work and other family or leisure commitments. For those who do not need a fixed number of working hours in order to live or support dependents and who value flexibility and choice over the certainty of a fixed level of income, this freedom might offer clear advantage.

However, the circumstances of most of those employed under zero-hours contracts mean that the freedom and choice ostensibly on offer is more apparent than real, particularly given the power imbalances that operate in many workplaces. For those who require a minimum number of working hours to remain financially secure or who fear that turning down hours will result in their employer withdrawing the offer of work in the future (what is known as being “zeroed-down”), life on a zero-hours contract can be extremely challenging.

Some of the individuals we spoke to for this note disliked life on a zero-hours contract because of the *uncertainty* of working a fluctuating numbers of hours devoid of any guarantee that they would earn enough to provide for themselves and their families. Others spoke of how their contractual situation was used as a *management tool* with future hours dependent on their relationship with their line manager and a track record of flexibility and compliance in taking all hours offered. For these individuals a zero-hours contract

² <http://www.legislation.gov.uk/uksi/1998/1833/contents/made>

³ <http://www.legislation.gov.uk/uksi/1999/584/made>

provides little real choice because of a fear that if extra or anti-social hours are turned down their employer may “zero-down” the number of hours offered the following week as a reprimand.

The prevalence of zero-hours contracts

Establishing a precise estimate of the scale of zero-hours contract use is extremely difficult. Statistics relating to zero-hours contracts are not only likely to suffer from a significant degree of reporting error (many of those working under such contracts fail to accurately self-identify themselves as such) but there is also widespread ignorance among those on such contracts about their precise contractual situation.

There are two main sources of statistics on zero-hours contracts: the Office of National Statistics' Labour Force Survey⁴ (LFS) and the Workplace Employment Relations Study⁵ (WERS). According to LFS estimates from the three-month period October to December 2012, 208,000 people reported that they were on a zero-hours contract (0.7 per cent of the workforce). This was up from just over 134,000 (0.5 per cent of the workforce) in 2006.⁶ Given the data limitations detailed above and strong evidence to suggest extensive use of zero-hours contracts in particular occupations and sectors (the National Minimum Dataset for Social Care, for example, estimates that 150,000 domiciliary care-workers alone are employed on zero-hours contracts⁷) it is clear that these headline figures are likely to be an extremely conservative estimate. Yet even on the basis of conservative estimates a clear upward trend, as shown in Figure 1 below, is apparent.

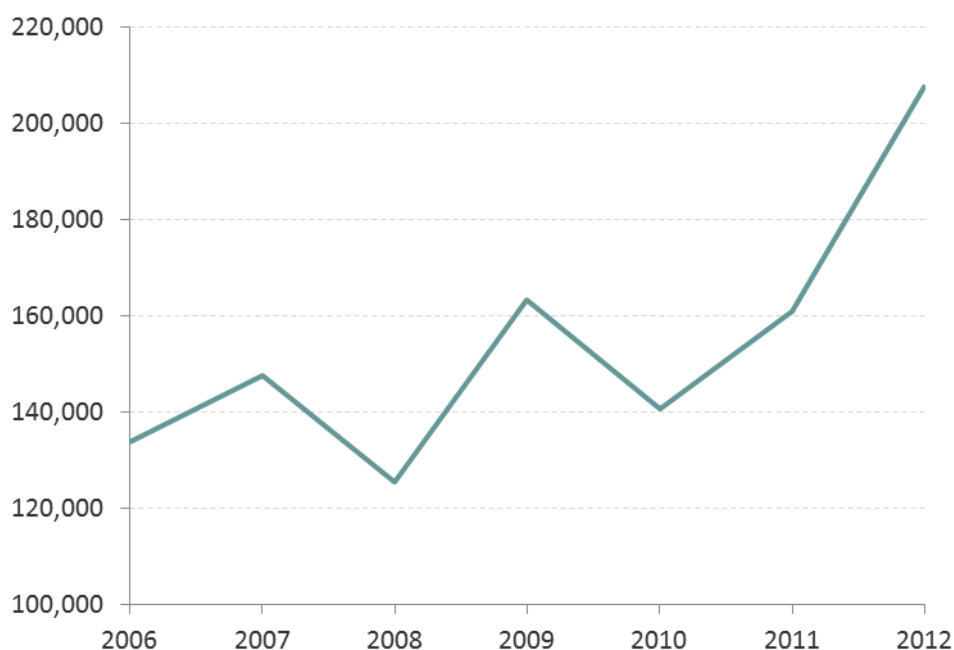
⁴ LFS covers the United Kingdom. Where snapshot data is given, it is taken from the latest quarterly data (October–December 2012). Trends refer to Q4 data from 2006 to 2012.

⁵ WERS covers Great Britain. All data refers to 2011. The weightings used within the WERS dataset are currently being revised by BIS. New weights will be supplied in July 2013. The WERS statistics presented in this report are therefore subject to change. However, the dataset revision is not expected to alter the general conclusions that can be taken from the findings presented in this report.

