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## ZERO HOUR CONTRACTS AS A TYPE OF “ATYPICAL” WORKING

**Problem setting.** The role of the classic employment relationship is undergoing major rethinking at the current time and non-standard employment becomes more widespread in both developed and developing countries. However, the use of such forms of employment leads to increased inequality and insecurity that undermines prospects for economic development, causing a steady decline in the living standards of employees.

Precarious and informal work – temporary, involuntary part-time, self-employment or insecure forms of work with no or limited access to social protection – are not new [1].

Non-standard forms of employment – also referred to as diverse forms of work – is an umbrella term for different employment arrangements that deviate from standard employment. They include temporary employment; part-time and on-call work; temporary agency work and other multi party employment relationships; as well as disguised employment and dependent self-employment. As working from home does not take place at the employer’s premises, but rather at the employee’s home or at another location of their choosing, it too is considered a diverse employment arrangement. Non-standard employment features prominently on digital labour platforms.

The increase in non-standard forms of employment in the past few decades has been driven by a variety of forces, including demographic shifts, labour market regulations, macroeconomic fluctuations, and technological changes [2].

**Analysis of recent researches and publications.** Topical issues of legal regulation of such kinds of atypical employment contracts as zero hour contracts (employment contract with non-fixed working hours) is the subject of study of such scientists, as: D. Ahrendt, F. Andersson, M. Avogaro, M. Ball, A.K. Bhandari, B. Bradford Manning, I. Brinkley, P. Cappelli, S. Carmichael, D. Clark, S. Clauwaert, E. Cockbain, C. Hampton, E. Farina, A. Felstead, D. Gallie, F. Green, G. Henseke, D. Kameråde, M. Koumenta, A. Klair, O. Llave, M. Mascherini, G. Mazeine, J. Messenger, D. McVicar, C. Phillips, K. Posch, H. Richardson, T. Weber, M. Williams, H. Wilson, etc.

The **purpose** of this article is to examine the main characteristics of atypical employment contracts – zero hour contracts (employment contract with

non-fixed working hours), to research issues of ensuring the individual and collective labour rights of employees with whom zero hour contract is concluded.

**Article's main body.** Zero-hour contracts, sometimes also known as casual contracts, are typically used where an employer needs flexibility to meet short term fluctuations in demand and also for some “on-call” work.

In casual work, voucher-based work, platform work and collaborative employment, employment status should be clarified and sustainable career trajectories ensured, to avoid labour-market segmentation and to support collective voice. In the digitally-enabled new employment forms, the focus could be on monitoring and control, algorithmic management and data ownership, protection and use. Ensuring adequate working time would be key in those new forms of employment where working hours tend to be too long or too short or characterised by unpredictability. Workers in employment forms subject to less integration in organisational structures could meanwhile be supported in skills development to enhance their employability [3].

It is important to note that on August 10, 2022, the Law of Ukraine dated July 18, 2022 No. 2421-IX “On Amendments to Certain Legislative Acts of Ukraine on the regulation of labour relations with non-fixed working hours” came into force. An employment contract with non-fixed working hours is a special type of employment contract, the terms of which do not establish a specific time for the performance of work, the obligation of the employee to perform which arises only if the employer provides the work provided for in this employment contract without guaranteeing that such work will be provided constantly, but with compliance with the terms of remuneration provided for in Article 21-1 of the Labour Code of Ukraine.

An employment contract with non-fixed working hours must contain, in particular, information on: the method and minimum period for notifying the employee about the start of work, which should be sufficient for the employee to start performing his duties in a timely manner; the method and maximum term for notifying an employee of readiness to start work or refusal to perform it in the cases provided for by part eight of this article; intervals during which a worker may be required to work (base hours and days).

Attention should be drawn to the legislation, which does not contain specific requirements regarding the method of notifying an employee about the start of work. Such communication can be carried out in writing, by means of electronic communications, by concluding acts on the performance of work, etc. There are also no special requirements for the specifics of setting deadlines. Such deadlines can be set in weeks, days or hours, depending on the content and specifics of the work performed. At the same time, it should be taken into account that such a notice period for the employee should be sufficient for the employee to start performing his duties in a timely manner.

