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The end of exclusivity in zero hours contracts

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Employment analysis: What will a ban on exclusivity clauses in zero hours contracts mean for employers and workers? Jane Klauber, a partner in the charity and social business team at Russell-Cooke Solicitors, advises lawyers to review existing arrangements with employer clients.

What are the details of this latest crackdown?

The latest 'crackdown' is the government's decision to legislate to ban exclusivity clauses in zero hours contracts following an unprecedented response to their consultation. The Small Business, Enterprise and Employment Bill will contain this provision and gives the Secretary of State the power to make further regulations to this end. The relevant provisions will be inserted in the Employment Rights Act 1996, cl 27A and 27B.

What does this mean for the status of existing contracts with exclusivity clauses?

This means that exclusivity clauses in existing contracts will be unenforceable. However, this does not mean the contract will be void, as only the exclusivity provision will fall.

What action should employers take in light of this announcement?

Employers will wish to review zero hours contracts to remove exclusivity if such contracts still meet their requirements. Alternatively, organisations may wish to review their needs in this area and consider terminating existing arrangements and offering part-time contracts to some staff. Where there is any question that workers have employed status/are protected from unfair dismissal an appropriate consultation will need to be followed and, in all cases, contracts will need to be terminated in accordance with their terms.

What is the relevant time-scale?

The Bill is expected to have its second reading in the Commons on 15 July 2014 and may be passed into the House of Lords towards the end of the year, which means it would become law at some point in 2015.

What should workers be doing at this moment?

Where workers are concerned about exclusivity provisions they may wish to raise the matter with their employer, mindful however that if the employer considers there are real commercial interests to be protected, they may not (depending on employment status) be obliged to continue to offer work.

What should lawyers do next?

First and foremost, lawyers should review existing arrangements with employer clients.

Exclusivity provisions in zero hours contracts are, in my experience, extremely rare in the charity sector. Generally while charities have become more aware of the commercial value in the services that they develop

than in the past and the need to protect commercially sensitive information, the sort of staff that are employed on zero hours contracts are typically in 'front line' roles delivering services frequently of a caring nature such as to elderly, mentally ill or disabled clients. As such it is unlikely our charity clients will be unduly concerned about the ban on exclusivity provisions. More widely, charities do place emphasis on good employment practice and may wish to review zero hours arrangements in light of the adverse publicity they have received. However, in my view zero hours contracts will continue to be useful as casual contracts and other atypical means of ensuring organisations retain flexibility in the face of the severe financial pressures they continue to face from cuts in government and other funding.

Jane Klauber advises organisations on all aspects of employment law. She acts for a wide range of non-profit making organisations including religious bodies, educational institutions, think tanks and city guilds.

Interviewed by Kate Beaumont.

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