⁶ Analysis published by the ONS in April 2013 gave the number of people in employment on a zero hour contract to be 200,000 during Q4 2012. This figure is slightly lower than that given in this paper. ONS present the number of people for which their 'main' type of work arrangement is a zero-hours contract. This analysis presents the number of people who are employed under a zero-hours contract, and therefore gives also captures people who have other working arrangements (term-time only, for example). The approach taken here has been chosen as it better reflects the overall prevalence of zero-hours contracts across the labour market. For the ONS analysis, see <http://www.ons.gov.uk/ons/about-ons/what-we-do/publication-scheme/published-ad-hoc-data/labour-market/april-2013/index.html>

⁷ Ioulia Bessa, Chris Forde, Sian Moore, Mark Stuart, The National Minimum Wage, earnings and hours in the domiciliary care sector, University of Leeds (February 2013). Similarly, the LPC estimates that around 50,000 employees in the social care sector are paid the NMW (around 6 per cent of the workforce) of whom just over 1 per cent are domiciliary care workers

Figure 1: Number of people on zero-hours contracts



Source: Resolution Foundation analysis of the Labour Force Survey Q4 2012

Beyond the headline rise in the use of zero-hours contracts our analysis also suggests that those employed on such contracts work fewer hours on average (21 hours per week) than those who are not (32 hours per week). This divergence is present across industries, although there is a particularly significant gap between the hours worked by those on zero-hours contracts in Administration & Support and those who are not. Our analysis also suggests that the prevalence of fewer average working hours among those employed on zero-hours contracts is not the product of a positive individual choice. According to the LFS those on zero-hours contracts are *less* likely to prefer working shorter hours than they do at present. They are also more likely to be looking for a new or additional job: 18 per cent of those on zero-hours are in this position compared to 7 per cent of those not on such contracts.

According to the LFS those employed on zero-hours contracts receive lower gross weekly pay (an average of £236 per week) compared to those who are not (an average of £482 per week). This is, in part, a consequence of working fewer hours on average per week but LFS also makes clear that the gross hourly wages of those employed on zero-hours contracts (an average of £9 per hour) are lower than those who are not (an average of £15 per hour).⁸ Moreover, zero-hours contract workers are also at greater risk of finding themselves in low pay⁹; a correlation supported by WERS which suggests that workplaces using zero-hours contracts have a higher proportion of staff paid between the National Minimum Wage (NMW) of £6.19 per hour and £7.50 per hour than companies that do not use this type of contract. While we cannot say with certainty, this increase in the number of people employed on poorly paid zero-hours contracts may partly

⁸ This difference in gross hourly wages is even greater for those who hold a degree. For zero-hours contract workers with a degree the mean wage is £10 per hour compared with £20 per hour for those who are not. However, the difference disappears at low skill levels (for people for whom a GCSE is their highest level of qualification).

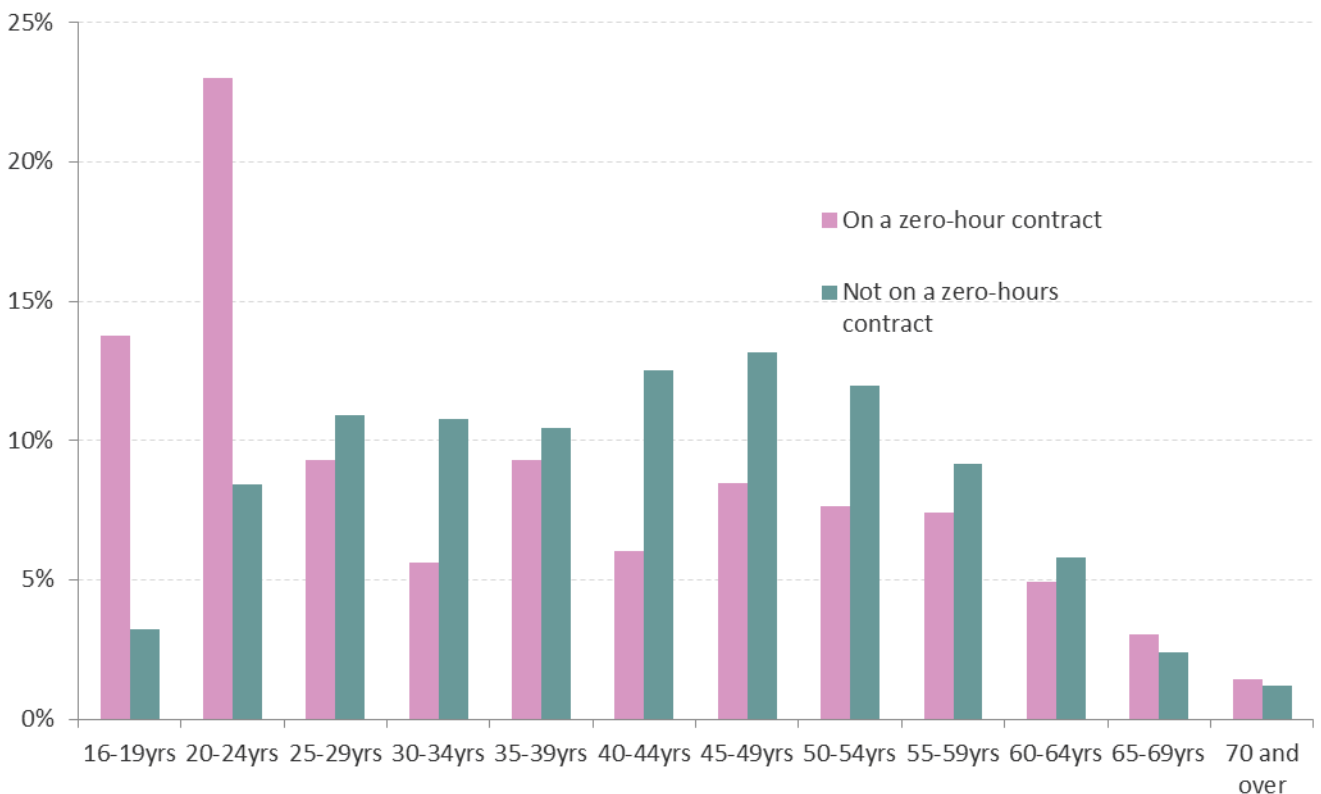
⁹ We define low pay as two-thirds of the median gross hourly wage based on the latest quarterly data (October–December 2012).

explain the ability of the UK labour market in recent years to combine high employment levels with an unprecedented squeeze on real wages.

