



Employment Law Association of Ireland

Employment Law Association of Ireland: response to University of Limerick study

The following are the responses to the key findings within the University of Limerick study:

Key findings:

Key finding 1: The ELAI is in agreement with this finding.

Key finding 2: The ELAI is in agreement with this finding.

Key finding 3: The ELAI is in agreement with this finding.

Key finding 4: Whilst the ELAI is aware that employers have argued if and when contracts suit employees. However there is a need for an adequate balance to be drawn between flexibility for employees and employers and vulnerability of employees caused by the uncertainty of zero hour contracts. It is imperative that the interests of flexibility for employee is not outweighed by vulnerability for employees.

Key finding 5: The ELAI is of the view that whilst it may be the case that only a small percentage of employees in Ireland have constantly variable working hours. This must not undermine the fact that such contracts are prevalent in certain sectors and have very real and meaningful human effects.

Key finding 6: The ELAI is in agreement with this finding.

Key finding 7: The ELAI is in agreement with this finding, save that it is more likely that female employees will be engaged on if and when contractual arrangements.

Key finding 8: ELAI is in agreement with this finding.

Key finding 9: ELAI notes this finding but is aware that intermittent and low paid work has been examined by other organisations such as the ILO. For example the ILO have published a report on Diversity of Marginal Employment, Policy Brief No. 7, 2015.

Key finding 10: ELAI notes this finding and wishes to state that it is difficult to appreciate how such short hours could be sought by choice by employees.

Key finding 11: ELAI is in agreement with this finding.

Key finding 12: ELAI is in agreement with this finding.

Key finding 13: ELAI wishes to put forward the chilling effect of the use of if and when contracts and the level of control they provide to employers. It could lead to aggressive control of employees by employers. There is a benefit to a dynamic workforce but this should not be utilised to allow control over if and when employees who are not the master of their own time

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when required to be available for work. If and when contracts are prevalent due to the moratorium on recruitment within the public sector.

Key finding 14: ELAI notes this finding but is concerned at the apparent benefit of flexibility to if and when contracts as this can cause a lack of clarity with the employment status of if and when contract workers. It is also logistically difficult to provide for flexibility to the extent required by employers unless this is to the detriment of if and when workers.

Key finding 15: ELAI wishes to highlight a further negative implication of zero contract contracts: it is a collective societal issue for women and is a causative factor in the gender pay gap.

Key finding 16: ELAI accepts this is an issue and this finding detracts from the argument of the employer that if and when contracts remove people from unemployment and social welfare. In fact, it is frequently the social welfare system which is invoked by if and when workers to supplement their meagre earnings from if and when work.

Key finding 17: ELAI does not accept this position. It is clearly the case that when if and when workers are engaged by the employer, a mutuality of obligation exists and employment status exists. There may be issues with continuity of employment between individual contracts of employment. As a matter of the Employment Equality Acts 1998-2014, such workers are likely to be employees as section 2(1) of those Acts prescribes a contract of employment exists where "an individual agrees with another person personally to execute any work or service for that person...".

Recommendations:

Recommendation 1: The ELAI is in agreement with this recommendation.

Recommendation 2: The ELAI is in agreement with this recommendation.

Recommendation 3: the ELAI is in agreement that there is a need to amend section 18 of the Organisation of Working Time Act 1997.

Recommendation 4: The ELAI believes the reference to 6 months could give rise to the possibility for abuse as an employer could consciously terminate the contract and the employee would not have sufficient service for an unfair dismissal claim pursuant to the Unfair Dismissals Acts 1977-2007. It is the clear view of the ELAI that any legislation pertaining to zero hour employees should use the service requirement of the Unfair Dismissals Acts as its baseline to ensure adequate protection for zero hour workers.

Recommendation 5: the ELAI believes this 72 hours notice is inadequate and would recommend that hours are rostered 7 days in advance.

Recommendation 6: the ELAI is in agreement with this recommendation.

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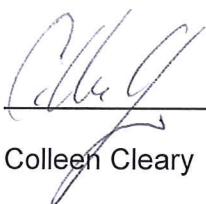
Recommendation 7: the ELAI is in agreement with this recommendation.

Recommendation 8: the ELAI is in agreement with this recommendation.

Recommendation 9: the ELAI is in agreement with this recommendation.

Recommendation 10: the ELAI recommend that the Code of Practice for Determining Self-Employed or Employment Status of Individuals be recommissioned and re-examined in light of the increased flexibility in the labour market in terms of the type of work and type of contracts in place and to reflect the case law from the civil courts.

Recommendations 11-4: the ELAI is in agreement with these recommendations.



Colleen Cleary

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