The employment contract with non-fixed working hours must indicate the method and maximum period for notifying the employee of readiness to start work or refusal to perform it in the cases provided for in part eight of this article. Thus, the employee has the right to refuse to perform work if the employer requires work to be performed outside the basic days and hours, or

if he was informed of the presence of work in violation of the minimum terms determined by the employment contract with non-fixed working hours.

The base days and hours should be understood as the time intervals that, in accordance with the terms of the employment contract with non-fixed working hours, the employee may potentially be required to work. At the same time, work on basic days and hours can be provided only if there is a corresponding need of the employer. If work is not provided, no remuneration is made (with the exception of the guarantees provided for in parts twelve and thirteen of this article).

An employment contract with non-fixed working hours can be used in cases where the employer has a need to recruit persons on an irregular basis to perform certain work that is intermittent but repetitive.

The necessity and time of involving an employee to work on an employment contract with non-fixed working hours, the amount of work is determined by the employer independently, depending on his economic needs.

The maximum time for such involvement may not exceed the normal working hours provided for by labour legislation (40 hours per week) [4].

It should be taken into account that the number of employment contracts with non-fixed working hours is subject to limitation. The number of contracts with non-fixed working hours with one employer cannot exceed 10 percent of the total number of employment contracts to which this employer is a party.

For example, if an employer has 36 employees under ordinary labour contracts before entering into an employment contract with non-fixed working hours, he can conclude four contracts. Indeed, in this case, the total number of employees will be 40 people  $((36 + 4) \div 10\% = 4)$ .

At the same time, for determining the share of 10%, it is impossible to round off the number of employees who can work under the employment contract to a larger whole number. For example, if the total number of employment contracts to which the employer is a party is 17 people, he can only enter into one employment contract  $((17 + 1) \div 10\% = 1.8)$ . Indeed, to conclude two employment contracts, the total number of employment contracts must be at least 20  $(20 \div 10\% = 2)$ [5].

A contract with non-fixed working hours is desirable for employers with irregular orders. For example, as we have already mentioned more than once, a small window production enterprise: there are orders – there is a need for work and employees, no orders – there is no need for them. At the same time, for a certain period of time, only specialists in the manufacture of windows are needed, at other times, specialists in their installation. In ordinary labour relations, when there are no orders and the employer cannot provide such workers with work, he has to pay for downtime. And although part-time work does not require the consent of the main employer, employees would still have to warn the employer about their intentions to work somewhere, because when orders appeared, they would have to interrupt the downtime and go to work.

But, given the definition of the number of employment contracts with non-fixed working hours with one employer, the conditional window manufacturing enterprise will not be able to use this contract, because both window manufacturers and their installers (two different groups of employees,

conditionally 2 people each) are the entire staff. The composition of such an enterprise, the contract can be only one [6].

Regarding the form of concluding this type of employment contract. The conclusion of an employment contract in writing when hiring an employee with non-fixed working hours is mandatory in accordance with the requirements of paragraph 62 of the first part of Article 24 of the Labour Code of Ukraine. In accordance with the first part of Article 2 of the Law of Ukraine «On the organisation of labour relations under martial law», during the period of martial law, the parties, with their consent, determine the form of the employment contract.

Thus, during the period of martial law, the written form of such an agreement is not mandatory. At the same time, when concluding an employment contract with non-fixed working hours, the content of such an agreement must contain the conditions that are mandatory in accordance with the law: the method and minimum period for notifying the employee about the start of work, which should be sufficient for the employee to start performing his duties in a timely manner; the method and maximum period for notifying an employee of readiness to start work or refusal to perform it in cases provided for in part eight of this article; intervals during which a worker may be required to work (base hours and days); the amount of remuneration for involvement in work outside the base days or hours; additional grounds for terminating employment contract with non-fixed working hours (if necessary) [7].

In order to prevent labour disputes, the State Labour Service of Ukraine recommends fixing the above conditions in writing.

When hiring with non-fixed working hours, an employment contract is concluded with the employee, an order (instruction) is issued on hiring the employee and the State Tax Service body is notified of hiring the employee.

The grounds for terminating labour relations are defined by Articles 36, 38, 39, 40 and 41 of the Labour Code of Ukraine, and an employment contract with non-fixed working hours may establish additional grounds for terminating it, which must be related to the employee's abilities or behaviour or other reasons. economic, technological, structural or similar nature.

