Staying flexible
Zero hour contracts guide
First of all, thank you for downloading this guide.

Many peoples’ working situation now strays from the traditional 9-5 job and their employment status determines their rights and the responsibilities of their employer. The results of the recent Labour Force Survey (LFS) conduction by the government’s Office of National Statics revealed that up to December 2018, there are 884,00 UK workers on zero-hour contracts. This equates to 2.6% of the UK workforce.

Following controversy surrounding this working practice, with companies like Sports Direct hitting the headlines for having 90% of their workforce on zero-hour contracts, the government commissioned Matthew Taylor, chief exec of the RSA, to produce a review of modern working practices. In this, he included 53 recommendations for reforming zero-hours contracts legislation, 51 of which have been accepted by the government. This led to the publication of Good Work Plan in December 2018, which the government has stated is the biggest package of workplace reforms in 20 years.

Although the proposals set out in Good Work Plan have yet to be introduced, businesses which employ people on zero-hours contacts need to prepare and think carefully about the new rules and managing employees in-line with these.

With new legislation comes the challenge of compliance. It seems inevitable that this will only serve to increase the responsibilities and workload HR’s. And with this comes the challenge of managing more admin.

These days, increasing numbers of businesses are equipping themselves with people-management software - like Breathe - to automate manual paper-based processes and replace spreadsheets. Smarter working helps HR administrators save time and money, so they can refocus their energies on helping people grow, increase morale and increase employee productivity as a result.

Best wishes,

Jonathan Richards, CEO, Breathe
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Introduction
What are zero-hours contracts?

A zero-hours contract is a type of employment contract between an employer and an employee. It effectively means that you, as an employer, are not obliged to guarantee any working hours to an individual. Equally, your worker is not obliged to accept any work that you offer them, and they are also free to work for other employers.

When might you use zero-hours contracts?

You may engage staff on a zero-hours contract basis if you want a flexible workforce that can temporarily cover any shortfalls in staffing that you have. Examples can include:

- Unexpected or last minute events e.g a caterer may win a new contract that means they need extra staff for that particular occasion.

- An agency providing specialist, niche services e.g an agency that supplies translation and interpretation services may not need employees working full-time for every single language they cover. Instead they probably want workers to be on call so that they can be employed only when they are needed.
Employment status for those on zero-hours contracts

In the majority of cases, when an employer uses a zero-hours contract, they are effectively recruiting a ‘worker’. However, an enhancement of the employment status may occur, making the recruit an ‘employee’. This would be dependant on how the relationship between the employer and the employee developed. For example if the employer wanted to pursue disciplinary procedures against the individual for not accepting all of the hours that they are offered, the employee has statutory rights.

Breaks between employment

Depending on what agreements are outlined, a zero-hours contract might mean that the contract only exists when work is provided to the employee. If this is the case a break in employment is considered as when no work is provided for a full calendar week (from Sunday to Saturday).

If employment is continuous then the worker has rights that accumulate over time. Equally, workers are also entitled to the National Minimum Wage, paid holiday, rest breaks and protection against discrimination, overwork and unlawful wage deductions.

When an employment is broken, the employer has responsibilities too, including the need to pay the worker for any accrued and untaken holiday pay. In event of the employment being broken, the worker is not required to notify the employer or provide a period of notice.
If you employ people on zero-hours contracts and you run your own business, or if you are the person responsible for aspects of HR in your company, then it’s important that you understand how annual leave and pay is calculated for these workers.
Are staff on zero-hours contracts entitled to holiday leave and pay?

Zero-hours contract workers have the same legal rights as employees on other contracts, except where there are breaks in their working. Here, those breaks may affect any rights that accrue with time, such as the number of days of holiday entitlement. They are entitled to take paid leave and must also be paid any leave owing to them when their employment contract is terminated.
How do you calculate holiday entitlement for zero-hours contracts?

Most workers are entitled by law to 5.6 weeks of holiday per year. This equates to 28 days for a 5-day-a-week worker. It’s also the same for employees who work 6 days a week, as it is capped at 28 days.

It is up to you, the employer, to decide if paid public holidays are counted as part of a worker’s leave entitlement, or whether you give these days in addition to the entitlement.

Annual leave starts to accrue as soon as your worker begins working. You will also have in place details of your “leave year”. For many companies their leave year will run from 1st January to 31st December. But other companies choose to follow the tax year or use their own dates.

