



# THE DECENT JOBS DEFICIT

*The human cost of zero-  
hours working in the UK*





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## **ACKNOWLEDGEMENTS**

The TUC commissioned Maria Hudson to undertake statistical analysis of the Labour Force Survey, the findings from which are reported throughout this publication. The report also draws on research carried out by Maria for the TUC in 2013. For more detail see *Casualisation and Low Pay: A report for the TUC*.

The TUC job insecurity survey referred to in the report was run in association with the Scottish Trade Union Congress (STUC).

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# INTRODUCTION

**I**n 2008 the TUC Commission on Vulnerable Employment explored the extent of exploitation in workplaces in the UK.<sup>1</sup> At the time, the Commission estimated that around two million workers in the UK found themselves in vulnerable employment. The Commission defined vulnerable work as precarious work that places people at risk of continuing poverty and injustice resulting from an imbalance of power in the employer-worker relationship. Six years later, evidence gathered by the TUC reveals that working conditions for many in the UK have not improved. Instead for those at the bottom end of the labour market, the struggle for a decent day's work in return for decent pay and conditions has intensified.

In 2014 millions of workers are still trapped in low-paid, highly insecure jobs, where mistreatment is the norm and where there is limited prospect of escape. Our findings suggest that those at the greatest disadvantage in society – women and young workers – are most likely to find themselves in precarious work.

Of particular concern has been the sharp increase in zero-hours contracts and the widespread use of agency workers in the aftermath of the recession. Too often workers on such contracts face working conditions better suited to the Victorian era than 21st century Britain.

There is a clear link between casual employment and low pay. Those employed in precarious jobs tend not only to experience heightened job insecurity but also a significant pay penalty. Most have seen no benefits from the recovery. Instead they often find it difficult to make ends meet, with some resorting to pay day loans or even food banks to cover basic household bills and feed their families.



But job insecurity in the UK is not limited to low-paid, low-skilled employment. Levels of insecurity are also rising amongst higher skilled and better paid staff working in professional occupations including education, health care and the entertainment sector. University lecturers, radiographers and even airline pilots have all been affected by the employer drive towards more flexible and insecure forms of work. The unpredictability of their take home pay makes it increasingly difficult for individuals and households to plan financially, to access credit, and to secure mortgages or tenancy agreements. Constantly varying working hours also has an impact on family life, making it difficult for individuals to organise childcare, the care of older relatives and a social life.

Those in precarious work are also particularly vulnerable to exploitation in the workplace. Due to their uncertain employment status, the transient nature of their work and their low level of weekly pay, many zero-hours contract workers, agency workers and others in insecure jobs lose out on basic rights at work. Being in such a precarious situation means it is very difficult for workers to complain if they are treated badly. As a result they risk having the few rights they do have disregarded.

The TUC believes that endemic poor treatment at work should not be tolerated. There is an urgent need for the government and politicians of all persuasions to challenge precarious employment and introduce policies to encourage the creation of decent jobs, on decent hours and pay. It is time to end the two-tier workforce and to ensure that all working people are treated with dignity and respect. A starting point would be to ensure that all workers, regardless of their employment status benefit from the full range of employment protections.

Unions also have a vital role to play in raising standards for those in insecure work. In recent years, in workplaces across the UK, unions have successfully campaigned for and negotiated a reduction in insecure employment. But there is far more work to be done to ensure that precarious jobs and exploitation at work become a thing of the past.

## **INSECURITY AT WORK**

The findings outlined in this report are based on an analysis of the Office for National Statistics (ONS) Quarterly Labour Force Survey (LFS). It also draws on findings from an online survey carried out by the TUC in April/May 2014. This survey received 3,244 responses, 51 per cent of respondents were men and 49 per cent women. The vast majority of respondents were members of trade unions. One in three were employed in temporary work, including agency work, zero-hours contracts or fixed term contracts.

Whilst the survey findings are not empirically representative, they highlight the sense of insecurity at work in the UK and the struggle that many face to make ends meet. Case studies and quotes scattered throughout the report are drawn from the survey.

Given the precarious nature of their employment, the identities of the individuals have been anonymised.



## SECTION ONE

# PRECARIOUS EMPLOYMENT

## THE ECONOMIC CONTEXT

The recession in 2008 led to lower levels of unemployment than may have been anticipated given the experience of previous economic downturns of the 1980s and 1990s. However, it heralded an increase in insecure and casual forms of work. Most notable has been the sharp increase in the use of zero-hours contracts and agency workers across the UK.

In the aftermath of the recession, as employment levels have risen, so too have the numbers working in part-time,<sup>2</sup> temporary and precarious forms of employment. Although atypical employment continues to represent a minority of overall employment – there is growing concern that the UK labour market is moving towards more low-paid, less secure and more exploitative forms of employment, at a time when many households are struggling with an unprecedented fall in living standards.

Inter-linked with the spread of casualisation, falling wages and rising costs of living has been the growth in under-employment, with the proportion of the workforce who are seeking additional working hours rising significantly.<sup>3</sup>



## TEMPORARY WORK

Official statistics<sup>4</sup> indicate that temporary and casual employment grew steadily during and in the aftermath of the recession of 2008/09.

By summer 2014 more than one and a half million (1.7 million) workers reported that they were in some kind of temporary work, an increase of more than 300,000 since the start of the recession.<sup>5</sup> The proportion of the overall workforce employed in some form of temporary work also increased from 5.5 per cent in 2008 to 6.5 per cent in 2014.<sup>6</sup> It is, however, widely recognised that the Office of National Statistics Labour Force Survey (LFS) substantially underestimates the numbers of agency workers (for reasons see next page.)

**TABLE 1: TEMPORARY EMPLOYEES AS A PROPORTION OF THE WORKFORCE**

	Temporary employees (000s)	Total as % of all employees
2008 (Apr–Jun)	1395	5.5
2009 (Apr–Jun)	1435	5.8
2010 (Apr–Jun)	1582	6.4
2011 (Apr–Jun)	1591	6.3
2012 (Apr–Jun)	1580	6.3
2012 (Apr–Jun)	1615	6.4
2012 (Apr–Jun)	1660	6.6
2013 (Apr–Jun)	1617	6.4
2013 (Apr–Jun)	1547	6.1
2013 (July–Sep)	1628	6.4
2013 (Oct–Dec)	1621	6.3
2014 (Jan–Mar)	1655	6.4
2014 (Apr–Jun)	1651	6.4
2014 (July–Sep)	1701	6.5

Source: ONS Labour Market Statistical Bulletins drawing on Labour Force Survey<sup>7</sup>

**ZERO-HOURS CONTRACTS**

The precarious nature of employment in the UK labour market is epitomised by the growing use of zero-hours contracts.

