



**THE OPERATION AND REGULATION OF ZERO
HOUR CONTRACTS IN JERSEY, TOGETHER
WITH A REVIEW OF SPECIFIC
EMPLOYMENT PROTECTIONS**

**REPORT AND RECOMMENDATIONS OF THE
JERSEY EMPLOYMENT FORUM
TO THE MINISTER FOR SOCIAL SECURITY**

R.70/2023

April 2023

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INTRODUCTION

On 11 May 2021, the States Assembly agreed [Proposition P.32/2021](#). In brief, the Proposition called for a review of existing employment legislation to ensure the adequate protection of employees working on so-called “zero hour contracts” from any challenges caused by such contracts, and, as needed, the strengthening of regulation.

The Proposition went on to highlight elements of the operation of zero hour contracts which should be considered. These were:

- a. A definition of zero hour employment contracts
- b. The prevention of employers requiring zero hour employees to be always available for work
- c. A ban on exclusivity clauses
- d. A right for zero hour employees, who in practice work regular hours, to switch to a contract which reflects the normal hours worked
- e. A right to reasonable notice of a work schedule
- f. A right to compensation for shift cancellation or curtailment without reasonable notice
- g. Other measures to be identified as part of the review

The Proposition also requested the Minister for Social Security to bring forward legislation to ban the use of exclusivity clauses – these are clauses which prohibit an employee on a zero hour contract from working for a second employer, even if the first employer has no work to offer to the employee. This work has been completed.

Finally, the Proposition requested the Council of Ministers to allocate funding in 2022 for expert advice and for an information campaign to ensure that employees and employers are better aware of their rights and responsibilities under the law.

Preparation of the Report and Recommendations

This Report and Recommendations have been prepared by the following members of the Forum:

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EXECUTIVE SUMMARY OF RECOMMENDATIONS

The findings and recommendations of the Forum begin in detail at Page 9 of this report. The following is an executive summary of the main recommendations.

The use and operation of zero hour contracts

- a. The Forum endorses current legislation which defines in Jersey law – in certain specific circumstances - the nature of a “zero hour contract” and **recommends** that no attempts to further define the nature or content of a “zero hour contract” need be made
- b. The Forum **recommends** that no legislation is necessary to prevent employers requiring employees engaged on a zero hour contract to always be available for work
- c. The Forum endorses recent legislation to provide for the unenforceability of exclusivity clauses in a zero hour contract and **recommends** no further legislative action in this regard
- d. The Forum **recommends** that an amendment should be made to the Employment (Jersey) Law 2003 ("Employment Law") to give employees the right to request an updated written statement of their terms of employment, where their existing statement does not reflect the reality of their working pattern
- e. Although the Forum is not recommending a statutory right to a reasonable notice of a work schedule, it **recommends** that it is good employment practice for employers to provide such notice within a reasonable period of time
- f. Again, although the Forum is not recommending a statutory right, it **recommends** that employers should, as a matter of good employment practice, consider making financial recompense to employees for the late notice cancellation or curtailment of work shifts
- g. A comprehensive programme of education and awareness-raising of the rights and responsibilities of employees and employers is essential. The Forum’s detailed **recommendation** in this respect is set out at page 12 below

Other issues considered as part of the review

- The Forum **recommends** that employers should have active regard to the health and well-being of their employees, under existing legislation, particularly those employed in more than one job
- The Forum **recommends** that the compensation awards available to the Employment Tribunal for breaches of an employee’s rights under the Employment Law and the Discrimination (Jersey) Law 2013 should be reviewed, by way of a further, specific consultation exercise
- Active enforcement procedures should be in place to take effective action against employers who abuse the work permit provisions

THE REVIEW PROCESS AND STATISTICAL EVIDENCE

Review process

On 21 February 2022, the then Minister for Social Security wrote to the Chair of the Forum, requesting the Forum to undertake a review in the terms outlined in the agreed Proposition.

The review included background research, discussions with key stakeholders and an online survey. The Forum prepared [this background paper](#) for the review.

The main route for the consultation was detailed discussions with a range of community and other organisations. The Forum is very grateful for the opportunity to discuss in depth issues raised in the consultation exercise with a comprehensive range of stakeholders, and for the evidence provided by them:

- Jersey Chamber of Commerce (including hospitality sector representatives)
- Unite the Union
- Jersey Community Relations Trust
- Jersey Advisory and Conciliation Service
- Centrepoint (a childcare organisation in Jersey)
- Friends of Africa
- Government of Jersey HR representatives
- Representatives of Jersey recruitment agencies
- Jersey Care Federation
- Jersey Employment Trust

In addition, an online survey in July and August 2022 elicited 33 responses.

An analysis of the results of the online and face-to-face consultations is set out below at Annex A of this report, at page 17.

The use of zero hour contracts in Jersey – statistical evidence

In percentage terms, the number of jobs recorded as zero hour contract jobs in Jersey has remained relatively constant over the last few years.