For employees with fixed-time contracts, leave is accrued monthly in advance at the rate of one twelfth of their annual entitlement. For employees on zero-hours contracts, holiday entitlement accrues in the same way, but due to the sporadic nature of the work, it is easier to calculate it based on hours.

So, your worker is entitled to a pro-rata amount of 5.6 weeks holiday, which is equivalent to 12.07% of hours worked over a year. The 12.07% figure is calculated by taking 5.6 weeks’ holiday and dividing it by 46.4 weeks (which is 52 weeks less 5.6 weeks). So, holiday is accrued at a rate of 12.07% per hour.

To give an example, if an employee has worked 20 hours in a week, then they would become eligible to take 144 minutes of paid leave.

With the figures rounded down, the calculation is:

\[
(12.07/100) \times 20 \text{ hours} = 2.4 \text{ hours} = 144 \text{ minutes.}
\]
How do you calculate holiday pay for zero-hours contracts?

Workers are entitled to receive zero-hours contract holiday pay. They are also eligible for payment in lieu of any untaken statutory leave entitlement on the termination of their employment.

To calculate the rate of holiday pay where you have workers without normal working hours, you can take an average of their pay over the preceding 12 weeks. For any weeks where there were no hours worked, and therefore no pay received, then those weeks should be replaced by the most recent previous weeks where pay was earned.
There is a common misconception that, because workers on zero-hour contracts are not entitled to hours of work, they have no statutory rights. This is not the case.
Are staff on zero-hours contracts entitled to sick pay?

Workers on zero-hour contracts are entitled to statutory sick pay providing they have earned in excess of the Lower Earnings Limit, which is £118 per week, (for 2019-2020) from one employer. Whilst many zero-hours contract workers may not reach this threshold due to the ad hoc nature of work being offered, those that do are entitled to receive sick pay. It should be emphasised that if a zero-hours contract worker relies on more than one job to reach the Lower Earnings Limit they will not be entitled sick pay as it must be reached from the earnings from one employer.

What are the sick pay entitlements for zero-hours contracts?

Providing that a zero-hours contract worker has reached the Lower Earnings Limit, they’re then entitled to statutory sick pay the same as any other worker. In order to receive statutory sick pay an individual must meet the following criteria:

- sick for 4 full days or more in a row (including non-working days)
- meet eligibility
- follow their employer’s policy for getting sick pay

Employees who receive statutory sick pay are entitled to £89.35 a week for up to 28 weeks. An employer may pay more than this, but they will not be able to pay less. It is advised that terms surrounding sick pay are written in an employees’ contract, this is called contractual sick pay.

If an employer feels that the employee is not entitled to statutory sick pay they must provide their reasons for denying sick pay in writing.
04 Notice period
Notice period and leave

If you have a genuine requirement for a flexible pool of workers, or a business where demand fluctuates, then zero-hour contracts can work extremely well. One aspect that it’s important for you to understand is the zero-hour contract notice period.

There are no statutory rights regarding notice periods for zero-hours contract workers. However, it’s good practice to stipulate a notice period into your zero-hour contracts, as you would with staff that work for you on an employed basis.

Theoretically though, a zero-hours contract gives your worker the ability to “leave” without ever giving notice. Since they don’t have to accept any work that you offer, nor give a reason for doing so, they could simply permanently continue to turn work down.

Even where notice to leave is given, your worker could still turn down any work offered during their notice period. Effectively therefore, they can “leave” as soon as notice is given.

In practice though, every employer seeks a good working relationship and wouldn’t want this sort of situation to develop. Equally, nor would the worker, who would presumably be hoping for a good employment reference from you.

From your side, the issues are the same. Although you may give notice to a worker, provide a leaving date and follow the process as per the zero-hours contract notice period you have outlined, you don’t then have to offer them any work during that time.

Instead of giving notice to your worker, you could, of course, simply stop offering them any hours. However, this may open you up to a claim of discrimination. So, it’s right to give notice and to follow your own process for terminating the contract.

So, there are a couple of things to be aware of with zero-hours contract notice periods. Firstly, you shouldn’t rely on a zero-hours contract worker being available during their notice period. Secondly, you cannot expect that they will even give notice that they are resigning. If you bear those points in mind, these contracts can be very useful for calling on ad-hoc workers as and when you need them.