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Ключові слова: право вибору, свобода волі, держава, людина, розвиток, вибір, суспільство.

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AN EMPLOYMENT CONTRACT WITH NON-FIXED WORKING HOURS AS A TYPE OF “ATYPICAL” WORKING

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.

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, “on-call” work, 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 [1].

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 (zero-hour contract) (hereinafter - the contract) 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 that the contract 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 contract 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 the contract, the amount of work is determined by the employer independently, depending on his economic needs [2].

It should be taken into account that the number of contracts with is subject to limitation. The number of contracts 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 the contract, he can conclude four contracts. Indeed, in this case, the total number of employees will be 40 people $((36 + 4) \times 10\% = 4)$ [3].

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 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.

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.

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 [4].

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 [5].

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.

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

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