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The benefits of zero-hours contracts

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Employment analysis: What are the advantages of using zero-hours contracts? Martin Donoghue, partner, and Dilini Loku, solicitor at Silverman Sherliker LLP--specialists in employment law, look at how zero-hours contracts could benefit both organisations and their employees.

Original news

Recruitment company claims zero-hours contracts are popular with workers, LNB News 04/03/2014 47

One of Britain's largest recruitment companies, Robert Walters, specialising in recruiting mid-level, white-collar workers, says staff like the flexibility of zero-hours contracts, particularly in IT. The Department for Business, Innovation and Skills is consulting on whether to introduce more regulation on zero-hours contracts. The chief financial officer of Robert Walters, Alan Bannatyne, says concerns about exploitation should focus on junior level, as further up it's not a problem.

When are zero-hours contracts especially useful for organisations and workers?

There is no legal definition of zero-hours contracts but essentially they are contracts under which there is no guarantee of work between an organisation that may need to have services performed for it from time to time and a worker who can provide those services. In this context therefore, the terms employer and employee are not necessarily accurate as an employment relationship is not intended to be created. But their attraction lies in the flexibility they provide for both the hiring organisation and the worker. An organisation has no obligation to provide regular work, or any work at all, to the worker with whom they have a zero-hours contract, and the worker has no obligation to accept work when it is offered.

For which members of a law firm are zero-hour contracts most appropriate?

They would really only be suitable for people who are needed on an ad hoc basis. Big firms especially often need extra support when they have surges of work and intense periods of activity in very large transactions or in large litigation matters. Extra paralegals may be needed for instance, to handle due diligence or disclosure work. It's hard to imagine these contracts being useful for hiring other types of lawyers though.

What are the most important things to keep in mind when using zero-hour contracts?

The main pitfall is that the relationship can become a relationship of employer and employee which gives rise to many obligations on the part of the employer and rights on the part of the employee. People therefore need to be very diligent about drafting zero-hours contracts so that the intentions of the parties are set out very clearly. If a contract is used to disguise a real employer/employee relationship you can be sure that this will not be successful in the long term and the employer will face employment claims at some stage. This could easily happen if there is a pattern of work being offered and accepted over an extended period of time.

Organisations using zero-hours contracts must ensure especially that they document when the contractual relationship comes to an end. A contract that continues for over two years, or sometimes even less, can give rise to claims for unfair dismissal if it is viewed as a contract of employment.

An employer will be obliged to auto-enrol eligible jobholders in an automatic enrolment scheme (unless they are already active members of the employer's qualifying scheme) from their particular 'staging date'. It can be difficult to determine when a worker under a zero-hours contract with fluctuating earnings reaches the qualifying earnings threshold to trigger the auto-enrolment obligation.

Are there any issues that are of particular relevance to law firms in the use of zero-hours contracts?

No. Any firm or company using these contracts would face the same issues.

What is the general trend in law firms?

I'm not aware that any firms are using zero-hours contracts but I'd be surprised if they were popular with firms. A recent survey on the labour force by sector revealed that these contracts are most often used in the public sector and in the distribution, accommodation and food sectors. Only about 15% of zero-hour contracts are found in the business sector. I believe that big firms who may need periodic support for very large matters would use fixed term contracts. These ensure that you have the services of the people you need. Also, zero-hours contracts are not a good way to attract the best talent for any function.

The government is presently conducting a consultation on the problems associated with the use of zero-hours contracts because of the potential for abuse. The government wants to strike the right balance between protecting individual rights and promoting labour policies that will sustain the economic recovery. The consultation ends on 13 March 2014 so we will have to see what comes out of that.

Interview by Diana Bentley.

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