From data in the regular labour market statistics provided by Statistics Jersey, from June 2020 to June 2022, the number of zero hour jobs was¹:

June 2020 – 5,800 out of a job total of 59,780

June 2021 – 6,540 out of a job total of 62,430

June 2022 – 7,040 out of a job total of 63,720

¹ Labour Market Report, June 2022: Table 5 Private Sector zero hour jobs, P.7; Figure 9 Percentage of jobs filled on zero hour contracts by sector, P.12; Table 12, Public Sector zero hour jobs, P.16

The Forum is conscious that these figures represent a snapshot of the employment environment during the Covid-19 pandemic and may therefore be subject to a degree of uncertainty. However, the following set of statistics show the trend in the number of zero hour contract jobs – as a percentage of total jobs by employment sector – over a much longer period of time:

June	2014	2015	2016	2017	2018	2019	2020	2021	2022
Agriculture and fishing	32%	30%	40%	8%	15%	17%	5%	5%	6%
Construction and quarrying	13%	15%	14%	13%	12%	10%	9%	8%	9%
Education, health and other services	13%	15%	18%	18%	18%	18%	17%	18%	19%
Financial and legal activities	1%	1%	2%	1%	1%	1%	1%	1%	1%
Hotels, restaurants and bars	15%	16%	17%	18%	18%	20%	20%	23%	26%
Information and communication	8%	7%	9%	9%	6%	6%	6%	6%	5%
Manufacturing	8%	11%	11%	10%	11%	13%	13%	16%	16%
Miscellaneous business activities	26%	26%	27%	26%	24%	23%	20%	20%	21%
Public sector total headcount	9%	8%	7%	8%	7%	8%	7%	8%	8%
Transport and storage	9%	14%	14%	13%	14%	13%	12%	11%	9%
Utilities and waste	6%	3%	6%	5%	7%	7%	8%	8%	5%
Wholesale and retail	6%	6%	6%	6%	6%	6%	7%	8%	7%
Total headcount	10%	11%	12%	11%	11%	11%	10%	11%	11%

December	2014	2015	2016	2017	2018	2019	2020	2021	2022
Agriculture and fishing	18%	18%	23%	10%	3%	10%	4%	4%	3%
Construction and quarrying	12%	12%	14%	14%	12%	11%	10%	8%	7%
Education, health and other services	11%	13%	15%	16%	17%	17%	18%	16%	19%
Financial and legal activities	1%	1%	1%	1%	1%	2%	1%	1%	1%
Hotels, restaurants and bars	10%	14%	14%	14%	15%	16%	26%	17%	19%
Information and communication	9%	8%	9%	8%	7%	5%	6%	6%	6%
Manufacturing	6%	7%	9%	8%	8%	10%	12%	13%	14%
Miscellaneous business activities	24%	26%	26%	23%	24%	22%	22%	20%	19%
Public sector total headcount	9%	9%	7%	7%	7%	8%	8%	8%	8%
Transport and storage	7%	8%	14%	13%	13%	14%	15%	13%	12%
Utilities and waste	6%	4%	6%	5%	6%	7%	7%	10%	4%
Wholesale and retail	4%	7%	6%	6%	6%	7%	8%	8%	8%
Total headcount	9%	10%	10%	10%	10%	10%	11%	10%	10%

The [2022 Jersey Opinions and Lifestyle Survey \(JOLS\)](#)² showed that the proportion of working adults who reported having at least one other job in addition to their main job – between 2013 and 2022 – has remained relatively constant at between 7% and 9%.

Zero hour contracts – the consequences of Brexit

Until the United Kingdom left the European Union, under freedom of movement rules EU citizens were able to come to Jersey to work without hindrance in terms of requiring a work permit. This meant that EU citizens in low-paid, low-skilled jobs could be employed on a zero hour contract. Under the post-Brexit immigration arrangements, freedom of movement no longer applies to such employees, and a strict work permit regime is in operation.

² JOLS 2022, Chapter 10, pp 72-74

Under the work permit rules in Jersey, employers are not allowed to employ staff on a zero hour contract. This should mean a reduction in the numbers of people employed on zero hour contracts over time, as more employees begin work in Jersey under the work permit regime.

Work permits and the requirement for full-time jobs for such employees

The Jersey work permit guidance³ (“Guidance”) was refreshed in April 2023. The Guidance makes it clear that, in whatever sector an employee works, an employer “*must pay no less than the ‘going rate’ for the full-time role based on an employee working 40-hours per week and must do so for the validity of the work permit. Evidence of this must be provided in the form of a contract – preferably signed by the employee.*” As set out above, this means that work permit employees cannot be employed on a zero hour contract and employers who act in such a way are in breach of the rules.

The Forum has been provided with evidence to suggest that such employment practices have taken place in Jersey. The Forum has made a recommendation in relation to these practices, which can be found at page 15, below.

The Forum is pleased to note, in addition, that the Jersey Customs and Immigration Service (JCIS) have spelt out the requirement for employers to notify them immediately if there is a change to the contract that was provided in support of a work permit application. Changes to a contract that breach the work permit policy will result in a review of the employer’s ability to apply for work permits.

