

Original Paper

The Analysis on Employment Rights of “Zero-Hours Contracts” Workers in the UK

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Received: December 01, 2017 Accepted: December 24, 2017 Online Published: January 25, 2018

doi:10.22158/wjssr.v5n1p16

URL: <http://dx.doi.org/10.22158/wjssr.v5n1p16>

Abstract

In view of the fact that a large number of people in the UK are working with zero-hours contracts, this paper gives a further discussion on the legal status of these people. In order that more “zero-hours contracts” workers can enjoy their legal rights in the UK, the project is designed to examine to what extent the workers with zero-hours contracts have the rights based on employment legislation. Firstly, it offers a clear distinction between “typical” and “atypical” workers and concludes that “zero-hours contracts” work should fall into the latter category. And then it proposes that the key to identifying worker and employee lies in the mutuality obligation between employer and employee. By taking the dispute between Pulse Healthcare Ltd and Carewatch Care Services Ltd & 6 others as a case study, it hopes to offer a detailed explanation on this question. At last, it comes up with the conclusion that the “zero-hours contracts” workers will be able to enjoy more rights after the legal status defining becomes more accurate.

Keywords

“zero-hours contracts”, employment rights, case study

1. Introduction

“Zero-hours contracts”, as a kind of working contracts, have been used in the UK for decades. Moreover, in recent years the tendency of using such contracts has seen a constant rise. At work, the workers with zero-hours contracts could not enjoy the welfare including bonuses, sick and holiday pays just as those formal employees do, and plus their instable working hours and low salaries might negatively impact their basic life. As a result, there has been wide criticism of zero-hours contracts. In addition, the categorization of this kind of contracts usually falls between the contract law and the employment law. Therefore, how to define it in the legal area has drawn more and more concern.

This project is aimed to examine to what extent workers with zero-hours contracts possess appropriate employment rights. It will make an overview of zero-hours contracts in terms of the number and characteristics, and then evaluate the key factor of identifying “employee” and “worker” based on a theory provided by Davies, and the case of *Pulse Healthcare Ltd v Carewatch Care Services Ltd & 6 others*.

Except the analysis on how to decide whether the workers can enjoy the employment rights, some aspects relate to the subject will not be mentioned in this. It could be said that zero-hours contracts have been put into an embarrassing situation, as the Advisory, Conciliation and Arbitration Services (ACAS) discussed below:

Zero-hours contracts may suit some people who want occasional earnings and are able to be entirely flexible about when they work. However, the unpredictable nature of working times means that they won't be for everyone.

Zero-hours contracts have been criticized for many times for the annual payments are much less than that of full-time working contracts. Those employees have no sick or holiday pays, no share of bonus, and some of them even suffer from severe mental pressure owing to the unpredictable income. Therefore, the majority of the employers consider them merely as “any time required” workers; in this way, the companies which hire these employees can have the maximum profit owing to the great reduction of labor wage. Moreover, it is unnecessary for employers to worry about the indolence of the employees.

Notwithstanding there are a lot of disadvantages of zero-hours contracts, it cannot easily help the workers get rid of the current circumstances by law. On the one hand, it is so new and specific that the term of “zero-hours contracts” can hardly be found in the codified legislation and cases are rare. On the other hand, the employer interests and employee rights should be kept in balance in the labor market, as a result of which, the law may not endow “zero-hours contracts” workers for whole with employment rights. This will be further discussed in the next section.

2. Legal Analysis

2.1 Legal Situation of Zero-Hours Contracts

The legal situation of zero-hours contracts has been ambiguous for quite a long time, as mentioned above, especially when it comes to the question whether or not the workers with zero-hours contracts are included in the protection of the Employment Law.

According to the theory by Davies, the question could be firstly answered by classifying the groups of workers. He divided the workers (including the employees) into typical workers and atypical workers. The former refers to the general type of employment, and atypical workers means “a person whose employment diverges from this norm in one or more respects”. He believes that it will make a significant contribution to comprehending the legal position of zero-hours contracts by identifying these

two types of workers.

As stated by Davies, there are four characteristics of “Typical workers”:

“For a single employer; on an indefinite contract (i.e., one with no end date); at the employer’s premises; regularly for that employer whether or not the firm is busy”.

Obviously, most of the zero-hours contracts workers have appeared to be in consistency with the first three characteristics except for the last one, “regularly for that employer whether or not the firm is busy”. The reason should lie in that they are under the contracts with no regular working hours. In other words, it could pass that they are rather similar as the employees and at least some of their rights should be ensured by the Employment Law.

According to what is said above, two points can be drawn. Firstly, those who with zero-hours contracts belong to atypical workers. Secondly, the main difference between atypical workers and typical workers lies in the fact that, the latter has the four characteristics while the former only has part of the four ones. In daily life, some of the “zero-hours contracts” workers are not in line with the first characteristic. For instance, someone takes advantage of the free time to work for two employers in two sports shops. However, the vast majority of the “zero-hours contracts” workers were not in consistency with the last one. For example, the tour guides who with zero-hours contracts can work every day in the busy season while they have to stay at home in the slack season, waiting for jobs. Therefore, they fail to form regular working period, as a consequence, they would not receive any pay from the boss when they are staying at home.

It comes a problem. If one is working with zero-hours contracts, but he or she is inconsistency with the four conditions, whether should he or she have the employment rights regulated by law?

It is not hard to find such contracts which actually acted in four conditions by Davies’ theory in the UK. It could be argued that as a matter of fact, the workers have accomplished the responsibilities as “employee”, though they signed on zero-hours contracts. However, the law does not give explicit explanation to the rights they deserve. This will be further discussed in the following case.