In April 2014 ONS published new research which estimated that there are at least 1.4 m zero-hours contracts in use in the UK.<sup>8</sup> These findings were based on a survey of employers undertaken in January–February 2014. The same survey found that an additional 1.3m individuals were on employers' books but did not work during the period of the survey. These statistics mirror the findings from the Chartered Institute of Personnel and Development (CIPD) which estimated that just over one million people in the UK are employed on zero-hours contracts.

The LFS also gathers information on zero-hours contracts. In the last quarter of 2013 it estimated that there were 538,000 individuals on zero-hours contracts, up from 250,000 in the last quarter of 2012. This marked rise may be partly accounted for by the increased awareness of zero-hours contracts following extensive media coverage of the issue. The ONS has also attempted to improve the methodology for measuring the numbers of zero-hours contract workers. However, generally it is recognised that the LFS significantly underestimates the true level of zero-hours contracts. This is because it is based on interviews of individual workers who often lack awareness of, or familiarity, with their type of contract.

**PREVALENCE OF ZERO-HOURS CONTRACTS**

According to the ONS survey of businesses, in January–February 2014, around 13 per cent of all employers had some zero-hours contract workers, but their use was more common among larger employers. Forty-seven per cent of employers with at least 250 employees made some use of zero-hours contracts, compared to 12 per cent of those with fewer than 20 employees.<sup>9</sup>

Zero-hours contracts tend to be concentrated in those industries which have traditionally been associated with low pay and with more casual working practices, including accommodation and food services where 45 per cent of employers made at least some use of zero-hours contracts. Over a quarter of individuals on zero-hours contracts worked in accommodation and food services (26 per cent), another quarter in administration and support services (25 per cent), and 10 per cent in the wholesale and retail sector.<sup>10</sup>

However, one of the most striking developments in recent years has been the rapid expansion in the use of zero-hours contracts in the public sector and outsourced public services. The CIPD survey found that public sector and voluntary sector employers were amongst those most likely to use zero-hours contract workers, with 35 per cent of education and 27 per cent of healthcare employers using these working arrangements.<sup>11</sup>



The government's austerity measures and cuts to public spending have been the main reasons behind the increase in precarious employment in public services. Changes in commissioning systems and the shift away from block purchasing mean that providers are no longer guaranteed a minimum level of work. Instead contractors are paid for activities and outcomes. In turn the contractors pass on the growing insecurity to the workforce in the form of insecure contracts which don't guarantee hours, work or pay.

Zero-hours contracts are particularly concentrated in the social care sector. Skills for Care, the workforce development body for adult social care in England, estimates that 307,000 adult social care workers in England were employed on zero-hours contracts in May 2013,<sup>12</sup> representing at least one in five of all workers in the sector. Zero-hours contracts are prevalent amongst domiciliary care services. Sixty-one per cent of domiciliary care workers in England were employed on zero-hours contracts in September 2011.<sup>13</sup> The use of such contracts in social care creates insecurity for workers.<sup>14</sup> Zero-hours contracts workers are more vulnerable to mistreatment and exploitation at work than those employed on regular permanent contracts. In particular, there is growing evidence of breaches of national minimum wage legislation amongst care workers.<sup>15</sup>

The increasing casualisation of employment has led to a high turnover in staff which in turn has an impact on the quality and consistency of care provided to the elderly and disabled people.

However, zero-hours are not only used for low-paid service sector jobs. In April 2013, the *Financial Times* reported that there were almost 100,000 zero-hours contracts in use in NHS hospitals, an increase of 24 per cent over two years.<sup>16</sup> The use of such contracts is no longer limited to occupations associated with low pay and insecurity, such as cleaning. It is also hitting new areas, such as cardiac services, physiotherapy, radiography and hearing services.

## CASE STUDY

Bob is a domiciliary worker for a private care company. Bob is only paid for the contact time he has with his clients. Bob has to pay for his own travel costs to and from clients. He is only partially reimbursed for petrol expenses and has to use his own phone when ringing his employer to give feedback regarding clients. "I have to accept a low-pay job that doesn't pay fuel allowance, vehicle problems or travel time."

Bob's previous company was taken over and his new employers issued new contracts through consultation. They changed the clause in the contracts from 'the company does not guarantee to offer work and staff do not have to accept' to 'the company won't guarantee work and staff have to accept the work offered.' Bob advised colleagues not to sign and most didn't. However, all new staff since the takeover have had to sign the new contract. Bob thinks it is reasonable for him to retain the right to not work as the company does not guarantee him work. "No guarantee of work equality. There should be equality for employees to say we cannot work. They are expecting people to be on standby without paying stand by time."

Bob receives a weekly rota every Friday for the following week, and says that his colleagues are given two to three days notice for work.

Bob's hours have dropped from 30 hours to 28 hours per week because one of his clients has been admitted to hospital. "We don't get paid for work we don't do. If all the people we look after go into hospital there is no pay. Management will not give me a new client as that means someone else will lose their money."

Bob has noticed there is a high turnover of staff. "The very young workers get bullied and are used. They burn out and leave. People like me who stand up for ourselves stick around. In this job employers have all the power."

Research undertaken by the University and College Union (UCU) based on Freedom of Information requests, revealed that 61 per cent of further education colleges in England, Wales and Northern Ireland have teaching staff on zero-hour contracts and 53 per cent of UK universities have staff on them.<sup>17</sup>

Of the universities that reported they use zero-hour contracts just under half (46 per cent) had more than 200 staff on zero-hour contracts. The remaining 54 per cent of institutions the number employed on zero-hour contracts ranged from 1 to 199. The number of zero-hour teaching contracts in universities equates to 47 per cent of the total number of 'teaching-only' posts.<sup>18</sup>

*"If I am sick or one of my children are sick and I can't get help at home I have to not go to work and then I don't get paid. I am a lone parent"*

**Comments from an HE lecturer employed on a zero-hours contract**

*"I don't get paid during the holidays, can't plan in advance for finances, don't get as many days as I would like, [the] lack of continuity with students and not [having] enough time to plan, do paperwork and do a really good job." "[It has a] negative impact on [my] family, not knowing which days each week [they] expect me to be at work"*

**Comments from an HE lecturer employed on a zero-hours contract**

The spread of zero-hours contracts is also not limited to the public sector but is also found amongst higher skilled and better paid professionals in parts of the private sector.