Employment rights in Jersey

The definition of an “employee” is set out in the Employment (Jersey) Law 2003⁴ (“Employment Law”) and is the basis of the employment rights that **all** employees enjoy. In Jersey, those on zero hour contracts are typically employees and **all** employees have the same rights from day one of employment. Regardless of whether their written contracts states that it is a zero hour contract, fixed term, permanent or any other type of contract, an employee has the following rights:

- A statement of initial terms of employment including – but not limited to – any provisions relating to hours of work and normal working hours, pay and benefits, holiday and notice entitlement on termination and applicable policies and procedures
- To be informed of any changes to the terms of employment within 4 weeks of the change (for example, where the initial contract no longer accurately reflects the working relationship between the parties)
- Not to be dismissed for an automatically unfair reason; for example, for asserting a statutory right, by reason of discrimination, or trade union membership
- Not to suffer a detriment because the employee has asserted a statutory right
- Not to be discriminated against on the basis of any of the protected characteristics set out in the Discrimination (Jersey) Law 2013
- Statutory paid annual leave period
- Minimum wage
- Right to request a change to terms and conditions (flexible working)
- Parental paid and unpaid leave
- Breastfeeding rights
- Daily rest break
- Weekly/fortnightly rest period

These are known as “Day 1 Rights” and apply from the first day an employee starts a job.

Additional rights in respect of unfair dismissal and redundancy are available to employees after they have been employed by the same employer for a minimum period. For example, to claim unfair

³ [Work Permit Policy & Procedures \(gov.je\)](#)

⁴ <https://www.jerseylaw.je/laws/current/Pages/05.255.aspx# Toc112854500>

dismissal an employee requires 52 weeks' continuity of employment unless the dismissal was for an automatically unfair reason as set out above.

Differences between the Jersey and UK regimes affecting treatment of zero hour contracts

As the Report by the then Minister for Social Security, attached to Proposition P.32/2021, pointed out, so-called "zero hour contracts" are a complex area, with much public confusion as to the rights and responsibilities of employees and employers.

In many cases, commentators (and others) have drawn direct analogies with the employment law regime in the UK and the rights of "workers" there who are engaged on zero hour contracts. The Forum considers these analogies to be misleading and unhelpful because in Jersey (unlike in the UK) there are no "workers" in law and zero hour contracts are typically contracts of employment. These contracts of employment attract the same rights as any other type of employment contract.

In Jersey, an employee's rights under a so-called "zero hour contract" exceed those present in current UK legislation. In Jersey, unlike the UK, all those who work are classed as "employees" and are entitled to the same level of employment rights and protections, regardless of the type of contract under which they are employed. This has been the case since a law change in September 2015 (P.41/2015) which ensured that all employees had the same rights. Before that date not all rights had been available to those working fewer than 8 hours per week.

By contrast, the UK legislation distinguishes between "employees" and "workers", with each group enjoying different levels of employment protection. In general, in the UK, those employed on a zero hour contract are likely to be classed as "workers" and enjoy fewer employment protections.

It is not appropriate to refer to the experience of zero hour workers in the UK (or other jurisdictions) when discussing the legal rights of zero hour employees in Jersey. That said, however, the Forum considers that looking at arrangements in other jurisdictions is nonetheless helpful as it may inform future decision making. This does not mean that such solutions identified in other jurisdictions are appropriate for Jersey.

In the Forum's view, there is a lack of understanding of the rights enjoyed by individuals who are employed in Jersey on a contract which does not stipulate the number of working hours. This lack of understanding was apparent to the Forum from many of the responses received during the consultation process and the consultation meetings between the Forum and employer and employee representatives.

Zero hour contract arrangements in other jurisdictions

There is no common definition of a zero hour contract across jurisdictions. The way in which zero hour contracts are understood, legislated for and managed in other jurisdictions varies considerably. The Forum's research has revealed just how diverse the contractual employment arrangements are in different jurisdictions and how those jurisdictions approach issues affecting terms and conditions of employment⁵.

To take two examples:

In the **United Kingdom** the Small Business Enterprise and Employment Act 2015 contains a provision banning the use of exclusivity clauses in zero hour contracts.

In addition, several UK Private Member's Bills – including the Workers (Predictable Terms and Conditions) Bill⁶ – have recently been introduced. The UK Government appears to support these

⁵ University of Limerick: A Study on the prevalence of zero-hours contracts 2015:

<https://dbei.gov.ie/en/Publications/Publication-files/Study-on-the-Prevalence-of-Zero-Hours-Contracts.pdf#page=128>

⁶ [newbook.book \(parliament.uk\)](https://www.parliament.uk/bills/2019-2020/new-book-book)

backbench moves as an alternative to bringing forward its own employment legislation, foreshadowed in the 2019 Queen’s Speech, but not yet acted upon.