2.2 Relevant Case

The facts in *Pulse Healthcare Ltd v Carewatch Care Services Ltd & 6 others* were clear. The Claimants (Mrs Short and four other members) in the case have been employed by Carewatch Care Services Limited (referred to as “carewatch”) with “zero-hours contracts” since 2003. They had been working as a part of 24-hour care team for “VF”, a lady who had severe physical disabilities, supported by the local primary care trust (“the PCT”). On December 2010, Pulse Healthcare Limited (referred to as “Pulse”) took over the contracts from Carewatch and fired the six carers later on, which brought itself to the Employment Tribunal by being charged with unfair dismissal.

Pulse denied that the carers were employees, on the grounds of:

1) The Claimants were not employees of Carewatch as there was not the requisite mutuality of obligation; and

2) The Claimants did not have sufficient continuity of employment to claim unfair dismissal.

3) ...

At the first instance, the Employment Tribunal, made the sentence in support of the claimants. Then the Employment Appeal Tribunal dismissed the appeal from Pulse.

It could be seen that the key to this case was whether the claimants, who were working with the “zero-hours contracts”, could be identified as “employees” under the Law. According to the Employment Rights Act 1967, only “employees” are entitled the right to claim unfair dismissal. Therefore, it appears to be of huge significance to examine whether the “zero-hours contracts” workers have the same or similar working circumstances with that of the “employees”, which is the mutuality of obligation. The demonstration of mutuality of obligation means proving that the employees had sufficient continuity with the employer. In this case, the “zero-hours contracts” holders had the agreements with Carewatch that they were allowed to work for other employers and this was added to contract, which was a weakening for the proven. However, the judge noticed that in reality the claimants had worked during fixed hours on a regular basis for several years, especially when Carewatch was required by VF’s the parents to keep the continuity of carers for their daughter. Thus it could be judged that the claimants had kept a mutuality relationship with Carewatch (or Pulse). At the final judgment, the claimants were supported; Pulse made an appeal to a higher court, but the appeal was dismissed.

According to the theories put forward by Davies, the refinement process of the judge on mutuality should be taken as the proof of the first and fourth pieces of his ideas about the differences between A and T. In this case, the judge showed support to claimants, holding that they could be defined as “employees”. In addition to the decision on mutuality, the court also made an examination on the contract signed by the both two parties. Although Carewatch (or Pulse) thought that they had signed zero-hours contracts with the carers, they kept a long-term and stable employment relationship in reality. It may suggest that these “zero-hours contracts” workers are no longer with short-term labor contracts, but general contracts. Such a distinction would transfer the identities of the accusers from workers to employees. In the short-term contracts, the transaction carrier is labor, or labor can be taken as goods for transaction. One party offers the payment, while the other does the jobs, like, writing a composition for others, taking care of other’s child, or repairing the motor. To the contrast, in a global “umbrella” employment, employee should not be taken as a commodity any more. As stated by Collins, the demands of the workers should be ensured in the contract of employment. And balance between life and work should be achieved; and the working time should never affect other human and social activities. Therefore, the employer, apart from paying for the work of employees, also needs to protect the rights that should be enjoyed by a human. It could be concluded, in this case, that only when the careers were regarded as employees can they enjoy the employment rights including sick and holiday pay, minimum working hours and minimum wage as well as other rights including, appealing for unfair

dismissal and other labor disputes judgment.

3. Evaluations

To sum up the explanation of Daives' theories, and the relevant case, it could be concluded that not all zero-hours contracts are excluded from employment law as long as the workers could prove the mutuality relations and be defined as general employment contracts. Then the employment status could be established. To be specific, what kinds of "zero-hours contracts" workers can be taken as employees with employment contracts? As there are a great variety of zero-hours contracts and it actually involves a wide range of aspects, it is hard to provide definite classifications. Currently, it could only adopt methods according to the specific cases, which is also a limitation that could not be explored further into by this research.

It is helpful to protect at least a part of human being's interests by defining the legal positions of "zero-hours contracts" workers; after all, some of those people simply want to make money or accumulate working experience through this kind of work. It could be believed that the legal status of zero-hours contracts will be clearer and that those employees can be well protected by law in the near future.

4. Conclusion

Zero-hours contracts are one of the "atypical work" which influences approximately 2,000,000 workers in the UK. By examining the legal status of such contracts could help the workers gain more rights so that they could enjoy more legal protection. Therefore, this paper, focusing on this question, offers a further discussion on to what extent the workers with "zero-hours contracts" have the employment rights.

This project has briefly outlined the current state of "zero-hours contracts" in the UK and provided the classification between atypical worker and typical worker. Moreover, it talks about a case happened recently in the UK. In this paper, it listed a great variety of jobs undertaken by "zero-hours contracts" workers, and gave a comparative study on and employment contract.

It was demonstrated that zero-hours contracts belongs to atypical work and has a clear distinction from typical work. In general, "zero-hours contracts" workers are not entitled to enjoy employee rights. It was concluded that in reality, some of the "zero-hours contracts" works have different situations with the "zero-hours contracts" workers, for they have more mutuality with their employers. By signing contracts with a single employer, they have to offer service whenever they are requested to. Therefore, they are actually working as "employees", should deserve employment rights. It is believed that as the defining of legal status of "zero-hours contracts" becomes clearer, an increasing number of people will be able to enjoy employment rights and learn to maintain their own legal rights.

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