Personal characteristics

According to the LFS, the prevalence of zero-hours contracts is highest among young people (those aged between 16 and 24). We estimate that 37 per cent of those employed on zero-hours contracts fall within this age group, compared to 12 per cent of the overall survey population. Figure 2 below shows this, with the pink bars denoting the distribution of those on a zero-hours contract.

Figure 2: Prevalence of zero-hours contracts by age



Source: Resolution Foundation analysis of the Labour Force Survey Q4 2012

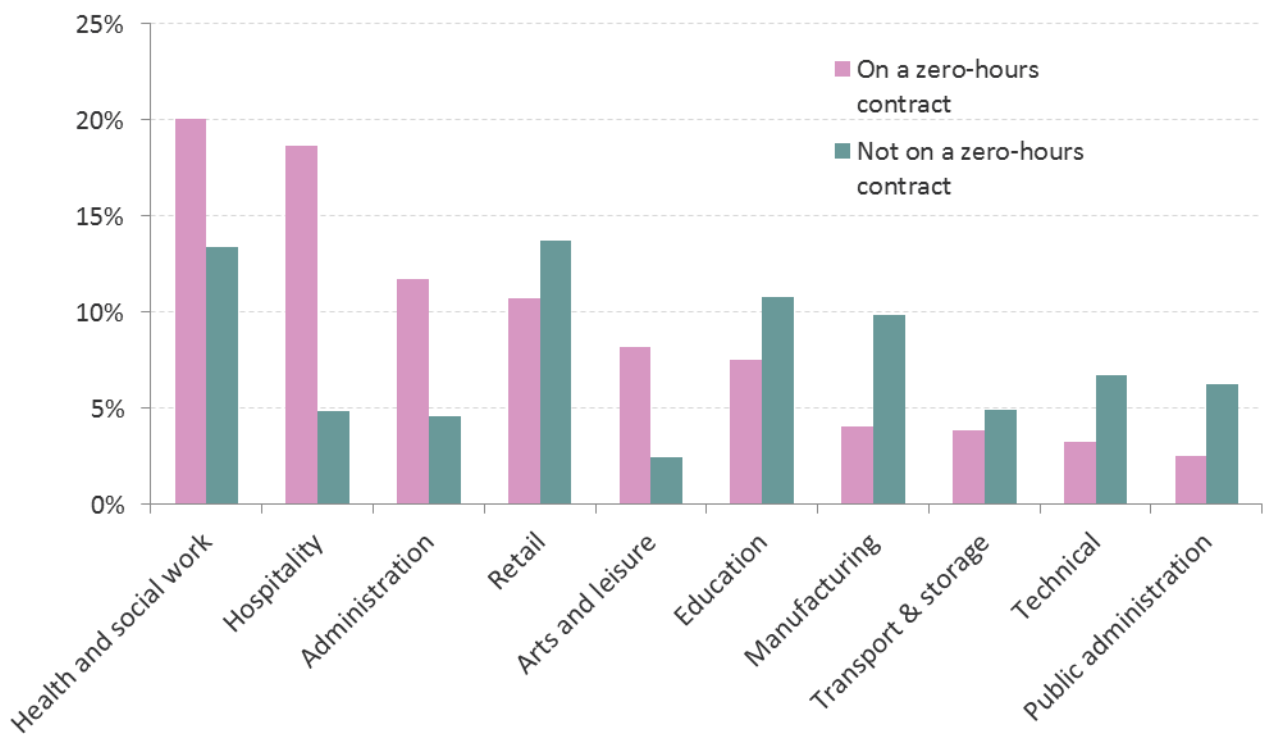
Perhaps surprisingly given the number of zero-hours contract workers in sectors such as social care which are heavily gendered, the prevalence of zero-hours contracts by sex is fairly evenly distributed with 53 per cent of those on such contracts being female and 47 per cent male. Unsurprisingly, those employed on zero-hours contracts tend to be less likely to have a degree (21 per cent) than those who are not (31 per cent) and are more likely to have a GCSE as their highest level of education (27 per cent of those on zero-hours contracts compared to 21 per cent of those who are not). Our analysis of the WERS also suggests that of the workplaces who use zero-hours contracts, just under half (48 per cent) employ non-UK nationals compared to a quarter (25 per cent) of workplaces that do not utilise such contracts.¹⁰

¹⁰ This should not be taken to mean that non-UK nationals are more likely to be on zero-hours contracts. As with all WERS Employer-level data, statistics refer to employers. Therefore it should not be assumed that particular employees are employed on zero-hours contracts on the basis that they are work within companies that use ZHC. Note WERS includes workplaces with 5 or more employees only. Micro-organisations are not sampled.