BALPA, which represents airline pilots in the UK, has highlighted how major airlines are now starting to employ pilots on zero-hours contracts.<sup>19</sup> Young pilots are often placed on these contracts for the first few years of their career, before being offered a permanent, more secure contract. The use of such contracts raises significant safety concerns. A 2013 ComRes survey for BALPA found that fatigued pilots on zero-hours contracts are more than twice as likely to report for work and not mention their tiredness to anyone. Only half the pilots surveyed felt a decision not to fly because of fatigue would be supported by their airline CEO.<sup>20</sup>

#### **AGENCY WORK**

Agency temps have long been a means by which employers manage peaks and troughs of work in the short-term and have been linked to lower levels of training and poorer job satisfaction.<sup>21</sup> Some commentators have suggested that the growth in zero-hours contracts was accompanied with reduced demand for agency workers with employers seeking to avoid the cost of agency fees and the impact of equal treatment rights for agency workers introduced in 2011.

However, there is no evidence that the number of temporary agency workers has diminished in recent years. Findings from the LFS suggest that the number of agency temps has grown in the aftermath of the recession.<sup>22</sup> The Recruitment and Employment Confederation's (REC) monthly Report on Jobs also indicates that demand for agency temps was higher in 2014 than before the recession.

As with zero-hours contracts, it is difficult to quantify the exact number of agency workers in the UK. The quarterly LFS indicated that in the period April-June 2013, just below 300,000 workers were agency temps. However, these figures differ substantially from those presented by REC. In 2012 both the government and REC jointly estimated the number of agency workers at the much higher level of 1.1 million.<sup>23</sup>

**TABLE 2: DISTRIBUTION OF AGENCY WORKERS BY INDUSTRY SECTOR, 2014  
(FOR MAIN JOB HELD)**

	All employees aged 16+ (%)	Agency workers (%)
Agriculture, forestry and fishing	0.7	0.4
Energy and water	1.9	1.7
Manufacturing	10.9	19.4
Construction	5.2	4.4
Distribution, hotels and restaurants	19.7	17.2
Transport and communication	8.4	8.5
Banking, finance and insurance etc	15.7	22.0
Public admin, education and health	33.1	23.8
Other services	4.6	2.6

Source: Quarterly Labour Force Survey, April-June 2014



An analysis of industrial sectors (Table 2) suggests that there continues to be sizeable proportions of agency temps in manufacturing (19.4 per cent), distribution, hotels and restaurants (17.2 per cent), banking, insurance and finance (22 per cent) and public administration, education and health (23.8 per cent).

### CASE STUDY

Tina is a qualified further education lecturer employed through an agency which forced her to sign a permanent contract of employment. She is only paid for the time she spends teaching but not for planning or attending meetings. Because she only teaches 24 hours a week she can't claim working tax credit.

Her colleague, who is unqualified but on a permanent contract, is paid double Tina's salary. "I do the same job and am treated the same as a permanent FE lecturer but I receive half the pay," says Tina.

Tina is notified of her hours of work at the beginning of September. Because she finds it difficult to make ends meet, she has a second job as a library assistant at weekends to supplement her pay. Here she is employed on a zero-hours contract.



## OTHER FORMS OF INSECURE EMPLOYMENT

Insecurity at work is not limited to those working on zero-hours contracts or as agency workers. In their drive for increased flexibility and to keep down wage costs, employers are increasingly using a wide range of employment relationships, including:

### (i) SHORT HOURS CONTRACTS

Under-employment is an issue for a growing number of workers in the UK. TUC analysis of the LFS found that in early 2014 3.4m workers experienced under-employment, an increase of more than a million since the start of the recession.<sup>24</sup>

Media exposés have highlighted the mistreatment of zero-hours contract workers in the retail sector. But the use of zero-hours contracts is not an isolated issue on the high street. The increasing use of short-hours contracts is also a problem facing many retail workers, with some being contracted to work, for example, eight or fewer hours a week. Whilst short-hours contracts may suit the needs of some, many short-hours workers want to work more and would like longer guaranteed working hours. An Usdaw survey of 2,223 members in 2014 found that many in the retail sector were under-employed. Whilst a very small number (less than two per cent) of respondents were employed on contracts of five hours or less, just under nine per cent were contracted to work for between six and ten hours per week. Over half of all respondents work above their contracted hours. Of these, three in every four would like these additional hours to be guaranteed. Nearly a third of those who did not currently work additional hours wanted more work.

*“I am on a short-hours contract, which means I work 16 hours per week. I am able to do overtime, where a few extra hours are available each week. But because there are so many employees on short-hour contracts ... getting overtime, is like first come first serve basis. It is normally available on a Monday, I start working the week on a Wednesday, and by that time there is hardly anything available. I found another part-time, again which is a zero-hours contract, and it is with much anxiety I wait for my next weeks’ hours, not sure how much I would get. [It is] very difficult to have a social life, with irregular working hours.”*

**Retail worker**

**(ii) TERM-TIME CONTRACTS**

Term-time contracts are a feature of employment for many support staff working in schools across the UK, including teaching assistants, school meals staff, administrators, technicians and librarians. Such staff do not enjoy the benefits of year-round contracts, often experience a pay penalty and face difficulties accessing basic workplace rights.



A UNISON survey of more than 15,000 school support staff from across the UK revealed a professional and committed, but demoralised, workforce that harbours grave concerns for their ability to support students adequately. The survey found that 80 per cent were concerned about workload, with 81 per cent admitting that the only way they could keep on top of their work was by doing unpaid overtime and working out of hours. Seventy per cent were concerned about job security. Eighty per cent of respondents said they love their job, but fewer than half said they felt valued – 53 per cent said they felt significant levels of stress in the job. Almost 90 per cent said they were concerned about low rates of pay, with 17 per cent forced to supplement their income with in-work benefits.<sup>25</sup>

**(iii) SELF-EMPLOYMENT**

Since the recession, the UK has witnessed a rapid expansion in self-employment. According to TUC analysis, self-employment accounted for 44 per cent of the net rise in employment since mid-2010, with pensioners, part-time workers and 'odd-jobbers' the fastest growing groups of Britain's new self-employed workforce.<sup>26</sup> There is a concern that many people are only taking this kind of work because they are unable to find good quality employee jobs that provide the stable employment they really want and the growth of self-employment is taking place at the expense of more secure employee jobs. Many newly self-employed workers do the same work as employees but with less job security and often less take-home pay. Indeed there is evidence that the growth in self-employment is a key factor in the UK economy's shift towards low pay. The latest assessment of earnings from self-employment is £207 a week less than half that of employees. They also do not receive any sick or holiday pay, nor do they have an employer contribute towards their pension.<sup>27</sup>

## SECTION TWO

# WHOSE FLEXIBILITY?

**E**mployers argue that the growth in flexible work benefits both employers and workers.

The advantages for employers in using temporary workers are clear. Many employers use casual work practices to maximise the flexibility of their workforce in order to manage peaks and troughs in demand. They can achieve significant cost efficiencies by retaining a pool of flexible workers, who are familiar with their business practices and who can be called on at short notice. The use of contingent workers can be part of a broader strategy to keep wage costs down. Employers are only required to pay zero-hour contract and agency workers for the time they actually work. They are under no obligation to pay an individual who turns up for the start of a shift but is not offered any work.