In **Ireland**⁷, the employment law prevents an employer entering into a contract that requires the employee to be available for work but does not guarantee a minimum number of hours of work. Exceptions to this include:

- Work of a casual nature (which must be agreed as such by both employer and employee)
- Work done in emergency situations
- Short term relief to cover routine absences

THE FORUM'S DETAILED CONCLUSIONS AND RECOMMENDATIONS

Introduction

As set out earlier in this report, unlike many other jurisdictions, Jersey’s Employment Law applies to all employees and provides the same rights across all types of employee, including “zero hour” employees. This ensures that whatever type of written employment contract is entered into between the employer and the employee, all employees are fully covered by the rights provided in the Employment Law.

Having taken into account the feedback from the responses to consultation (see Annex A below), the Forum has come to the following conclusions and makes the following specific recommendations:

(i) The definition of a zero hour contract

The use of the term “zero hour contract” has become common in recent years but there is no agreed definition of this type of contract and the term has different meanings in different countries.

Jersey law already contains two, very similar, definitions of a zero hour contract, in Paragraph 1 of the Control of Housing and Work (Exemptions) Order 2013⁸ and in Article 6 of the Employment (Jersey) Law 2003⁹:

“zero hours contract” means a contract or other arrangement between an individual and an undertaking such that the individual may work for the undertaking from time to time but there is no minimum requirement for the individual to do any work for the undertaking.” (Control of Housing and Work (Exemptions) Order 2013)

“In this Article “zero hours contract” means a contract of employment where the employee may work for the employer from time to time but there is no minimum requirement for the employee to do any work for the employer.” (Article 6, Employment (Jersey) Law 2003)

The use of these definitions is restricted to very specific areas of legislation and does not extend in general across the Employment Law.

The rights of employees within the Employment Law are based on the overall relationship between an employer and an employee. They do not depend on whether the terms and conditions specify full time, part time, fixed term, variable hours or zero hour.

Providing definitions of different types of contracts within the Employment Law would be a significant change in the operation of the law. The Forum has not been presented with any evidence that such a move would be beneficial to employees or employers and, as set out in the executive summary above, does not recommend any change in this area.

⁷ [Employment \(Miscellaneous Provisions\) Act 2018, Section 15 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie/eli/2018/act/17/section/15)

⁸ <https://www.jerseylaw.je/laws/current/Pages/18.150.10.aspx>

⁹ https://www.jerseylaw.je/laws/current/Pages/05.255.aspx#_Toc112854511

There is no one, single accepted legal definition of a zero hour contract. What differentiates these contracts from other types of employment contract is only the fact that no working hours are stipulated in the contract.

The Forum considers there is little to be gained in attempting to go beyond what is currently the legislative position in Jersey. Having a definition of a zero hour contract will not, in itself, provide any additional employee protections. In particular, there is one significant issue with any legal definition that relies on no hours being agreed in the employment terms and conditions. An unscrupulous employer could simply contract with an employee for them to work one hour per week or per month, in order to circumvent any legal requirement or ban in respect of a zero hour contract.

In addition, the term “zero hour contract” is applied to a range of working relationships; the fact that there is no clear accepted definition makes it all the more difficult to establish exactly what the relevant criteria should be. Instead, the Forum considers that, in Jersey, the focus should be on strengthening and enhancing employees’ rights and the remedies that currently exist.

(i) The prevention of employers requiring zero-hour employees to always be available for work and (iii) a ban on exclusivity clauses

Zero hour contracts in Jersey are based on the principle that the employer can choose to offer work and the employee can choose to accept or reject work.

Banning the practice of requiring the employee to always be available for work when there is no obligation on the employer to offer work has occurred in other jurisdictions. For example, in **Ireland**¹⁰, the employment law prevents an employer entering into a contract that requires the employee to be available for work but does not guarantee a minimum number of hours of work. The Irish law also provides for a range of exceptions in this area.

This is not the case in Jersey, where the law specifically states that an employee is not obliged to do any work for the employer (see Page 9 above). The development of employment legislation in Jersey has been based on providing a law that is simple and fit for purpose in a small economy.

The Forum does not believe it is appropriate to introduce additional legislation in respect of an employment practice that is not seen in Jersey. However, it recommends that this area is kept under review.

In January 2022, the States Assembly agreed to legislate to make exclusivity agreements in zero hour contracts unenforceable and the change in the Law came into effect in May 2022. New Article 6 of the Employment Law¹¹ provides for this. The Forum noted the overwhelming support for this move. Detailed feedback from the consultation exercise indicates that the practice of inserting and attempting to enforce exclusivity clauses in zero hour contracts is today unknown in Jersey. Organisations which the Forum consulted are very clear that exclusivity clauses are unacceptable and improper, and they actively promote that view.

The Forum concludes that no further work is necessary on this element at this time.

(iv) A right for zero hour employees, who in practice work regular hours, to switch to a contract which reflects the normal hours worked

There is evidence from the consultation exercise that some employers operate contracts for employees where the contract does not specify the hours to be worked but the employee does, in fact, work regular hours for the employer.

