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Clerk to the Committee for the Economy
Northern Ireland Assembly
Room 347, Parliament Buildings
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(By Email to peter.hall@niassembly.gov.uk)

25 February 2022

Dear Peter,

Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill

Thank you for providing the Labour Relations Agency the opportunity to comment on the Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill (your reference: EC515/22).

The Agency has watched the development of policy initiatives around the issue of zero hours contracts in both Great Britain and Northern Ireland with interest. Along with subjects such as fees for tribunal hearings, zero hours contracts often prompt visceral responses from different stakeholders depending on the prism through which they are being viewed.

One group of stakeholders may view zero hours contracts as the last bastion of necessary employment flexibility and they remain an essential aspect of working life. Others view zero hours contracts as exploitative by their very nature and, as such, should be banned outright.

In NI, the subject was addressed via a consultation in 2014, albeit in a limited way. Provision was made in the Employment Act (Northern Ireland) 2016, where Section 59 (A) provides for the Department for the Economy to *“...by regulations make such provision as the Department considers appropriate for the purpose of preventing abuses arising out of or in connection with the use of—(a) zero hours contracts; (b) non-contractual zero hours arrangements; or (c) worker's contracts of a kind specified by the regulations.”*

This aspect of the Act has not yet been enacted.

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There is also a commitment in the 'New Decade New Approach' agreement, which states in Employment Rights xxii inter alia "*...the Executive should move to ban zero hours contracts.....*".

In GB, only exclusivity clauses in zero hours contracts are prohibited.

In the Republic of Ireland, the Employment Misc. Provisions Act 2018 made significant changes to employment rights legislation, including changes in the law on zero hours contracts. This amended the Organisation of Working Time Act 1997 by introducing a system of banded hours for workers.

It was notable that in GB, when regulating zero hours contracts was being debated initially, there were concerns about circumvention tactics such as hiring staff on one hour contracts (thereby lifting them out of the definition altogether), or changing their employment status from that of worker to independent contractor, thus avoiding the reach of any regulation.

There is little doubt that the Taylor Report shone a light on many of these issues and it was clear from the report that context informs a great deal of the debate and that legislation is often seen as either too blunt or not encompassing enough.

With specific regard to the Private Member's Bill itself, the Agency has identified some issues that need to be voiced regarding:

- The wider employment status debate (see below);
- The difference between what is contractually on paper and what happens in practice as patterns and custom and practice develop over time; and,
- The inability for some to conduct definitive workforce planning due to ongoing business uncertainties, thereby necessitating the use zero hours contracts as a business model requiring maximum flexibility at the lowest potential outcome cost.

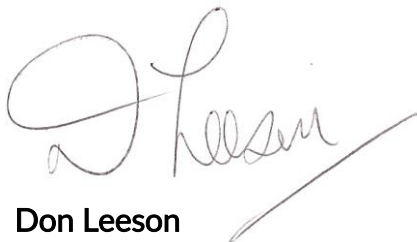
We are struck by the following:

- Polarised opinions associated with their use and existence;
- The lack of understanding regarding where zero hours contracts sit within the wider employment status policy debate (independent contractor, worker, or employee). And, from here, the need to examine policy direction through the employment status lens and wider future direction on legislating around 'worker' rights;
- The lack of understanding that the Agency cannot conciliate in a dispute regarding the dismissal of a 'worker' because only employees have the right to claim unfair dismissal and most zero hours workers are legally classified as 'workers';
- The lack of certainty regarding how zero hours contracts are defined per se by Government departments, employers, statisticians etc and how they pertain to the discussion around 'atypical' employment models, practices and rights;
- Competing narratives around workers who want to be on zero hours contracts in terms of specialist freelancers versus precarious workers, who have no choice on the prevailing business model;

- The focus on zero hours contracts in certain contexts, especially around digital platform working and the 'gig economy' and the direction of travel within the EU and where that sits with the policy debate;
- Divergent views regarding the extent of regulation beyond suggestions in the draft Employment Bill in GB regarding the right to request a more predictable contract; and,
- The potential for other non-legislative initiatives regarding zero hour contracts such as a semi statutory code of practice on the responsible use of zero hours contracts, zero hours covenants, and charters associated with certain industries such as hospitality and so on.

I hope this is helpful. The Agency stands ready to provide whatever assistance it can in terms of helping to improve employment relations in the event that this Private Members' Bill becomes law.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Don Leeson', with a long horizontal flourish extending to the right.

Don Leeson
Chief Executive