Employers also use agencies to 'outsource' any employment law obligations; whilst others see zero-hours contracts as a means of evading such rights altogether. Employers are therefore able to reduce costs for example by laying off staff at short notice whilst avoiding redundancy payments.

A minority of workers are attracted by the flexibility offered by zero-hours contracts and agency working. For example, some nurses choose to top up their hours and take home pay by working additional hours through 'in-house banks'.

However, there is growing evidence that the use of zero-hours contracts and agency working is a conduit for exploitation and abuse. The imbalance of power which exists in such employment relationships<sup>28</sup> means that whilst the employer reaps the benefits of flexibility, whilst all the risks and associated insecurity are transferred to the worker.



### DOWN-SIDES OF FLEXIBILITY

One of the major problems facing zero-hours contract workers – and indeed agency workers and those working as freelancers – is the expectation to remain available for work as and when required by their employer even though they are not guaranteed any hours or take home pay. Such practices lead to under-employment.

An analysis of the LFS indicates that zero-hours contract workers tend to work shorter hours than other staff and are more likely to want more working hours than other workers (Table 3). Despite the inadequacy of their income, the need to be available for work when required by the employer, often at short notice, hinders the ability of such workers to take up additional work, leading to under-employment.

**TABLE 3: TYPICAL WEEKLY WORKING HOURS FOR ALL EMPLOYEES, AGENCY WORKERS AND ZERO-HOURS CONTRACT WORKERS**

Typical weekly working hours	All employees (%)	Agency workers (%)	Zero-hours contract workers (%)
1-7	2.0	0.7	8.9
8-15	6.2	5.1	24.9
16-23	11.0	9.0	18.0
24-30	10.0	9.7	19.1
31-35	10.0	8.2	5.5
35 plus	60.8	67.2	23.5

Source: Quarterly Labour Force Survey, April-June 2014

Zero-hours contract workers are also given short notice when work is available or will be cancelled. Findings from the CIPD survey<sup>29</sup> reveal that zero-hours workers often receive limited notice when work is available or when it is cancelled:

- Forty-two per cent of zero-hours workers only receive up to 12 hours' notice of when work is available.
- Forty-six per cent of zero hour staff receive little or no notice (40 per cent) or find out at the start of the shift if work (6 per cent) has been cancelled.

The lack of a work guarantee and the related unpredictability of work from week to week (and day to day) can put a strain on families and their ability to arrange childcare or the care of an elderly relative.

### THE IMPACT OF FLEXIBILITY

*“I am a waiter. Some weeks I will have one or two shifts the next I can have four or five... It is cheaper to hire waiters who are 16-17 [years old]... my boss only pays the minimum wage for that age band. Can't make plans in advance due to unsure working days and can be cancelled even an hour before work starts.”*

A 16- to 19-year-old male working in hospitality

*“I cannot plan anything. Sometimes they let me know only half an hour before [my] shift.”*

A male agency worker, working in food processing aged 20-24

*“Not knowing if I will get any shifts the next week. We get a text every Friday telling us what we will be working the next week.”*

A female call centre worker aged 20-24



*“Not being on a permanent contract, employed directly by the factory and never knowing from one week to the next how many hours and what hours I will be working. Zero-hours contracts are the pits.”*

An agency worker employed in food manufacturing aged 20–24

#### POLICY RECOMMENDATIONS

- The proposed restrictions<sup>30</sup> on the exclusivity clauses in zero-hours contracts should be extended to all forms of employment relationship. Employers should only be able to require exclusivity if they pay an individual on a full-time equivalent basis.
- All workers should be entitled to receive on the first day of employment a written statement setting out their terms and conditions, including their expected hours of work.
- Employers should be required to provide workers with adequate notice of available work and notice before work is cancelled. Where a shift is cancelled at short notice workers should have the right to be reimbursed by employers for travel costs. Employer should also be required to pay the workers for their scheduled shift. These changes would ensure that workers are not left out of pocket. They would also encourage employers to plan their staffing needs in advance.



## SECTION THREE

# IMPOSED FLEXIBILITY OR POSITIVE CHOICE?

## INVOLUNTARY TEMPORARY WORK

An analysis of the LFS suggests that too often employment on zero-hours contracts or through employment agencies is a form of imposed flexibility for working people rather than a positive choice.

In 2014 there were 300,000 more individuals trapped in temporary work than before the recession (Table 4). The proportion of workers in temporary work because they could not find a permanent job peaked in 2012/13 and only started falling in late 2013. Nevertheless the residual level of people in temporary work who cannot find a permanent job remains a matter of serious concern.



**TABLE 4: TEMPORARY EMPLOYEES (REASONS FOR TEMPORARY WORKING)**

	Temporary employees (000s)	Could not find permanent job (000s)	Could not find permanent job (%)
2008 (Apr–Jun)	1395	344	24.9
2009 (Apr–Jun)	1435	429	29.9
2010 (Apr–Jun)	1582	568	35.9
2011 (Apr–Jun)	1591	600	37.7
2012 (Apr–Jun)	1580	631	39.9
2013 (Apr–Jun)	1547	596	38.6
2014 (Apr–Jun)	1651	604	36.6
2014 (Jul–Sep)	1701	597	35.5

Source: ONS Labour Market Statistical Bulletins drawing on LFS<sup>31</sup>

**TABLE 5: PERCENTAGE OF ZERO-HOURS CONTRACT WORKERS AND AGENCY WORKERS WHO COULD NOT FIND A PERMANENT JOB**

	Could not find a permanent contract 2008 (%)	Could not find a permanent contract 2014 (%)
Temporary workers on a zero-hours contract	19.0	41.4
Agency workers whose job is not permanent	48.7	62.6

Source: Quarterly Labour Force Survey April–June 2008 and 2014

The level of dissatisfaction with temporary working is particularly high amongst zero-hours contract workers and agency workers and has risen sharply since the recession (Table 5).

