



## **Banded Hours Contract Bill 2016**

### **Ibec Submission to the Joint Committee on Jobs Enterprise and Innovation**

**27 January 2017**

Ibec welcomes the opportunity afforded by the Joint Committee on Jobs Enterprise and Innovation to comment on the Banded Hours Contract Bill 2016 and related matters.

### General Comments

In the first instance, Ibec notes that the Department of Jobs Enterprise and Innovation has made significant progress in preparing a Draft Scheme of the Terms of Employment (Information) (Amendment) and Organisation of Working Time (Amendment) Bill 2016 (the “draft Heads of Bill”). These draft Heads of Bill deal with the issue of banded hours (and related matters) and propose significant amendments to the Organisation of Working Time Act 1997. These proposed amendments afford employees the right to request increased bands of hours where their contracts do not reflect the reality of their hours worked. Ibec has been engaging closely with the Department in order to achieve a balanced outcome in the draft Heads of Bill. In these circumstances, Ibec cannot see the value in progressing a duplicate bill such as the one before the Joint Oireachtas Committee.

Ibec also questions whether the sponsors of the Bill have considered how the Bill will feed into the future of work. With the development of digitalisation and the growth of new business models, the world of work is evolving. Ibec notes the Government’s ambitions to derive the maximum benefit from digitalisation and these new business models. It is therefore crucial to consider how proposed regulation might impact on these ambitions in any analysis so that Ireland’s ability to adapt to, and benefit from, changing economic circumstances and the future workplace is not restricted.

Notwithstanding the above, Ibec cannot support legislation which removes the employer’s ability to manage the flow of work in their organisation. While Ibec has always supported enterprise level solutions in relation to taking the needs of workers into account, it is imperative that employers have the ability to manage and roster staff in line with business demands and needs of customers/service users.

The Bill before the Joint Oireachtas Committee is proposed to apply across the board. However, Ibec notes that certain sectors (such as retail, hospitality, education, elder care, health care and social care) depend heavily on non-traditional, flexible working arrangements in order to satisfactorily meet customer needs and regulatory requirements. Employers in these sectors in particular need to be in a position to respond to changing conditions, for example, emergency health care requirements and varied needs of consumers and service users.

Employment law is already a highly regulated area of law in this country. Any further regulation of employment law must be evidence based and should not be introduced unless a real need is demonstrated. No reliable evidence of a need for this kind of

legislation is yet available. The UL Study on the prevalence of zero hour contracts<sup>1</sup> found little if any evidence of the use of zero hour contracts. Furthermore, the study found that only 2.6% of employees are employed on variable hour part-time contracts. On the evidence currently available, therefore, it cannot be said that legislation such as that proposed is justified.

Where appropriate, Ibec supports negotiated solutions to some of the challenges posed by having to reconcile greater workplace flexibility for employees and customers/service users. However, current industrial relations channels are the most appropriate method of reaching such solutions. These methods have been used to good effect in some of the sectors referred to above.

This Bill has the potential to have significant adverse effects on employment creation and sustainability across all sectors and will have considerable cost implications for businesses and, in particular, small and medium sized businesses.

### Substantive Comments

#### *Section 3*

Section 3 effectively provides employees with a statutory right to seek a variation of the terms of their contract of employment without adequate regard to the competitive pressures on the business of relevant employers.

Section 3(1) appears to propose that an employee may request to be moved to a band which *exceeds* the average hours worked in the previous 6 months. The minimum number of hours in that requested band would then become the minimum number of hours to be provided to the employee. It is illogical and entirely inappropriate that the minimum number of hours to be provided to an employee could exceed the mean number of hours worked by an employee in the previous 6 month period.

Setting the mean as the new minimum would result in ever-increasing minimum contract hours and in the employer being required to allocate more hours than are needed, or indeed are affordable, at certain periods. This is clearly inefficient and will result in a substantial increase in costs for business.

Furthermore, the 6 month reference period provided for in section 3 is far too short to take account of seasonal variations and normal peaks and troughs of a business.

---

<sup>1</sup> University of Limerick Study on the Prevalence of Zero Hour Contracts and Low Hour Contracts among Irish Employers and their Impact on Employees, Kemmy Business School, University of Limerick

Section 3(4) of the Bill only permits an employer to refuse a request for increased hours if the business is experiencing severe financial difficulties. Ibec submits that this is far too narrow and unworkable for employers who need flexible working arrangements in order to meet regulatory requirements and varying consumer and service user demand.

Section 3(4) does not allow for situations where the number of hours worked in a particular 6 month period is irregular or exceptional. This is not acceptable. The hours worked by a particular employee(s) might be unusually high in a particular period due to the extended absence of a colleague, sick leave levels, the launch of a new product or service or an increase in the use of part-time contracts in accordance with the Code of Practice on Part-Time Working which encourages employers to provide employees with access to part-time work<sup>2</sup>. Furthermore, hours can be irregular due to fluctuation in consumer demands, particularly within the hotel and hospitality sectors and employers in these sectors simply cannot predict how busy a particular period of time will be. These circumstances do not appear to be covered by the Bill at all.

Section 3 of the Bill, therefore, effectively removes an employer's say in whether it can provide a minimum number of hours or whether there are clear justifiable reasons as to why an employee cannot move to the increased band of hours. As was recognised by Minister Mitchell O'Connor during the Dáil debate on this Bill<sup>3</sup>, employees would have to receive the additional requested hours each time they are requested until the employer reaches the point of severe financial difficulties.