¹⁰ [Employment \(Miscellaneous Provisions\) Act 2018, Section 15 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie/eli/2018/act/15/section/15/enacted/html)

¹¹ https://www.jerseylaw.je/laws/current/Pages/05.255.aspx#_Toc112854511

Part 2, Article 3 of the Employment Law places an obligation on the employer to provide an initial statement of terms of employment to an employee.

Article 4 of the Law places an obligation on the employer “*where there is a change in the matters, particulars of which are required by Article 3 ... the employer shall give the employee a written statement containing particulars of the change*”.

Article 3 and 4 combined place a legal obligation on the employer to keep the employee informed about their contractual terms by updating the written statement. Where an employee commences employment on the basis of a zero hour contract, but subsequently works regular hours, it is arguable that the nature of the working relationship has changed and the employer is already required by Article 4 to update the written terms of employment to reflect the change.

Where an employee is on a zero hour written contract, but is working regular hours, then arguably the employer is in breach of Articles 3 and 4, because the written terms of employment do not reflect the working relationship that exists in practice.

The Forum’s consultation has shown that there are many cases where the employee is content with the flexibility that a zero hour contract provides. In such cases the employee may not wish their contract to be changed. Equally, there are cases where the employee may wish to have their contract updated. The remedy in the Law (Article 7) is to make a complaint to the Tribunal where the written terms have not been provided or updated.

The Forum is of the view that, while an employer is already legally obliged to provide a written statement of terms of employment and to update it, the employee should also have a right to request that the written contract is updated to reflect the reality of their working pattern. The Forum considers that this approach would be helpful to employees in terms of clarifying and enhancing the operation of employee entitlements in contracts of employment.

The new right should not be limited to any particular type of change or contract, but should be available to any employee who has consistently worked a regular pattern of hours which does not reflect their current written terms and conditions. An amendment should be made to the Employment Law to provide for the right of an employee to request an amendment to a written statement of employment terms which confirms the reality of their working pattern. The right to request an amendment should be able to be made after 6 months, during which the employee has been working to a pattern of regular hours. “Regular hours” will need to be defined in legislation.

The result of a request to amend should be communicated to the employee within 4 weeks of the request being made. The onus should be on the employer to demonstrate why such a request should be denied and the employer should be clear when explaining its reasons. The basis for a denial should be extremely limited in scope – for example, a foreseeable reduction in the number of hours required to be worked by the employee at the time the request is made - and provided for in express terms in the Employment Law. Other examples of a justified denial might be the development of a “regular” pattern to cover parental leave for a specific period of time, or the culmination of a short-term project for which the requirement for future resources will necessarily diminish.

Given that a 6-month pattern of evidence would need to be established for an employee to make a request to amend, the Forum recommends that an employee be entitled to make one application in a 12-month period.

(v) A right to reasonable notice of a work schedule

In terms of a right to reasonable notice of a work schedule, the Forum is concerned that, in practice, this would be difficult to achieve, especially in the context of contracts with no guaranteed hours. The Forum is also conscious that working variable hours may be the choice of the employee, rather than the employer.

The Forum instead recommends that it would be good employment practice for an employer to provide notice of a work schedule within a reasonable period of time. Good communication between the employer and employee is key when notifying any changes to work schedules. The results of the detailed consultation exercise indicate that most employers do, whenever possible, provide employees with reasonable notice of work schedules.

(vi) A right to compensation for shift cancellation or curtailment without reasonable notice

The Forum concludes that cancellation of work at short notice is inherently unfair and demonstrates an imbalance of power between employer and employee. However, the Forum recognises that introducing a right to compensation could be challenging.

The Forum has considered very carefully the question of a right to compensation for shift cancellation or curtailment without reasonable notice. Its judgment at this stage is not to recommend legislating to provide for compensation in all cases where a shift is cancelled or curtailed at short notice, but rather to encourage good employment practice in this area.

From the evidence collected during the consultation exercise, there appears not to be a significant issue with late notice cancellations or curtailments in Jersey. However, the Forum is reminded of the significant financial impact short term cancellation by an employer can have. The Forum would urge employers, in the interests of good employee relations and as a matter of fairness and equity, to make some recompense where an employee is financially disadvantaged by a short-notice cancellation or curtailment.

The Forum recommends that this particular aspect is kept under review.

Other issues identified as part of the Forum's review

The Forum has taken the opportunity, as part of its review into the operation of zero hour contracts in Jersey, to look more broadly at some of the current employment protections contained in Jersey legislation. A particular focus of the Forum has been to consider whether these provisions perpetuate what has been described as a "power imbalance" between employee and employer and, if so, what steps can be taken to remedy any imbalances.

The following are some of the key issues the Forum considers need addressing as a matter of importance:

(i) Education, employment rights and awareness-raising

The Forum's review has identified some misunderstanding of the scope of employment rights enjoyed by employees on a zero hour contract in Jersey. The Forum finds that work needs to be done to ensure that employees and employers understand their employment rights and responsibilities, in particular an understanding of the Day 1 Rights that all employees enjoy. This should be achieved by working across employer, employee and community organisations to improve knowledge of existing rights. The Forum has been encouraged, during its consultations with business and other organisations, to see that the issue of education and awareness is a very real concern of those organisations too.