In 2008 just 19 per cent of zero-hours contract workers on temporary contracts reported that they were in temporary work because they could not find a permanent job. By 2014, this figure had jumped to 41 per cent of zero-hours contract workers. Part of this rise may be due to an increased awareness amongst workers about the implications of working on a casual contract. However, the increase in the proportion of temporary agency workers who want permanent work following the recession underlines the pattern of growing dissatisfaction with insecure employment.

Such findings are perhaps unsurprising given the precarious nature of work – with the possibility of working hours being reduced at short notice, no guarantees over take-home pay, and the increased vulnerability to mistreatment for such workers.

## SECTION FOUR

# YOUNG WORKERS AND CASUALISATION

Over the last decade there has been a huge rise in the proportion of under-25s living below the breadline as they struggle to cope with falling incomes, poor prospects and the increased cost of housing and food.<sup>32</sup> The increase in poverty amongst younger workers has resulted from upheavals in the labour market, including the vast expansion in the use of zero-hours, part-time work and low-paid self-employment.

Analysis of the LFS confirms that younger workers aged under 30 are disproportionately employed in temporary and insecure employment. In 2014, a majority of all zero-hours contract workers were aged under 30 – an increase of 11 per cent when compared with figures for 2008 (Tables 6a and 6b).

Whilst those aged under 30 represent just one in four of the overall working population in 2014, they account for 44 per cent of all individual workers employed in temporary work, and 37 per cent of all agency workers (Table 6a).

### YOUNG WORKERS AND INVOLUNTARY TEMPORARY WORK

Employers argue that agency working and zero-hours contracts offer young workers welcome job experience and a valuable stepping stone into more permanent employment.

However, research commissioned by the UK Commission for Education and Skills suggests temporary working is not always a positive choice for workers. For young workers in particular, working on a flexible contract was often the only available option.<sup>33</sup>

Analysis of the LFS also suggests that younger workers are increasingly trapped in insecure work, when they would prefer permanent, secure employment which is more likely to provide access to training and enhanced workplace benefits.

**TABLE 6A: THE DISTRIBUTION OF PERMANENT, ZERO-HOURS CONTRACT, AGENCY AND TEMPORARY WORKERS BY AGE, COMPARED WITH THE WORKING AGE POPULATION, 2014 (PERCENTAGE)**

	16–19 yrs	20–24 yrs	25–29 yrs	30–34 yrs	35–39 yrs	40–44 yrs	45–49 yrs	50–54 yrs	55–59 yrs	60–64 yrs	65–69 yrs	70+ yrs
Working age population	3.2	9.8	11.9	10.9	9.4	10.3	10.9	10.1	8.3	7.0	5.6	2.5
Permanent workers	2.9	9.5	12.6	12.2	10.6	11.8	12.9	11.6	8.7	4.9	1.7	0.6
Zero-hours contract workers	14.1	25.5	10.7	8.5	6.5	5.5	5.9	6.5	7.6	4.6	4.0	0.6
Temporary workers	11.9	18.7	13.8	10.1	7.5	8.3	6.8	6.7	6.4	5.0	3.5	1.4
Agency workers	3.2	20.2	13.7	12.5	6.8	12	7.8	8.4	8.0	4.0	3.0	0.4

Source: Quarterly Labour Force Survey, April-June 2014

**TABLE 6B: THE DISTRIBUTION OF PERMANENT, ZERO-HOUR CONTRACT, AGENCY AND TEMPORARY WORKERS BY AGE, COMPARED WITH THE WORKING AGE POPULATION, 2008 (PERCENTAGE)**

	16–19 yrs	20–24 yrs	25–29 yrs	30–34 yrs	35–39 yrs	40–44 yrs	45–49 yrs	50–54 yrs	55–59 yrs	60–64 yrs	65–69 yrs	70+ yrs
Working age population	8.0	10.4	10.1	9.6	11.2	11.9	10.9	9.6	9.2	9.1	–	–
Permanent workers	4.6	9.7	11.6	10.9	12.3	13.3	12.3	10.3	8.5	5.0	1.1	0.5
Zero-hours contract workers	10.3	15.6	12.7	7.6	9.8	8.8	7.5	5.5	9.3	7.0	4.1	1.7
Temporary workers	13.2	19.4	10.7	8.2	10.1	8.1	7.7	6.2	6.5	6.1	2.6	1.2
Agency workers	5.3	24.1	13.5	11.2	10.3	7.0	8.7	8.2	7.3	4.1	0.5	–

Source: Quarterly Labour Force Survey, April-June 2008

**TABLE 7A: REASONS GIVEN BY ZERO-HOURS CONTRACT WORKERS FOR DOING TEMPORARY WORK BY AGE, 2014 (PERCENTAGE)**

	16–19 yrs	20–24 yrs	25–29 yrs	30–34 yrs	35–39 yrs	40–44 yrs	45–49 yrs	50–54 yrs	55–59 yrs	60–64 yrs	65–69 yrs	70+ yrs
Contract included training	0	2.1	0	5.4	13.0	0	0	0	0	0	0	0
Contract for probationary period	4.7	0	0	0	0	0	0	6.5	0	0	0	0
Could not find permanent job	17.3	49.8	58.3	44.7	65.5	37.1	47.9	40.5	59.9	29.0	7.2	0
Did not want permanent job	54.9	31.0	19.6	34.2	13.7	44.7	23.0	42.7	21.4	39.0	69.5	70.9
Some other reason	23.1	17.1	22.1	15.6	7.7	18.2	29.2	10.3	18.8	32.0	23.3	29.1

Source: Quarterly Labour Force Survey, April-June 2014

**TABLE 7B: REASONS GIVEN BY AGENCY WORKERS FOR DOING TEMPORARY WORK BY AGE, 2014 (PERCENTAGE)**

	16–19 yrs	20–24 yrs	25–29 yrs	30–34 yrs	35–39 yrs	40–44 yrs	45–49 yrs	50–54 yrs	55–59 yrs	60–64 yrs	65–69 yrs	70+ yrs
Contract included training	0	1.4	1.3	5.8	3.0	7.1	0	0	0	3.7	7.0	0
Contract for probationary period	0	1.3	1.5	2.0	1.9	0	0	0	0	0	0	0
Could not find permanent job	38.6	80.6	64.1	60.3	54.4	57.4	71.6	64.9	68.5	26.9	21.0	0
Did not want permanent job	23.8	2.9	6.6	11.7	18.9	8.3	13.7	20.1	5.4	53.6	59.8	100
Some other reason	37.7	13.8	28.0	20.7	21.7	25.4	14.7	15	26.2	15.8	12.2	0

Source: Quarterly Labour Force Survey, April-June 2014



It is unsurprising that the majority of zero-hours contract workers aged 16–19 are not looking for permanent work because they fit their jobs around school or university courses. However, 50 per cent of zero-hours contract workers aged 20–24, and 58 per cent of those aged 25 to 29, said they were only doing temporary work because they could not find a permanent job (Table 7a).

