

ISME  
17 Kildare Street,  
Dublin 2  
26<sup>th</sup> January 2017

Ms Mary Butler TD,  
Chair,  
Joint Committee on Jobs, Enterprise and Innovation,  
Leinster House  
**Your Ref: JEI-i-056**

Dear Deputy Butler,

ISME thanks you for your invitation to address the Joint Committee on Jobs, Enterprise and Innovation on the Banded Hours Contract Bill 2016 on 31<sup>st</sup> January, which we will be delighted to attend. ISME was invited by the then Minister to respond to the University of Limerick '*Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees.*' ISME appends our response to the Minister.

The Committee has asked ISME to respond to five specific considerations. We append our responses as follows:

***(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).***

It is noteworthy throughout the UL study that Zero-Hours contracts are not prevalent in the Irish workplace. ISME therefore questions the objectives behind the formulation of a Private Member's Bill to address a non-existent problem.

***(2) whether zero hour contracts should be banned***

It follows from our response at (1) above that they should not be banned. Zero-Hours contracts are not in widespread use in the Irish economy. The availability of employers to provide low-hours, and as-and-when working, is something which suits a great number of employers *and* employees. In the absence of evidence that a legislative response beyond that already provided for under Section 18 of the Organisation of Working Time Act 1997, new primary legislation on the matter is wholly unwarranted.

***(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;***

No it does not, and furthermore the obligations set out in Section 5 whereby ‘*Every employer shall display... a notice... in English and Irish, and in other languages where required, such that the notice is reasonably likely to be understood by the workers concerned*’ is impractical, inappropriate, and excessively burdensome.

Furthermore, ISME notes that the notification requirements for employees described in Section 5 go far beyond the notification requirements set out in Section 9 of the Safety, Health and Welfare at Work Act 2005; and Section 17 of the Organisation of Working Time Act, 1997. No adequate, or indeed any, reasoning is set out in justification of these more onerous requirements. See our comments regarding the need for a Regulatory Impact Assessment in Para (4) d) below.

***(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);***

This item addresses directly the issue of whether Organisation of Working Time Act 1997 goes far enough in protecting the rights of affected workers. ISME takes the simple view that legislative responses to the issue must be informed by evidence. It is clear from the UL study that evidence

supporting the thesis that this is a material problem is lacking. ISME therefore requires the following before it could positively consider the Bill as written:

- a) Evidence-based analysis of the treatment of workers on zero-hours contracts, and how they are being exploited under the existing Organisation of Working Time Act 1997 regime.
- b) Evidence-based analysis detailing the specific failures of Section 18 of the Organisation of Working Time Act 1997, and its enforcement mechanisms, in low and zero-hours contracts.
- c) Specific and detailed explanation of how it is proposed to expand and/or improve the workplace inspection mechanisms under the proposed Bill, in such a manner as would materially better the lot of workers on low and zero-hours contracts.
- d) A Regulatory Impact Assessment is urgently required to justify the additional legislative burdens proposed under the Bill.

***(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.***

ISME does not consider it appropriate to expand the remit of the Low Pay Commission to review banded hour contracts. However, if the Joint Committee were to conclude that such an expansion of the LPC's remit was justified, ISME believes it should be subject to Regulatory Impact Assessment per para (4) d) above.

In summary, ISME wishes to voice its frustration that the Dáil is considering a legislative response to a problem where (1) its extent is not established, and (2) there already exists primary legislation and an enforcement mechanism to tackle specific problems where they are identified.

ISME believes that, where a problem such as low or zero-hours contracts is perceived to exist, the most appropriate policy response is to enforce the protections already provided for by the legislature. Legislating for additional protections is only appropriate where enforcement failure can be identified.

The ratchet effect of responding to non-compliance by introducing more legislation serves only to increase the gap between those companies which comply with employment law and those which do not. It does little or nothing to improve the lot of those individuals working for non-compliant

employers, who will ignore new laws with the same vigour as they ignore the old. In ISME's view, this Bill will serve only to disimprove the lot of workers among non-compliant employers.

We understand that this Private Members' Bill is proposed in good faith by its authors. However, we urge the Committee to reflect on the fact that the Banded Hours Contract Bill 2016 is unlikely to secure any protections for workers that are not already available under the Organisation of Working Time Act, 1997, and indeed that the Bill as proposed could be counter-productive in the protection of workers on low or zero-hours contracts.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Neil McDonnell', with a long horizontal flourish extending to the right.

---

Neil McDonnell

Chief Executive

ISME, the *independent* business organisation