Employers and business organisations have a key part to play in ensuring that there is a greater understanding of the requirements of the Employment Law in relation to an employee's right to receive from their employer details of:

- a) the terms and conditions under which they are employed; and
- b) their associated statutory rights.

The Forum notes that the Jersey Employment and Discrimination Tribunal (“the Tribunal”) continues to receive a significant number of claims from employees relating to non-compliance by employers with the provisions of the Employment Law in relation to an employee’s statutory rights. The Forum is concerned that these claims stem from both ignorance of the Law by the employer and a wilful disregard of its provisions, in equal measure.

By way of example, employers continue to be in breach of the provisions of the Employment Law by failing to provide a statement of terms and conditions and payslips to their employees. Employers and their representative organisations should take steps to ensure that they provide employees with clear information about their rights, as well as ensuring that employees are given information about other sources of help and advice, including trade unions, the Jersey Advisory and Conciliation Service (“JACS”) and other civil society advice organisations.

Very often, and particularly in the case of zero hour employees, the statement of terms and conditions provided by the employer does not reflect the reality of the working relationship between the parties. Written terms and conditions which are reflective of the actual arrangements in place between an employer and employee should be the norm and where the terms (including the number of hours) change during the relationship, the employer should update the written record to reflect this and provide it to the employee. Furthermore, employers should ensure that employment practices and procedures are communicated clearly and effectively to employees via internal employee guidance and ensure that employees are aware of routes of redress, both internal and external.

Employers and their representative organisations should take steps to ensure that employees have direct access to information and sources of help and advice, whether that be through a trade union, a statutory advisory body such as the JACS or another civil society advice hub.

As part of the effective communication of employees’ rights, the Forum notes that, in June 2022, there were 8,190 private sector undertakings (businesses) in Jersey¹². Of these, 6,710 businesses employed between 1 and 5 employees. This equates to 82% of all the private sector businesses in the Island. Smaller businesses may be especially in need of guidance and assistance with their responsibilities under the Employment Law and should be encouraged to seek out such advice and assistance. The Forum also encourages the Government to consider whether, and if so, what, further steps it can take to ensure employees have the necessary information tools to enforce their employment rights and employers have the support they need to ensure compliance with the Employment Law.

Employers and business organisations have a part to play in ensuring that there is a greater understanding of the requirements of the Employment Law in relation to an employee’s right to have provided to them terms and conditions - under which they are employed - and an understanding of their associated statutory rights.

The Government should ensure the widest possible dissemination of information, including working with arm’s length and partner bodies, so that entitlement to equal treatment under the Employment Law, regardless of the type of employment contract, is acknowledged and embedded in the relationship between employee and employer. Information should cover hard copy and online resources.

The Forum notes that there is a lack of information available on the gov.je webpages relating to an employee’s rights and an employer’s responsibilities under Jersey’s employment legislation. The Government should take prompt steps to ensure that such information is available and clearly signposted.

¹² [Labour market statistics \(gov.je\)](https://www.gov.je/labour-market-statistics)

The health and well-being of employees

Employers and employees should be alert to the possibility that excessive working hours could have a detrimental effect on the performance of the employee and the well-being of them and their families. As an example, in the care sector, the Jersey Care Commission recommends that employees should not work more than 48 hours a week. Employers should have appropriate systems in place to deal with any issues that may arise and be aware – and communicate to their employees - the relevant provisions of Jersey’s employment and health and safety at work legislation, particularly those concerning daily, weekly and fortnightly rest periods.

The compensation regime for breaches of the Employment and Discrimination Laws

The Forum recognises that the levels of compensation provided for in the Employment and Discrimination Laws were set some considerable time ago. Anecdotal evidence suggests that these levels are now inadequate. As a result, the Forum recommends that a consultation be undertaken specifically to canvass views on amending the ranges and increasing the maxima of awards that may be made by the Tribunal.

(i) A breach of an employee’s statutory rights

Consideration should be given to updating the current criteria relating to the ability of the Tribunal to make a financial award to an employee for a breach of certain statutory rights – for example, non-provision of a statement of terms and conditions, pay slips or the right not to suffer detriment. The current maximum of 4 weeks’ pay appears not to be a sufficient deterrent to prevent non-compliance by an employer with an employee’s statutory rights. The current maximum should be reviewed as part of a separate consultation exercise.

(ii) Compensation for unfair dismissal

The Employment (Awards)(Jersey) Order 2009¹³ provides for a scale of compensation for findings of unfair dismissal, which currently ranges from up to 4 weeks’ pay to 26 weeks’ pay depending on the length of service. The Forum recommends that the current lower end of the scale ranges be reviewed as part of a separate consultation exercise, with a view to increasing the starting point of the number of weeks’ pay available as compensation for a finding of unfair dismissal.