Industry

According to WERS, zero-hours contracts are now used by 8 per cent of workplaces across a wide range of sectors including retail, hospitality, higher education and health. Using the LFS we estimate that 20 per cent of those employed under zero-hours contracts work in the health and social work sector, 19 per cent in hospitality, 12 per cent in administration, 11 per cent in retail and 8 per cent in arts, entertainment and leisure. These results are shown below in Figure 3 with the pink bars denoting the distribution of those on zero-hours contracts.

Figure 3: Distribution of employees by zero-hours contract status by industry



Source: Resolution Foundation analysis of the Labour Force Survey Q4 2012

Zero-hours contracts are particularly prevalent in the private sector where 85 per cent of those employed on such contracts are located, compared to 76 per cent of those not on these contracts. Those on zero-hours contracts are also more likely to be working in smaller workplaces (those with less than 50 employees) than in large workplaces (those with over 250 employees). It is worth noting, however, that, even within the same sector and among workplaces of similar sizes, the use of zero-hours contracts varies. This suggests that the use of these contracts is not an inevitable by-product of a changing economic environment but the result of particular business models and/or imperatives. Some organisations choose not to use them, while others make extensive use of them, despite facing similar operating environments.

We found that individuals contracted on the basis of a zero-hours contract are more likely to have been with their employer for a short period of time: 35 per cent of those on such contracts have been with their current employer for less than a year compared to 15 per cent of those not on such contracts. This implied association between zero-hours contracts and staff turnover is supported by the interviews we conducted

for this note. Our analysis also suggests that those employed on zero-hours contracts are less likely to have their pay or conditions affected by union agreements and are less likely to be a member of a trade union or staff association.

Data limitations

As suggested above, there are a number of reasons to question whether the estimates drawn from both the LFS and the WERS provide an accurate picture of the prevalence and distribution of zero-hours contracts across the UK. In the case of the LFS this is because the dataset relies on individual responses to a question about work arrangements. This requires individuals to recognise the term 'zero-hours' and be familiar with their own contractual arrangement. It is therefore likely that some individuals who are employed on zero-hours contracts do not associate their own working arrangements with this precise term leading to significant under-reporting. This hypothesis was supported in a May 2013 response to a parliamentary question when Lord Wallace of Saltaire, responding on behalf of the government, stated that: "In addition [to sampling error], there is likely to be a degree of reporting error in these estimates as individuals may fail to identify their type of employment contract".

In addition, despite the large sample sizes used in the LFS, the zero-hours contract sub-group is based on a relatively small sample. While all reported results in this note are statistically significant, a more extensive understanding of zero-hours contracts would require large-scale survey work of employers and employees that would overcome the sample-size and under-reporting issues present in the LFS. Similarly, the WERS is based on responses from individual workplace managers and excludes micro-organisations (those employing fewer than five employees) thereby potentially under-reporting the prevalence of zero-hours contracts among workplaces of this size.

There is also evidence to suggest that many people employed on zero-hours contracts are entirely unaware of their contractual situation. Several well-established national organisations which provide employment advice informed us that they had dealt with significant numbers of cases in which individuals in crisis sought assistance having learnt that they were employed on zero-hours contracts only when their working hours were drastically altered or they realised they did not hold particular employment rights. The presence of widespread ignorance about employment on a zero-hours contract was also substantiated by many of those we interviewed. As a further education lecturer in Bradford whom we spoke to put it:

"I had no idea I had signed a zero-hours contract. When I applied for the job it was advertised as being for between three and 21 hours work a week. I expected to agree a regular number of set hours once I'd started but found myself working only three hours a week without a formal induction or any kind of support".

Why do employers use zero-hours contracts?

There are a number of reasons why zero-hours contracts are an attractive proposition for employers:

Zero-hours contracts allow an employer to maximise the flexibility of their workforce **to more easily adjust to variations in demand**. This is a particularly attractive proposition for employers during an economic downturn. If an employer has access to a pool of readily accessible labour through an increase in the number of those employed on zero-hours contracts, then staffing levels can be adjusted to better match demand and wage bill costs can be reduced. In effect, zero-hours contracts allow an employer to transfer the burden of varying demand onto the workforce. This is easier in today's loose labour market where employment opportunities are limited and employers can easily recruit. It is also easier in low-paid, low-skilled sectors of the economy in which employers are often (though not always) competing on cost and price rather than on service quality.

Zero-hours contracts allow employers **to better manage risk**. Employing a proportion of one's workforce on a zero-hours contract can, for example, allow an employer to adapt to severe fluctuations in demand (such as might occur if a major contract fell through) by zeroing down large numbers of staff at a stroke. We interviewed an individual who works for a computer games manufacturer who described how his hours are regularly reduced to zero for two to three month periods when a particular project is delayed.

Zero-hours contracts allow employers **to reduce the initial costs** associated with recruiting and training staff. Having a large pool of "on-call" trained workers means that growth in demand can be accommodated without the need to hire and train at extra cost or to pay fees to an agency. This practice appears to be common in higher and further education where staff working on zero-hours contracts can be brought in to teach a module for a term without any delay but without any on-going costs after their work assignment is complete.