Similarly, 81 per cent of temporary agency workers aged 20–24 and 64 per cent of those aged 25–29 reported they were in temporary work because they could not find a permanent job (Table 7b).

SECTION FIVE

# CASUALISATION AND LOW PAY



The UK has a serious problem of low pay.<sup>34</sup> Research by the Resolution Foundation suggested that in 2014 just over five million people were in low-paid work.<sup>35</sup> The annual report *Monitoring Poverty and Social Exclusion 2014* commissioned by the Joseph Rowntree Foundation found that half of all people in poverty live with a working adult, whilst around two-fifths of working age adults in poverty are themselves in work.<sup>36</sup> Changes in the labour market, and in particular, employers' drive for more flexible and insecure forms of work, mean that having a job is no longer a guarantee of an end to poverty.

TABLE 8: PAY FOR ALL EMPLOYEES AND SELECTED EMPLOYMENT STATUSES

	Average gross weekly pay (£)	Average gross hourly pay (£)	Median hourly pay (£)
All employees	469.03	13.19	10.58
Permanent workers	479.26	13.30	10.71
Temporary workers	296.06	11.28	8.40
Agency workers	407.57	11.17	8.97
Zero-hours contract workers	188.19	8.46	6.77

Source: Quarterly Labour Force Survey, April-June 2013



## **PAY PENALTY FOR TEMPORARY WORKERS**

Analysis across a variety of pay indicators<sup>37</sup> reveals that those in temporary and casual forms of work experience a significant pay penalty when compared to permanent employees.

Average gross weekly pay for employees on permanent contracts is £476.26 compared with £296.06 for temporary workers (Table 8). The disparity in gross average earnings is partly caused by shorter working hours – with the related problems of under-employment – of those in temporary work (see Table 3 on page 13). However, temporary workers also experience a disparity in relation to hourly pay rates. Average gross hourly pay for permanent employees is £13.30 for permanent employees, £11.28 for temporary workers and £8.46 for zero-hours contract workers.

Zero-hours contract workers also appear to experience a worse pay penalty (again see Table 8) than agency workers and others in temporary employment. The average hourly pay rate for zero-hours contract workers is £8.45 – nearly a third less than for those on permanent contracts.

In addition to issues of low pay and short hours working for zero-hours contract workers, the LFS also reveals that a significant proportion of zero-hours contract workers experience a lack of security over their weekly earnings. When zero-hours contract workers were asked whether their gross weekly pay in the reference period was the same as usual, 34 per cent indicated that they had 'no usual amount' of weekly pay compared with 7 per cent of those in other kinds of work arrangement.<sup>38</sup>

## **TEMPORARY WORKERS AND THE LIVING WAGE**

According to the Living Wage Commission 5.2m workers earned less than the living wage in 2014.<sup>39</sup> In 2014 the living wage rate in London was £8.80 and £7.65 in the rest of the UK. Recently the Living Wage Foundation announced that in 2015 these rates would rise to £9.15 and £7.85 respectively.

*“Two in five zero-hours contract workers earn less than £111 a week and therefore lose out on statutory sick pay.”*







**TABLE 9: PROPORTION OF EMPLOYEES, ZERO-HOURS CONTRACT WORKERS, AGENCY WORKERS AND ALL WORKERS WHO ARE NOT PERMANENT IN SOME WAY EARNING BELOW THE LIVING WAGE, 2014**

	All employees (%)	Temporary workers earning below the living wage (%)	Agency workers earning below the living wage (%)	Zero-hours contract workers earning below the living wage (%)
London	21.1	41.6	33.3	47.4
Rest of UK	29.6	27.4	40.1	60.7

Source: Analysis of Quarterly Labour Force Survey, April–June 2014. This analysis is based on Living wage rates prevailing at time of QLFS April-June 2014 (that is £8.80 in London and £7.65 in the rest of the UK)

**TABLE 10: DIFFICULTIES MAKING ENDS MEET**

	All respondents (%)	Agency workers (%)	Zero-hours contract workers (%)
I find it easy to make ends meet	20	15	10
I sometimes find it difficult to make ends meet	39	31	34
I often find it difficult to make ends meet	21	26	28
Most weeks I find it a struggle to make ends meet	15	22	22
Don't know / Can't really say	5	6	6

Source: Findings from TUC online survey on job insecurity, April-May 2014<sup>40</sup>

While recognising the weaknesses in the LFS earnings data, a higher proportion of zero-hours contract workers appear to earning below the living wage than temporary workers and agency workers, although agency workers also fare badly (see Table 9). The majority (61 per cent) of zero-hours contract workers employed outside London earn less than the living wage, compared with 40 per cent of agency workers and 30 per cent of all employees.

### DIFFICULTIES MAKING ENDS MEET

Those employed in precarious employment, including zero-hours contract workers and agency workers, regularly experience changeable working patterns and a lack of a guaranteed level of regular pay. They often have no idea how many hours they will work each week or what their take home pay will be. According to the LFS, 75 per cent of zero-hours workers report that their working hours vary each week.<sup>41</sup> Such unpredictability places a significant strain on household incomes, making it hard to plan financially or meet household bills.

*"[I have] difficulty paying monthly bills, i.e. rent, tv, mobile phone contracts, etc due to [my] hours not [being] guaranteed."*

**A retail worker aged 20–24**

*"[It] gives me sleepless nights as not sure how much I [will] be getting to pay for essentials like rent – as one week [I] may have 35 hours – next week have only 15 hours."*

**Male hotel worker on a zero-hours contract**

*"My hours could be dropped right down to my contract of eight hours at any time, with which I would no longer be able to pay rent or other bills."*

**A female retail worker aged 20–24 working on a short hour contract**

Whilst many households in the UK are struggling as a result of falling living standards, those in precarious forms of work are finding it particularly difficult to make ends meet. Half the zero-hours contract workers and 48 per cent of agency workers responding said they often found it difficult to make ends meet or struggle to make ends meet most weeks (Table 9).