Thus, it should be emphasised that additional grounds for its termination may be established in an employment contract with non-fixed working hours.

The minimum working time of an employee performing work on the basis of an employment contract with non-fixed working hours during a calendar month is 32 hours. If an employee performed less than 32 hours of work during a calendar month, he must be paid wages for at least 32 hours of working time in accordance with the terms of remuneration determined by the employment contract.

That is, the minimum working time of an employee determined by law on a non-fixed working time basis does not create an obligation for the employer to provide the employee with an appropriate amount of work during the calendar month, but creates a guarantee for the employee that in any case employee will receive a wage for the month at least in the minimum size – for 32 hours of work.

The employer is obliged to ensure reliable accounting of the work performed by the employee and accounting of labour costs in the prescribed manner (Article 30 of the Law of Ukraine «On wages»).

So, if the employer requires work to be performed outside the basic days and hours, or if the employee was informed that there was work in violation of the minimum terms determined by the employment contract with non-fixed working hours.

In this case, the refusal cannot be considered a violation of the terms of the employment contract.

An employee can apply such a method of self-defence by an employee of his labour rights as the right to refuse to perform work, if: the employer requires work to be performed outside the basic days and hours established by the employment contract with non-fixed working hours; the employer requires the performance of work within the basic days and hours established in the employment contract with non-fixed working hours, but informed the employee about this in violation of the minimum notice periods specified in the employment contract with non-fixed working hours; the employer requires the performance of work within the basic days and hours established in the employment contract with non-fixed working hours, but the employee is in a state of temporary disability, certified in the prescribed manner; the employer requires the performance of work within the basic days and hours established in the employment contract with non-fixed working hours, but the employee is involved in the performance of state or public duties.

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It is important to evaluate that work under zero-hour contracts is thought to have grown in recent years.

Unlike a traditional contract of employment, a zero hours contract offers no guarantee of work. Many employers use such contracts to cover situations where work fluctuates, and many individuals also find this to be a suitable working arrangement. However, there has been criticism of their widespread use in the UK.

In 2022 there were approximately 1.03 million people on zero hours contracts in the United Kingdom, compared with 919,000 in the previous year. Since 2000 there has been a net increase of over 807,000 people on this type of employment contract [9].

Work under zero hour contracts can affect employees in a variety of ways.

The lack of a guaranteed minimum number of hours worked arguably makes zero hours contracts automatically insecure. The Trades Union Congress definition of insecure work, for example, includes everybody on zero-hours contracts.

The total number in “insecure work” includes: 1) agency, casual, seasonal and other workers, but not those on fixed – term contracts; 2) workers whose primary job is a zero-hours contract; 3) self-employed workers [10].

Empirical evidence suggests that de facto earnings of employees in non-standard forms of employment may differ from those of regular employees. Having a job which doesn't provide a fixed income can be a major challenge and despite the theoretical flexibility, for many there may be no other choice but to accept such work. On average, the hourly pay of zero-hours contract employees was 57% of the hourly pay of employees without zero hours contracts.

Zero hour contracts can also impact on the psychological and mental well-being of workers due to instability and financial concerns. Moreover, because those on zero hour contracts are only paid for the hours they work, many will do so even when they are ill for fear of being seen as unreliable and losing their job as a consequence. That may also contribute to feelings of stress and poor mental health longer term [11].

This is especially true that many individual contractors, self-employed, employees, who worked under zero hour contracts or freelancers without employee benefits who work in an unregulated environment regarding working hours, occupational health and safety, and other conditions of work. In particular, digital tools risk creating a permanently on-call culture, where workers are expected to be reachable anytime and anywhere, including outside working hours. This demand for constant connectivity risks blurring of private and professional lives and negatively affecting employees' health. While some countries, such as France, have adopted labour law on the right to disconnect, the vast majority have not.

A key challenge is that current regulatory frameworks, tax systems, and social protection systems are not adequately equipped to accommodate the new and increasingly diverse forms of employment to protect the benefits and well-being of employees [1].

Simply banning zero hour contracts would be ineffective. In part this is an obvious conclusion of understanding the problem to be wider than just zero hour contracts. Banning zero hour contracts would mean employers merely making use of other manager-controlled flexible scheduling practices in order to continue to contain costs by tightly matching labour supply to demand. Even if it were an effective measure, it would likely be damaging to employment in many sectors. Ideally flexibility should take account of the needs of both employers and employees. Flexibility can provide firms with the

ability to match labour supply to demand but should also enable workers to balance both work and non-work commitments and to feel mastery over their time-use. What is needed is worker-controlled flexible scheduling as well as manager-controlled flexible scheduling [12].