There is anecdotal evidence that some employers utilise zero-hours contracts in order to **avoid particular employment obligations** associated with standard contracts of employment. We should not of course assume that this is always deliberate or that all employers have a clear understanding of zero-hours contracts and the legal obligations that come with them.¹¹ However, the fact that many zero-hours contracts are drafted in such a way as to avoid conferring the formal employment status of "employee"¹² suggests that some employers use zero-hours contracts to avoid obligations such as maternity and paternity leave, the right to request flexible working and potential redundancy costs (although it should be noted that we found evidence of some employers abusing the flexible nature of zero-hours contracts in order to reduce staff to small or zero-working hours and thereby circumvent the issue of redundancy altogether). The use of zero-hours contracts to reduce statutory obligations towards staff or to deter staff from asserting existing statutory rights may also explain why we found evidence of individuals formally employed on permanent contracts being pressured into signing replacement zero-hours contracts. For example, we spoke to a Day Services Support worker, working for a well-known national charity providing "life-enhancing services and vital support" for older people, who told us that:

¹¹ On 30 May 2013 we observed an Advisory, Conciliation and Arbitration Service (ACAS) focus group involving ACAS advisors from across the UK. The advisors accounts provide anecdotal evidence of a lack of clarity among employers calling the Acas Helpline about the statutory obligations that should operate under zero-hours contracts.

¹² Within the meaning of section 230 of the Employment Rights Act 1996

“After 8 months working as a day services support worker I became seriously ill and informed my employer that I would need to be in hospital for about six weeks to undergo surgery and to recover. The day after, and I have no doubt the two are linked, several of the girls and I were brought in and told that the company had to make a few “little tweaks” to our contracts. I made some calls and sought advice as I assumed they couldn’t do this to us but the next week my line-manager told me I either signed the new contract or I could leave the company. I was told that if I signed they wanted to also know they’d have no negative attitude from me. I felt that I had no choice as my husband was out of work at the time and I’ve been on zero-hours since”.

(Female day services support worker, Kendal)

Employment status is a notoriously complex legal area and court and tribunal decisions very much depend on the facts and circumstances of each case. However, in cases where an individual employed on a zero-hours contract has a consistent pattern of work offered by their employer there may be ground for the individual to convince an Employment Tribunal (ET) that a clear ‘mutuality of obligation’ exists and that formal ‘employee’ status is justified. This is because employment law often takes contracts as a starting point rather than the finality of what constitutes an employment relationship. As a result – and irrespective of the intentions of the drafter – courts and tribunals will also look at the reality of the employment relationship i.e. what happens in practice in the workplace irrespective of whether the contract itself suggests an obligation exists. As such the wording of any zero-hours contract may not be determinative of whether there is, in practice, a mutuality of obligation. If the reality is that there is a pattern of work which is regularly accepted a tribunal may deem the contract to be one of employment.¹³

Many of the individuals we interviewed for this project appeared, prima facie, to warrant formal ‘employee’ status and yet have been told that they are ‘workers’ who do not hold a number of statutory rights. In such cases an individual may be able to convince a tribunal that they qualify for certain employee rights. However, there are clearly significant barriers that confront any individual on a zero-hours contract from asserting their rights even where a clear mutuality of obligation exists and employee status appears incontrovertible. This is because of the potentially high financial costs of taking a dispute to tribunal both in terms of lost income (a particular barrier for low-paid workers considering initiating a grievance) and legal costs – barriers which, as a result of the introduction of fees for employment tribunal claims and appeals to the Employment Appeal Tribunal (EAT) from 29 July 2013¹⁴, will become harder to surmount. And of course, even if an individual dispute is successfully settled out of court or by means of an ET, this would not prevent further abuses from occurring to other workers.

¹³ For example, the Tribunal Case *Pulse Healthcare Limited V Care Watch Care Services Limited* involved six individuals engaged by Carewatch to provide 24-hour care to a severely disabled individual. Pulse Healthcare Ltd took over the service contract from Carewatch and the individuals claimed they were employees and that their employment transferred under TUPE. Pulse argued they were not employees and did not have sufficient continuity of employment to claim unfair dismissal but the Employment Tribunal disagreed. The ET said there was sufficient mutuality of obligation for the claimants to be employed (i.e. they were required to personally perform the work, they were obliged to do the work and Carewatch undertook to offer the work). The ET also disagreed that the claimants were engaged on a succession of individual contracts as opposed to an ‘umbrella’ contract and therefore did not have sufficient continuity of service – the ET felt they were employed under a ‘global’ contract to provide a critical care package.

¹⁴ The introduction of fees by HM Courts and Tribunals Service is subject to parliamentary approval. Fees will not be payable on claims submitted, or notices of appeal received, before the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 comes into force. There will be two main charging points: first on issue of a claim and second prior to the final hearing for a claim that proceeds to that stage. For employment tribunal claims, different fee levels will apply, depending on whether the claim is a level 1 or level 2 claim. The Order lists the claims that come under level 1 (which includes claims for unpaid wages and redundancy payments). Other claims come under level 2. For level 1 claims, the issue fee will be £160 and the hearing fee will be £230. For level 2 claims, the issue fee will be £250 and the hearing fee will be £950. Different fee levels will apply to claims involving multiple claimants. For lodging an appeal with the EAT, the appellant will pay an issue fee of £400 and a hearing fee of £1,200. There will be only one level of fee regardless of the type of claim or number of claimants.

Why is the use of zero-hours contracts on the rise?