If these proposals were to be adopted, many sectors, particularly retail, hospitality, education, elder care and health care, would be seriously adversely affected. Employers in these sectors (and indeed all sectors) need to be in a position to respond to consumer demands, regulatory requirements and varying needs of service users. The flexibility required by businesses is wholly undermined by this Bill.

### *Section 5*

Section 5 of the Bill requires employers to translate all notices regarding the overall availability of working hours to any languages which are required by a workforce.

As currently drafted, this provision appears to apply to all businesses without exception; even to businesses who only employ full-time staff and do not operate a roster system.

---

<sup>2</sup> Industrial Relations Act 1990 (Code of Practice on Access to Part-Time Working) (Declaration) Order 2006

<sup>3</sup> Banded Hours Contract Bill 2016, Second Stage, Dáil Debate, 5 July 2016

This is clearly a disproportionate and impractical measure which would have significant and unreasonable cost and administrative implications for employers, particularly small and medium sized employers.

### *Schedule*

The bands provided for in the Schedule to the Bill are far too rigid and do not afford employers anything close to the level of flexibility they require to meet regulatory requirements and consumer and service user demand.

### **Related Matters**

We note that the Joint Committee will also consider 5 specific related matters as set out in the invite to attend dated 23 January 2017.

We set out our response to these matters below.

- 1. The problems caused by the increased casualisation of work that prevents workers in low hour and zero hour type contract arrangements from being able to save or have any job security (and in this context, it should be noted that the resolution made reference to the Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees carried out by the University of Limerick)*

Ibec notes the reference to the UL Study. In Ibec's submission on the UL Study<sup>4</sup>, Ibec registered a number of concerns, including (1) the manner in which the study failed to add in any material respect to the information already available on the prevalence of zero hour, low hours and/or If and When contracts in Ireland, (2) the extent to which the authors went beyond the scope of the study's terms of reference and (3) the manner in which the authors conflated a wide range of flexible working arrangements.

Ibec questions, therefore, the merits of using the UL Study as a basis for legislative change and further regulation in this area.

Notwithstanding these concerns, Ibec notes that the evidence which was available to the authors showed little if any evidence of the use of zero hour contracts. Furthermore, the study found that only a very small minority of employees (in the region of 5.3%) have variable working hours and an even smaller number work such arrangements on a part-time basis (2.6%). It should also be noted that the UL Study provided no indication or evidence of abuse of variable hour or low hour contracts or

---

<sup>4</sup> UL Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees, Ibec Submission to the Department of Jobs Enterprise and Innovation, 4 January 2016.

the use of such contracts as a means of exploiting workers or avoiding employment law obligations.

These findings appear, to Ibec, to suggest that flexible working arrangements are only used where necessary for the operation of the business or at the employee's request and are not in fact, "on the increase", as is so often reported.

## *2. Whether zero hour contracts should be banned*

As stated above, the UL Study found little if any evidence of the use of zero hour contracts in Ireland. This is likely due to the significant cost implications of section 18 of the Organisation of Working Time Act 1997 which entitles employees on zero hour contracts to minimum payments whether they are called into work or not.

Given this scarcity of such zero hour contracts, Ibec questions the need to ban their use.

## *3. Whether the Bill has sufficient flexibility in its application for small businesses and provides a simple approach in this regard, while lessening the administrative burden*

It simply cannot be said that this Bill has any flexibility, least of all sufficient flexibility in its application for small businesses, nor does it provide a simple approach or lessen the administrative burden. Indeed the contrary is true as is set out in more detail above.

## *4. Whether workers on low and zero hour contracts should be allowed a minimum set of hours and the right to request more hours (section 18 of the Organisation of Working Time Act 1997)*

As stated above, section 18 of the Organisation of Working Time Act 1997 already provides significant protections to employees, entitling them to minimum payments whether they are called into work or not. Indeed Ibec notes that the draft Heads of Bill currently being prepared by Government propose to extend this protection by (1) introducing a floor protection of three times the National Minimum Wage (€27.75 at 2017 rate) and (2) entitling workers to request more hours where they feel their contracts do not reflect the reality of hours worked.

Ibec is strongly of the view that any proposals for legislative change in this area must recognise the competitive pressures on business and the necessity for employers to have the ability to manage the flow of work in their organisation and to roster staff in line with business demands and needs of customers/service users. It is not acceptable that employees may have a statutory right to vary the terms of their

contracts of employment without adequate regard for the employer's business demands and regulatory obligations.

5. *Whether the remit of the Low Pay Commission should be changed to permit or require it to review proposals on banded hour contracts for those on low pay*

Ibec believes that it would be inappropriate to change the remit of the Low Pay Commission to permit or require it to review proposals on banded hour contracts for those on low pay.

The issue of variable hours is extremely broad, impacting on every sector and every level of employment. It would, therefore, be impossible to carve out a role for the Low Pay Commission which would deal only with variable hour workers on low pay. Furthermore, it is unclear what is even intended by "low pay". If it is intended to refer to the national minimum wage, Ibec notes that the Low Pay Commission already has a role in this regard.

Furthermore and as stated above, Ibec believes that current industrial relations channels are the most appropriate method of reaching solutions to some of the challenges posed by having to reconcile greater workplace flexibility for employees and customers/service users. These methods have been used to good effect in some of the sectors referred to above and should continue to be the primary channel for resolution.

### **Concluding Remarks**

Ibec is happy to continue to engage with all stakeholders on the issues the Bill proposes to address. However, the Irish business community cannot support a Bill which does not appear to be grounded in evidence, is totally inflexible and encroaches to such an extent on employers' right to manage their business.

END