Recompense for contractual loss (for example, pay in lieu of notice) is a maximum of £10,000, plus certain other amounts as prescribed in the Order, leading to an overall aggregate. The Forum recommends that, as part of a consultation exercise, views should be sought on increasing that element of the award, to bring it in line with the Petty Debts Court, which has jurisdiction to deal with claims with a value of up to £30,000.

(iii) Compensation for financial loss and hurt and distress in employment-related discrimination cases

While not an area that falls within the remit of the Forum, it notes that the Discrimination (Jersey) Law provides for compensation to be awarded by the Tribunal for financial loss and hurt and distress in employment-related complaints where a breach of a complainant’s rights has been found (Article 42(1)(b) of the Discrimination Law). Currently, the maximum amount allowable is £10,000, of which £5,000 may be awarded for hurt or distress, for each complaint of discrimination in any one case. This figure may not

¹³ <https://www.jerseylaw.je/laws/current/Pages/05.255.10.aspx>

be of a sufficient level to encourage employers to take discrimination in the workplace sufficiently seriously. The Forum recommends that views be sought on increasing the maximum compensation amount, perhaps (again) by reference to the jurisdictional limit of the Petty Debts Court.

(iv) Effective enforcement procedures against employers holding work permits

The Forum has been given evidence that some employees who come to the Island on work permits have been given no choice but to sign zero hour contracts (overriding their previous agreed terms) on their arrival. This is an unlawful practice by employers. The terms of the work permits dictate that employees who are engaged under such work permits are required to have a fixed period of work of at least 40 hours per week (see Page 6 above). The Forum recommends that the Government ensures there are adequate active enforcement procedures in place to discourage and, where necessary, take effective action against such malpractice.

(v) Ability to make additional requests for a variation in contractual terms and conditions

Article 15A(5) of the Employment Law currently provides that an employee may make only one application to request a change in terms and conditions in a 12-month period, under the flexible working provisions. The Forum considers that, given that flexibility should, as far as possible, be at the heart of modern employment practices, the maximum number of applications allowable in a 12-month period – currently set at one - should be reviewed.

(vi) Protection against unfair dismissal by reason of retirement

In its deliberations, the Forum has identified an issue to do with other statutory employee rights, which are not Day 1 Rights.

These additional statutory employment rights (“non-Day 1 Rights”) come into play at various points in an employee’s service:

- The right to claim unfair dismissal (other than an automatically unfair reason) requires 52 weeks of continuous service
- The right to statutory redundancy pay requires 2 years’ continuous service
- Statutory redundancy pay is based on the length of service and is broadly 1 week per year of service, after 2 years’ service

Article 3(2) of the Employment Law requires an employer to specify in the statement of terms and conditions (which is a Day 1 Right) the date on which that employee’s period of continuous service begins. This is an important inclusion in an employee’s statement because the non-Day 1 Rights, and the extent to which they are available to an employee, will largely depend on that commencement date.

In this regard, the Forum’s deliberations have revealed that there is some evidence that employers are using retirement as a reason for dismissal. However, if not carried out fairly, such a dismissal may have other consequences for an employee in terms of their access to the above rights.

An employer may dismiss an employee by reason of retirement and the Employment Law provides for retirement as a potentially fair reason for dismissal¹⁴. However, there is evidence that some employers terminate employees’ contracts by reason of retirement, only to re-engage them (often on a zero hour contract) having left a gap in the employment relationship of such a length that that relationship is legally “broken”. As a result, access to non-Day 1 Rights is no longer available to the employee.

¹⁴ https://www.jerseylaw.je/laws/current/Pages/05.255.aspx#_Toc112854667

In effect, this course of action by the employer introduces a new date for the commencement of a period of continuous service and the consequent deprivation by the employer of an employee's rights. Generally, such action by employers occurs because the employer wishes the employment relationship to continue but without the exposure to the non-Day 1 Rights. The Forum considers this an unacceptable practice and one which potentially affects the equality of bargaining power between the employer and employee.

The Forum notes the existence of comprehensive JACS guidance on this issue.¹⁵ As part of any education and awareness-raising campaign strategy (as outlined at Page 12 of this report) the Forum urges a clearer focus on available information resources, which will help with an understanding of the accrued employment rights of employees who may be particularly vulnerable by reason of their age and which are designed to help employers comply with the law.

¹⁵ <https://www.jacs.org.ie/employment-advice/model-policies-procedures/retirement-guide/>

Responses to consultation

This annex deals with responses to both the online and face-to-face surveys. It summarises the results by the criteria identified in P.32/2021.