It is unclear precisely why the number of people on zero-hours contracts has risen so sharply in recent years. However, some have suggested that there are two factors at work:

- 1) A prolonged economic downturn appears to be the main driver of increased use of zero-hours contracts. With demand uncertain and the pace of recovery unclear, it appears that many private sector employers have become more reliant on zero-hours contracts to manage their businesses through a difficult economic period. Similarly, increasing pressures on the public purse have also seen public sector employers search for ways to reduce costs. This is perhaps most marked in the social care sector where reductions in formula grant from central government have seen local authorities drive down unit rates for care, at the same time as they have been shifting away from purchasing guaranteed volumes to spot purchasing through framework contracts. In removing guaranteed block volumes of paid care to providers, framework agreements incentivise the use of zero-hours contracts among providers as a means of managing risk. As a result there is strong evidence to suggest that the use of such agreements is an important factor in ensuring that 56% of all domiciliary care workers are now employed on zero-hours contracts.¹⁵ Of course, slack labour markets and the ready availability of large pools of low-skilled workers who are unable to command high wages and who lack alternative prospects is also likely to be a factor in many parts of the country. A common theme across the interviews we conducted was a sense that in many local labour markets, where alternative prospects for standard forms of employment are small, zero-hours contracts have become ubiquitous.
- 2) According to a number of employers and employer representatives we spoke to, the 2010 Agency Workers Regulations (SI 2010/93) which implemented the 2008 European Union Temporary and Agency Worker Directive (2008/104/EC) may also have contributed to the growth in zero-hours contracts. The regulations entitle agency workers to the same pay, terms and working conditions as their full-time equivalents after 12 weeks (3 months).¹⁶ There is anecdotal evidence from employees and employee representatives in some sectors to suggest that some employers are moving away from hiring agency workers toward the direct hiring of zero-hours contract workers as a means of avoiding both the Agency Workers Regulations and the cost of agency fees. However, the year following implementation of the Directive also witnessed a 5.4 per cent increase in temporary placement volumes according to the Recruitment and Employment Confederation. This suggests that the increased use of zero-hours contracts has not eliminated demand for agency workers. What is more likely is that the period since the economic downturn has seen a general increase in all forms of vulnerable employment, including rising numbers of agency workers and those on zero-hours contracts.

¹⁵ Bessa, Forde, Moore and Stuart, *The National Minimum Wage, earnings and hours in the domiciliary care sector*, Low Pay Commission February 2013 see, http://www.lowpay.gov.uk/lowpay/research/pdf/LPC_-_Final_Leeds_University_Report_-_26_February_2013SM2.pdf

¹⁶ Unless an agency worker opts out under the 'Swedish derogation' that provides for an exemption from the regulations as far as equal pay is concerned.

The impact of zero-hours contracts on employees and workplaces

It is important not to assume that employment on a zero-hours contract is uniformly undesirable. Being on a zero-hours contract may suit individuals who only require occasional earnings, who can be entirely flexible about when they take work or who can cope with variations in their income from week to week. Zero-hours contracts may also suit groups of workers, for example students, whose work is seasonal in nature or, in some circumstances, older workers who wish to reduce their hours as they progress towards retirement. A minority of those we interviewed, while acknowledging that the uncertainty of working under a zero-hours contract would have negative implications for many others, touched on some of the benefits of being able to work flexibly:

“I really value the flexibility of working on zero-hours because it allows me to fit other things into my life and if I don’t get enough hours one week I can always make them up the next by taking on more. I can see that for families with a mortgage the situation would be seriously nerve-wracking and of course I have to trust my line-manager to deliver those hours and that’s far from ideal but it has worked for me so far.”

(Male domiciliary care worker, Edinburgh)

We also spoke to employers who felt strongly that zero-hours contracts benefited particular employees. For example, a major housebuilder we spoke to suggested that:

“We’ve now use zero-hours contracts on a limited basis to employ a small number of administrative staff. Previously these individuals had been working for us on a temporary basis through an agency. Bringing them onto our books on zero-hours contracts allows us to save money on agency fees and if anything gives those individuals more certainty than they had previously. It has also enabled us to provide staff with greater flexibility when family issues arise. One member of staff required a significant degree of flexibility to care for her son while he was in hospital and her contract allowed us to easily facilitate that”.

While data limitations mean that we cannot make a direct connection between the growth of zero-hours contract use and rising rates of under-employment¹⁷ since 2008, there may be a link between the two. As such, many would also argue that increasing use of zero-hours contracts has delivered particular benefits for employees in the recent economic downturn by allowing many who would otherwise be workless to remain in employment, thereby avoiding the scarring associated with prolonged periods out of work.

Yet it is clear from our research that the lack of certainty associated with zero-hours contracts and their potential use as a management tool mean that they can impact negatively on employees in the following ways:

¹⁷ The total number of people finding themselves under-employed has risen by around one million since the start of the recession. Comparing LFS estimates from Jan-March 2008 to Jan-March 2012 2.3 million people were under-employed in early 2008 compared to 3.3 million today (a 42% increase) see, TUC, Under-Employment Crisis: a TUC analysis of under-employment across the UK <http://www.tuc.org.uk/tucfiles/367.pdf>

Managing household expenditure

Variable hours can make it difficult to plan and to manage household expenditure. Earnings that fluctuate significantly from week to week or end at short notice as a result of being zeroed down can make it very difficult to manage regular outgoings such as rent or energy bills:

“Budgeting is very difficult. I’m paid two weeks in arrears so I have some idea of what I’ll be getting in but given my hours vary from week to week I have to be careful about spending on shopping and other bits”.