Workers who have no fixed hours or guaranteed incomes increasingly find that mortgage applications are turned down. Some are even being refused tenancy agreements.<sup>42</sup> Some need to resort to taking out pay day loans and even to use food banks to cover their basic household bills and to feed their families.

## CASE STUDY

Over the last ten years a publishing company has increasingly used agency workers. As permanent staff have left they have not been replaced. The company has a minimum agency staffing level of about thirty across three shifts, which is the minimum. Regularly it's around sixty.

After the introduction of the Agency Worker Regulations, agency workers working on site were moved onto 'pay between assignments' contracts. They were given no choice even though this meant they lost out on rights to equal pay. Around 100 individuals are on such contracts. The company keeps a pool of workers available in this way. Additional workers are placed on 12 week contracts, to avoid the equal pay aspects of the Agency Worker Regulations.

Agency workers are paid less than those on permanent contracts. The rate of pay for agency workers on an early shift is £6.50 per hour. Those working on the late shift from 2pm are paid £6.62 an hour whilst those working nights are paid £7.50 an hour. The rate for permanent workers agreed with the union Unite is £9.60 for those working between 6am and 6pm. Those working between 1800-0600 also receive a 30 per cent allowance. Agency workers get statutory holidays. Permanent staff are initially entitled to 25 days, increasing one day each year to a maximum of 30 days. Agency workers get statutory sick pay, whilst permanent staff receive 20 weeks of full pay and six weeks half pay under the agreed sick pay scheme.

Agency staff, particularly those working on the 10am and 6pm shifts, are often cancelled on the day or sent home early with no pay if the work slows down, even though they are offered 7.5 hours work in advance of coming in. They are also excluded from Christmas bonuses and profit share schemes, compassionate agreements and medical appointments.

Unite has recruited many of the agency workers and is campaigning for equal treatment rights.

## POLICY RECOMMENDATIONS

- ▶ Workers should have better access to permanent, secure employment. Where in practice individuals work regular hours, their employer should be required to issue them with a written contract which guarantees them their normal working hours on an ongoing basis. The only exception should be where the individual actively requests to remain on a zero-hours or flexible contract.
- ▶ Individuals employed on zero-hours or other forms of casual contract should be recompensed for the added flexibility that they offer employers and their increased financial risk. They should be entitled to an allowance for the flexibility they provide employers. This could mirror practices in Australia where individuals employed on flexible contracts are entitled to an allowance equivalent to 15 per cent of the going rate for any particular job.
- ▶ Workers should have the right to be paid the national minimum wage whenever they are 'on-call' and expected to be available for work at short notice.

Additional recommendations on wider pay policy include:

- ▶ The national minimum wage should increase to significantly more than £7.00 per hour next year, and its real value should continue to rise strongly in the following years.
- ▶ The living wage should be rolled out through the public sector and its contractors. Both local authorities, good employers and their trade associations should have a stronger role in promoting the living wage.
- ▶ The public sector pay cap must come to an end.
- ▶ There is a need for a revitalised role for trade union collective bargaining.

## EQUAL PAY FOR AGENCY WORKERS

The ongoing lack of pay equality for agency workers remains of serious concern for unions. In September 2013, the TUC complained to the European Union Commission that the UK government had failed properly to implement the EU Temporary Agency Workers Directive. Of particular concern is the use of the so-called 'Swedish derogation' or pay between assignments contracts. Individuals employed on such contracts are not entitled to equal pay even where they have been on an assignment for more than 12 weeks. The TUC discovered that in some workplaces agency workers were paid up to £135 less a week than permanent staff doing the same job.<sup>43</sup>

### POLICY RECOMMENDATION

- ▶ The so-called Swedish derogation should be removed from the Agency Worker Regulations to ensure that all agency workers qualify for equal treatment. This would also ensure that employers cannot use agency workers to undercut the pay and conditions of other workers.



## SECTION SIX

# WOMEN AND CASUALISATION

**W**omen have been disproportionately affected by the growth in precarious, low-paid, part-time employment in the UK following the recession. For a further examination of the impact of growing casualisation on working women see the new TUC report *Women and Casualisation – Women's Experiences of Job Insecurity*.

In 2014, women accounted for 54 per cent of temporary workers and 55 per cent of zero-hours contract workers (Table 11). The over-representation of women in casual work is unsurprising given the prevalence of zero-hours contracts in retail and social care. In domiciliary care, where zero-hours contracts are the predominant form of work, 84 per cent of workers are female and 20 per cent were born outside the UK.<sup>44</sup>



**TABLE 11: GENDER PROFILE OF DIFFERENT WORKING ARRANGEMENTS**

	Women (%)	Men (%)
All zero-hours contract workers	54.7	45.3
All temporary workers	53.5	46.5
Agency workers	46.0	54.0

Source: Quarterly Labour Force Survey, April-June 2014

**TABLE 12: GENDER PROFILE OF SELECTED PAY MEASURES FOR ALL EMPLOYEES AND SELECTED EMPLOYMENT STATUSES**

	All employees		Permanent workers		Temporary workers		Zero-hours contract workers		Agency workers	
	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
Average gross weekly pay (£)	371.28	563.34	377.97	576.01	267.51	328.74	173.11	205.3	362.92	443.37
Average gross hourly pay (£)	11.76	14.55	11.85	14.68	10.43	12.27	8.84	8.02	10.97	11.32
Median hourly pay (£)	9.60	11.76	9.62	11.96	8.50	8.24	6.93	6.35	8.89	9.05

Source: Quarterly Labour Force Survey, April-June 2014

**TABLE 13: GENDER PROFILE OF TYPICAL WEEKLY WORKING HOURS FOR AGENCY WORKERS AND ZERO-HOUR CONTRACT WORKERS**

Typical weekly working hours	Agency workers (%)		Zero-hour contract workers (%)	
	Women	Men	Women	Men
1-7	1.6	-	10.0	7.6
8-15	5.4	4.9	27.4	21.8
16-23	17.5	1.9	20.1	15.5
24-30	15.1	5.3	20.0	18.1
31-35	9.5	7.1	5.7	5.2
35+	51.0	80.7	16.8	31.7

Source: Quarterly Labour Force Survey, April-June 2014

**PAY GAP FOR WOMEN IN TEMPORARY WORK**

As we saw in section six, individuals in temporary employment, including zero-hours contracts, experience a significant pay gap compared to permanent employees. Analysis of the LFS suggests that women in precarious jobs also experience a significant gender pay gap.