**Conclusions and prospects for the development.** Hence, collective bargaining can play a vital role in reducing casualisation, protecting vulnerable employees from abuse, to further extend collective agreements to non-standard (atypical) forms of employment, and widen collective bargaining coverage.

Meanwhile, it remains unchanged that an employment contract for an indefinite period of time should be the most common type of employment agreement. It is important to note that employers who are responsive to the desires and needs of their employees not only have more satisfied staff, but also benefit from their higher degree of motivation in carrying out their work. Improved motivation leads to higher productivity and a higher standard of work, which ultimately benefit the business.

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### Summary

**Lagutina I. V. Zero hours contracts as a type of “atypical” working.** – Article.

Zero hours work typifies work where there are no guaranteed hours offered by the employer. This article examines the relationship between the state and the emergence of zero hours work in an atypical liberal market economy. Many modern workplaces are experimenting with accommodating changes in the workforce and the basic structure of scheduled work. There has been growing public interest in the growth of zero hours contracts, where people are placed on a contract under which the employer is not obliged to offer regular work.

It is worth highlighting that zero hours contracts often don't reflect the true nature of the employment relationship. Other problems include: 1) employers having complete discretion over working hours; employees must make themselves available for work at their boss's request; they are effectively on call constantly; 2) zero-hours contract employees face great uncertainty about their working hours and income, making it harder to plan their finances and other needs such as childcare; 3) employees have reported being denied bank loans and mortgages because of the lack of guaranteed hours in their contracts; 3) job insecurity triggers stress and anxiety amongst many employees, who have bills to pay and families to support; 4) these employees are much less likely to receive key employment rights than they are legally entitled to, such as sick and holiday pay.

The article emphasises that the use of temporary employment leads to increased inequality and insecurity that undermines prospects for economic development, causing a steady decline in the living standards of employees. This article analyses the problem of legislative regulation of relations between employers and employees.

*Key words:* zero hour contract, employment contract with non-fixed working hours, employee, labour rights.

### Анотація

**Лягутіна І. В. Договори з нульовим робочим днем як тип нетипової роботи.** – Стаття.

Робота з нульовим робочим днем є типовою для роботи, при якій роботодавець не пропонує гарантованого годинника. У цій статті досліджується зв'язок між державою та появою нульового робочого дня у нетиповій ліберальній ринковій економіці. Багато сучасних робочих місць експериментують зі змінами в робочій силі та базовою структурою запланованої роботи. Зростає суспільний інтерес до збільшення кількості контрактів з нульовим робочим днем, коли укладають контракт, яким роботодавець ні пропонувати постійну роботу.

Договори з нульовим робочим днем часто не відбивають справжньої природи трудових відносин. Інші проблеми включають: 1) роботодавці мають повну свободу дій щодо робочого часу; працівники повинні бути доступні для роботи на вимогу свого начальника; вони постійно на зв'язку; 2) працівники, які працюють за контрактом з нульовим робочим днем, стикаються з високою невизначеністю щодо свого робочого часу та доходу, що ускладнює планування їх фінансів та інших потреб, таких як догляд за дітьми; 3) працівники повідомляли, що їм відмовляють у банківських кредитах та іпотечних кредитах через відсутність укладених з ними безстрокових трудових договорів; 3) ненадійність роботи викликає стрес і тривогу у багатьох працівників, які мають рахунки для оплати та сім'ї, які потрібно утримувати; 4) у цих працівників набагато менше шансів отримати основні трудові права, ніж вони мають згідно із законом, такі як оплата лікарняних та відпускних.

У статті підкреслюється, що тимчасова зайнятість веде до зростання нерівності та соціальної незахищеності, підриває перспективи економічного розвитку країни, викликає неухильне зниження рівня життя працівників. Аналізується проблема законодавчого врегулювання правовідносин між роботодавцями і працівниками, що працюють при нетипових формах зайнятості.

*Ключові слова:* договір нульового робочого часу, трудовий договір із ненормованим робочим днем, працівник, трудові права.