(Female domiciliary care worker, Newcastle)

“Many of my colleagues who are raising families have got into serious debt from working on zero-hours contract because they cannot be sure what they’ll get in each month. Those who’ve avoided debt have done so by living with parents, drawing on savings, having redundancy pay from previous jobs to fall back on or because mortgage costs are currently low. The housing round here is cheap but lots of people on these contracts wouldn’t be able to survive without family support”.

(Female FE lecturer, Bradford)

“It’s really hard to plan. I’ve clung onto this job for all the downsides because of my mortgage and I usually work enough hours to cover that but I’ve had to cut out any luxuries because I can’t guarantee what I’ll get in each month”.

(Female domiciliary care worker, Stockton)

This is a particular challenge for low-paid workers who are less likely to have savings to help smooth their income between periods when they have fewer hours of work:

“You have to be really careful with money. I try to save to cover the possibility that my hours will be low one week but it’s hard as the pay isn’t fantastic to start with”.

(Male support worker, Brighton)

Family commitments

The variability of hours under a zero-hours contract can also make it difficult to manage family commitments:

“It’s really disruptive as you basically have to take what hours you’re given. So on any typical week I might have a Friday off when I’d rather be working but then have to make up my hours by working on a Sunday when I want to spend time with the kids”.

(Female domiciliary care worker, Edinburgh)

This is perhaps most acute for families with young children for whom working variable hours can exacerbate the problem of managing childcare expenditure. Most childcare providers require payment in advance, particularly in areas where competition for places is high. This can leave parents on zero-hours contracts paying for childcare that they do not use or unable to arrange childcare at short notice if they are offered additional hours work. With high childcare costs already acting as a disincentive to work for low paid parents, paying for childcare that they are unable to use further erodes incentives to work.

Employment rights and relations

We also encountered evidence that zero-hours contracts, in cases where ‘zeroing-down’ is used as a management tool, can have an impact on the willingness of staff working under them to complain about unfair treatment, to report unsafe working conditions or to assert statutory employment rights.¹⁸ The threat of having one’s hours reduced can deter individuals from raising any kind of issue with their employer. This dynamic could be exacerbated by the fact that many people on zero hours contracts are low paid and feel relatively powerless in the workplace:

“In reality there is not much flexibility because if you ever turn down hours or complain to the supervisor you simply stop getting offered work. The worst I had was a period being offered eight hours a week after I refused to do seven night runs (a 5.40am start and a 10pm finish)”.

(Female domiciliary care worker, Stockton)

“So much depends on your relationship with your line-manager. The fact that most people were on zero-hours meant anyone would do anything for a shift and people who shouted the loudest or spoke badly of other colleagues would get more shifts. The management also used the contracts to force people into taking on long shifts. Two people were even asked to travel to Scotland and back in a day. The reason I am no longer with the company is that I caused some damage to one of the cars – a few small dents – and owned up to it to my manager. I suspected I had spatial awareness problems and sought help but instead of offering me support I heard nothing from the company and was no longer given any shifts. After six months they said they could terminate my contract as I hadn’t worked. They even changed the procedures so I couldn’t send in my availability so I ended up having no contact with them at all”.

(Male assistant funeral care director, Worthing)

“It’s not the uncertainty that bothers me. I have a relatively constant number of working hours but these contracts only work one way anyway – they don’t offer any flexibility to those who’d want it. All the girls are on the same hours as they were when they were on permanent ones. One girl who told her line-manager, with a week’s notice, that she didn’t want to work one week day had her hours reduced and her card was marked from that point on.”

(Female day services support worker, Kendal)

“When I started out at my current job I did nine weeks without a single day off and I was regularly working anything up to 55-60 hours a week. Since putting my foot down and refusing to work every other weekend – I still do 12 days on with 2 off – my hours have dried up and I still argue with my manager over pay for the hours I have actually worked”.

(Female domiciliary care worker, Newcastle)

Job and service quality

The use of zero-hours contracts also has implications for staff turnover, morale and the quality of one’s workforce. This is a particular cause for concern in sectors such a social care where professional standards are essential but also one that has implications for workers who have no choice but to remain with a particular employer:

¹⁸ A trend which was a prominent theme of the focus group we observed with ACAS employment advisors from across the UK (see footnote 8)

“In my department those of us on zero-hours contracts do the bulk of the work. It’s used by my employer as an entry route into further education and while some get lucky and find permanent work there is no guarantee. The employer has all the advantages and can try before they buy. Those on zero-hours are expected to do business development and take risks on developing new courses with no certainty. It’s all about money for the employer and those of us on zero-hours staff are just an invisible part of the workforce. It also has an impact on the workforce as a whole because there is in effect a two-tiered workforce and this has caused communications issues between the two as well as a real absence of collaborative spirit.”

(Female FE lecturer, Bradford)

“People come and go quickly and the new girls are always inexperienced and untrained.”

(Female domiciliary care worker, Newcastle)

“The company only had four permanent members of staff while the rest of us, about 15 or so, were all on zero-hours contracts. The turnover was incredibly high even during the time I was there but you only needed one month’s training so the company weren’t that concerned but what it did was to make competition for shifts more intense as new people joining were also jostling for hours”.

(Male assistant funeral care director, Worthing)

“I have no faith or commitment to the company since they put us all on zero-hours. All the girls who had their contracts changed feel the same. And it definitely has an impact on the care we provide. We look after lots of patients with dementia and we’re supposed to be ‘up’ and positive for them each day but now everyone is worried and looking for other jobs and that rubs off on patients. More and more people are leaving now and new people come and go often”.