(i) The definition of a “zero hour contract”, including the local use of zero hour contracts

Respondents told the Forum that:

- Zero hour contracts are welcome in their flexibility, in not tying employees to a fixed number of hours per week
- A lack of knowledge about sources of information, advice and assistance and about awareness of an employer’s and employee’s statutory rights and responsibilities needs to be addressed as a matter of importance
- The term “zero hour contract” is unhelpful, and the essential nature of zero hour contracts is a variable or flexible hours’ contract – from no guaranteed hours to a regular long-term employment relationship
- Some employers appear to believe that a “zero hour contract” is not an employment contract at all and therefore employees enjoy fewer protections. This highlights an education issue
- Employers are not using zero hour contracts in the way they should be – there is evidence that some employees are working consistently regular hours, indicating a more permanent working pattern which should attract a different type of employment contract
- There need to be better employment practices, to prevent the abuse of employees who habitually work regular hours, yet are employed on a zero hour contract. The view was expressed that such an anomaly potentially leads to employee exploitation
- The example was given of employees recruited on a work permit being given zero hour contracts. This practice is illegal in Jersey, and should attract firm enforcement action against employers
- The existing definition of a zero hour contract, contained in Article 6 of the Employment Law, is sufficient for the needs of Jersey
- Without the availability of zero hour contracts, some employers would struggle to recruit and retain staff. This is particularly so in the childcare and care sectors
- A better enforcement function is needed to prevent the abuse of employees being held to a zero hour contract, when in fact working “regular” hours
- Employees on a zero hour contract are entitled to be treated in the same way as those on any other type of contract, so why should they need additional employment protections?
- There is a perception that employers don’t use zero hour contracts in the way they should, which leads to employee exploitation. Enforcement and better education is “the way forward” Legislation should be introduced to provide for employees employed initially on a zero hour contract to request a change to a different type of contract after a qualifying period

(ii) The prevention of employers requiring zero hour employees to always be available for work

Respondents told the Forum that:

- Contracts of employment, on whatever basis, should be clear about the number of working hours being offered
- Employees should not be being offered zero hour contracts when the employment is akin to a full-time job from the time of appointment. Again, contracts of employment should specify the likely band of hours to be worked
- If someone employed on a zero hour contract habitually refuses the offer of work, there should be some sort of release clause in the contract which effectively terminates it

- Flexibility is the key to any contractual relationship. It is not necessarily appropriate for such flexibility to be enshrined in law, but if there is a way for an employee not to be disadvantaged by refusing work, then that should be put in place
- Any contractual protections should focus on the actual hours worked. If they are regular and sustained, then an employee should have the right to a full-time or fixed hours contract.

(iii) A ban on exclusivity clauses

A change has been made to the Employment Law which means that a term in a contract, that seeks to prevent an employee from working for a different employer but does not guarantee any work to the employee, is unenforceable. There is no evidence that terms of this nature have been used in Jersey in recent years.

Respondents told the Forum that:

- Exclusivity clauses have no place in a modern, flexible work environment
- The use of such clauses is actively discouraged by employers and business organisations
- New Article 6 of the Employment Law, making exclusivity clauses unenforceable, is a sensible and workable solution for Jersey
- Employees who work for more than one employer should be encouraged/required to notify their respective employers of the time commitment they have agreed with each of them, so as not to put one employer in difficulties with staffing when an employee on a zero hour contract is not available
- Making exclusivity clauses unenforceable is a good thing – this adds to the flexibility that employees can take advantage of

(iv) A right for zero hour employees, who in practice work regular hours, to switch to a contract which reflects the normal hours worked

There is evidence that, despite the employer's obligation to provide an initial statement of the employee's terms and conditions of employment and to update that statement within 4 weeks of any change to those terms and conditions, employers frequently provide contracts which do not reflect the fact that in reality the employee is working regular hours and not on the flexible/ad hoc basis set out in the contract.

Respondents told the Forum that:

- Habitually working fixed or regular longer hours should entitle an employee to a different type of contract
- Entitlement should be an automatic one
- The question of moving to a different type of contract should require a discussion between employee and employer, not necessarily involve a legal entitlement.
- This is an issue of communication and correct understanding of the Employment Law provisions, which better publicity around the advice and assistance available would help to cure

(v) A right to reasonable notice of a work schedule

Respondents told the Forum that:

- Views differed about the meaning of this question. Some respondents focused on the ability of an employee on a zero hour contract to take work at short notice; others concentrated on the requirement for an employer to give sufficient notice of upcoming work (or no hours or reduced hours in a particular week)
- For "bank teams" – such as supply teachers or nurses – such a provision might not work well

- Employers would always try to give employees who work on a zero hour contract sufficient notice of future work, because it is in the interests of employers to do so, but that requiring it through legislation was not the appropriate way forward

(vi) A right to compensation for shift cancellation or curtailment without reasonable notice

Respondents told the Forum that:

- If an employee is asked to work a minimum number of hours under a zero hour contract, there should be some compensation in the event of a short notice cancellation
- Once a shift is confirmed, there should be a minimum number of hours paid
- The question was posed of a situation in which an employer has no alternative but to cancel a shift or curtail because, for example, the employer had a business which was dependent on the weather

(vii) Other measures as part of the review

Respondents told the Forum that:

- Part-time and full-time contracts should be the default option
- It is essential for there to be effective communications for employers and employees
- There should be a requirement to monitor the number of jobs/hours being worked by an employee on a zero hour contract, so that health and safety issues are not compromised

