



Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 11

EMPLOYMENT

Exclusivity in zero hours contracts

153 Exclusivity terms unenforceable in zero hours contracts

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) After section 27 insert—

“PART 2A

ZERO HOURS WORKERS

27A Exclusivity terms unenforceable in zero hours contracts

- (1) In this section “zero hours contract” means a contract of employment or other worker’s contract under which—
 - (a) the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and
 - (b) there is no certainty that any such work or services will be made available to the worker.
- (2) For this purpose, an employer makes work or services available to a worker if the employer requests or requires the worker to do the work or perform the services.

- (3) Any provision of a zero hours contract which—
- (a) prohibits the worker from doing work or performing services under another contract or under any other arrangement, or
 - (b) prohibits the worker from doing so without the employer’s consent, is unenforceable against the worker.
- (4) Subsection (3) is to be disregarded for the purposes of determining any question whether a contract is a contract of employment or other worker’s contract.

27B Power to make further provision in relation to zero hours workers

- (1) The Secretary of State may by regulations make provision for the purpose of securing that zero hours workers, or any description of zero hours workers, are not restricted by any provision or purported provision of their contracts or arrangements with their employers from doing any work otherwise than under those contracts or arrangements.
- (2) In this section, “zero hours workers” means—
- (a) employees or other workers who work under zero hours contracts;
 - (b) individuals who work under non-contractual zero hours arrangements;
 - (c) individuals who work under worker’s contracts of a kind specified by the regulations.
- (3) The worker’s contracts which may be specified by virtue of subsection (2)(c) are those in relation to which the Secretary of State considers it appropriate for provision made by the regulations to apply, having regard, in particular, to provision made by the worker’s contracts as to income, rate of pay or working hours.
- (4) In this section “non-contractual zero hours arrangement” means an arrangement other than a worker’s contract under which—
- (a) an employer and an individual agree terms on which the individual will do any work where the employer makes it available to the individual and the individual agrees to do it, but
 - (b) the employer is not required to make any work available to the individual, nor the individual required to accept it,
- and in this section “employer”, in relation to a non-contractual zero hours arrangement, is to be read accordingly.
- (5) Provision that may be made by regulations under subsection (1) includes provision for—
- (a) modifying—
 - (i) zero hours contracts;
 - (ii) non-contractual zero hours arrangements;
 - (iii) other worker’s contracts;
 - (b) imposing financial penalties on employers;
 - (c) requiring employers to pay compensation to zero hours workers;
 - (d) conferring jurisdiction on employment tribunals;
 - (e) conferring rights on zero hours workers.

- (6) Provision that may be made by virtue of subsection (5)(a) may, in particular, include provision for exclusivity terms in prescribed categories of worker's contracts to be unenforceable, in cases in which section 27A does not apply.

For this purpose an exclusivity term is any term by virtue of which a worker is restricted from doing any work otherwise than under the worker's contract.

- (7) Regulations under this section may—

- (a) make different provision for different purposes;
- (b) make provision subject to exceptions.

- (8) For the purposes of this section—

- (a) “zero hours contract” has the same meaning as in section 27A;
- (b) an employer makes work available to an individual if the employer requests or requires the individual to do it;
- (c) references to work and doing work include references to services and performing them.

- (9) Nothing in this section is to be taken to affect any worker's contract except so far as any regulations made under this section expressly apply in relation to it.”

- (3) In section 236(3) (orders and regulations subject to affirmative procedure), after “made under section” insert “27B,”.