(Female day services support worker, Kendal)

Claiming tax credits and other benefits

For many employees on zero-hours contracts who are low paid, the interaction between variable hours of work and the tax credit system can be a source of concern. Since April 2012,¹⁹ to qualify for Working Tax Credit (WTC) claimants have had to work a minimum of 16 hours per week and claimant couples with at least one child have had to work 24 hours between them (with one working at least 16 hours per week). Eligibility for WTC is based on an individual’s ‘normal working hours’ with, according to guidance from Her Majesty’s Revenue and Customs (HMRC), normal working hours calculated on the basis of what the claimant in question ‘regularly, usually or typically’ works. Yet within the context of a system which lacks provision for say, averaging hours over a period of time,²⁰ an estimate of what constitutes ‘regular, usual or typical’ working hours clearly presents difficulties.

The resulting complexity not only makes it extremely difficult for individuals to calculate whether or not they are actually better off in work but can create administrative difficulties for those who are in work and claiming tax credits, particularly for those on zero-hours contracts whose hours fluctuate dramatically. Even

¹⁹ The change did not affect lone parents, for whom the 16 hour threshold for WTC still applies. This reduction was one of a number of measures announced in the June 2010 Budget and 2010 Spending Review aimed at “controlling the costs of tax credits” in order to “provide a fair and affordable platform for the introduction of the Universal Credit.” Prior to April 2012, to qualify for Working Tax Credit (WTC) a claimant would have to work a minimum of 16 hours per week and couples with at least one child would have to work 30 hours between them, with one working at least 16 hours per week

²⁰ It should be noted that there are rules for those who work term-time only

claimants on zero-hours contracts whose working hours are relatively stable could find that their 'normal working hours' equate to less than 16/24 and, as a consequence, could find that they are forced to repay – potentially sizable – amounts of money. Anecdotal evidence also suggests that some Work Programme (WP) providers are facing similar challenges in the context of a performance-based contract because WP job outcome and sustainment payments are predicated on placing individuals from different participant groups into employment for continuous or cumulative weekly (i.e. more than 16 hours within a seven day period) periods. For individuals on zero-hours contracts to meet these requirements, and have them audited by government, is potentially far more onerous than for individuals on standard contracts.

In this respect, Universal Credit (UC) will be an improvement. Eligibility under UC is not based on a certain number of hours of work and in-work support will be available from the first hour of work – reducing proportionately as working hours increase. Furthermore, Universal Credit payments will be based on real-time information (RTI) provided by employers to HMRC. However, the system is unlikely to be without its problems for workers on zero-hours contracts whose hours fluctuate from week to week. Even if RTI works as intended, there will still be a month's time lag which will mean that individuals will receive UC payments based on their hours of work in the previous month. The combination of fluctuating earnings and UC payments could see household income vary quite considerably from month to month for some claimants, making household finances even more difficult to manage.

Conclusion

It is possible that zero-hours contracts may suit some groups of workers employed on them. For those who do not require a fixed number of working hours in order to live, for example students or, in some circumstances, older workers who wish to reduce their hours as they progress towards retirement, such contracts can offer flexibility and a welcome choice of working pattern that can aid a better balance between work and other family or leisure commitments.

However, it is clear that for the majority of those employed on zero-hours contracts this freedom and choice are more apparent than real. For those individuals who require a minimum number of working hours per week to ensure their family is financially secure or those who, confronting severe power imbalances in the workplace, fear that turning down hours as and when offered will result in future work being withdrawn, life on a zero-hours contract is one of almost permanent uncertainty. For those who have had their hours zeroed down on the basis of a perceived unwillingness to work the hours their employer requires or following the lodging of a workplace complaint, this uncertainty can be coupled with the anxiety that comes from exploitation.

Given the potential for work on a zero-hours contract to negatively impact on the management of household budgets, to impinge on family commitments, to undermine employment rights and relations, and to complicate access to tax credits and other benefits, the continued rise in their use is of growing concern. Yet their impact also extends beyond those working under them, impacting on staff morale, team cohesion and turnover in a way that can damage the quality of the service being provided.

It is not hard to see why employers are turning to zero-hours contracts, particularly in today's difficult economic climate. In allowing for maximum flexibility they allow employers to more successfully adjust to variations in demand, manage risk, reduce the costs of recruitment and training and, in certain circumstances, avoid particular employment obligations. Yet it seems clear that these benefits of zero-hours contracts for employers come at far too high a price for the majority of those employed on them.

It may be too early to move toward an outright ban of zero-hours contracts given that a minority value the flexibility and choice they provide but there is an indisputable case for preventing the unacceptable aspects of their use and for introducing measures that provide greater certainty and security to those working under them. The government has recently made clear that it recognises that it is time to give urgent consideration to what safeguards can be introduced to improve this situation and in the coming months we will be publishing our own recommendations to support such efforts.

The Resolution Foundation

The Resolution Foundation is an independent research and policy organisation. Our goal is to improve the lives of people with low to middle incomes by delivering change in areas where they are currently disadvantaged. We do this by:

- undertaking research and economic analysis to understand the challenges facing people on a low to middle income;
- developing practical and effective policy proposals; and
- engaging with policy makers and stakeholders to influence decision-making and bring about change.

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