Women on temporary contracts earn, on average, £61 a week less than men, whilst women on zero-hours contracts earn, on average, £32 less per week than men on these same types of contract. The average gross hourly pay for women in temporary work is £10.43 compared with £12.27 for male temporary workers (Table 12). Similarly, average male agency workers earn £80 more per week than female agency workers.



The average hourly pay for women on zero-hours contracts is marginally higher for women than men. This may in part be due to a higher prevalence of female employment in sectors covered by collective agreements. Nevertheless, the average weekly pay for women on zero-hours contracts is lower than that for men (see also Table 12).

This pay disparity is partly due to women on temporary contracts working shorter hours. Only one in six women on a zero-hours contract works over 35 hours a week, compared to around one in three men (Table 12).

## CASE STUDY

Alice started as a Christmas temp in October 2013. Alice currently works 10 hours per week. She is paid the national minimum wage and has to rely on her husband for financial support.

Alice sometimes spends more money on travel to work than she earns. "I feel like I am not bringing home enough money," she says. Some of Alice's colleagues who have worked for the company for a longer period are on 20 hours a week contracts and others are on a zero-hours contract like Alice. Alice feels she is not given a fair share of hours. She is frequently given evening shifts and struggles to juggle these shifts due to family responsibilities. Alice would like to be given daytime shifts. "I go into work feeling depressed, she continues."

Alice is usually given one weeks' notice of her working hours, but the shifts vary each week. Sometimes her shifts are cancelled. If Alice is unable to work, she is responsible for finding someone to cover her shift. She has to give her manager two weeks' notice for the manager to find cover.

Recently Alice has noticed that her managers are bullying staff into not taking breaks for a six-hour shift. Alice's colleague had been working a six-hour shift from 2.30pm to 8.30pm. When a staff member didn't turn up to work she was told not to take her break. "It is very bad now," she adds.

SECTION SEVEN

# THE TWO-TIER WORKFORCE

Individuals on casual contracts – including zero-hours contracts, agency workers and freelancers – are vulnerable to exploitation and mistreatment in the workplace.

Abuses reported to the TUC through the job insecurity survey include:

- ▶ Individuals losing out on holiday pay or being too frightened to ask for time off for fear they will not be offered future work.
- ▶ Individuals being refused work because they are pregnant or are just returning from maternity leave.
- ▶ Vulnerable workers being offered the worst shifts or being expected to work late even though they have no transport to get home.
- ▶ Individuals not being paid their wages in full or on time.
- ▶ Employers refusing to adjust workers' shifts so the worker can care for their families or attend doctor's appointments.
- ▶ Workers being sent home at the start of or half way through a shift with no pay.

Whilst agency workers and zero-hours contract workers are rarely sacked, employers can reduce their hours to zero at any time – at which point individuals are often uncertain if they will be offered future work which makes it difficult for them to claim benefits, including Jobseeker's Allowance.

Too often employers think that because an individual is on a zero-hours contract they have zero responsibility for them – even though this is rarely the case in law. Some are not aware of their workers' rights, whilst others take advantage of the individuals' uncertain employment status to evade employment rights obligations.



## CAN'T AFFORD TO BE SICK

There is also evidence that many in temporary and precarious forms of work lose out on basic workplace rights, including statutory sick pay (SSP).

Individuals who are too ill to work may be entitled to receive SSP, which is currently set at £87.55 per week, for up to 28 weeks. However, in order to qualify for SSP an individual must have been off work sick for four or more days in a row. Before this they are not entitled to any pay. Workers must also earn more than the lower earnings limit which is currently set at £111 a week.



**TABLE 14: PROPORTION OF WORKERS UNDER DIFFERENT WORK ARRANGEMENTS EARNING BELOW THE LOWER EARNINGS LIMIT OF £111 PER WEEK**

All employees (%)			Permanent workers (%)			Temporary workers (%)			Zero-hours contract workers (%)			Agency workers (%)		
All	Women	Men	All	Women	Men	All	Women	Men	All	Women	Men	All	Women	Men
8.8	12.7	5	7.8	11.5	4	25	31.3	17.7	6.2	12.3	1.3	38.6	39.8	37.4

Source: Quarterly Labour Force Survey, April-June 2014

The self-employed have no right to SSP. However, evidence gathered by the TUC reveals that many workers in precarious jobs also lose out on SSP because they do not earn enough each week.

Analysis of the LFS shows that one in four temporary workers are unlikely to qualify for SSP because they earn less than £111 a week, whilst nearly two in five of all zero-hours contract workers lose out on SSP (Table 14).

In comparison 7.8 per cent of all permanent staff will be guaranteed at least statutory sick pay if they are too ill to work. Many permanent workers also qualify for far more generous contractual sick pay schemes which often apply from the first day of illness.

Many vulnerable workers already feel pressurised to go into work when they have short-term illnesses due to the lack of SSP for the first four days. However, these statistics suggest that many more with longer term and more serious ailments will feel forced to continue working because of the lack of sick pay, with all the associated risks for their health and that of their fellow workers.

Expectant and recent mothers who earn less than the lower earnings limit of £111 also lose out on statutory maternity pay (SMP). They must also have been in continuous employment for 26 weeks prior to going on maternity leave. Women who do not qualify for SMP will be entitled to statutory maternity allowance which is less. Fathers who earn less than the lower earnings limit will also lose out on statutory paternity pay.

## LOSING OUT ON RIGHTS DUE TO EMPLOYMENT STATUS

The issue of employment status is critical for staff employed on zero-hours contracts, agency workers and others in casual work or self-employment, as it determines which employment rights they are entitled to – if any.

Individuals who qualify as employees benefit from a fuller range of employment rights,<sup>45</sup> including:

- **Job protection rights**, such as unfair dismissal protection and rights to statutory redundancy pay (after two years' successive employment), and protection from automatically unfair reasons for dismissal.
- **Family-friendly rights**, including rights to return to work after maternity, paternity or adoption leave, and that to request to work flexibly.
- **Right to a written statement of terms and conditions** (within two months of the start of employment) and to a payslip.
- **Some trade union rights**, including rights to paid time off for trade union duties and protection from dismissal for taking part in official industrial action.

The key tests which the courts use for deciding whether a person is an employee are:

- the individual must be required to do work personally
- there must be mutuality of obligation between the employer and individual and,
- the individual must be subject to control by the person for whom they work.



Individuals who do not meet these tests will often be classified as 'workers' and will only benefit from limited protection on pay, working time and paid holidays, discrimination rights, health and safety protection and limited trade union rights.

Some individuals are classified as self-employed. They have the least rights of all, with only limited protection under anti-discrimination and health and safety rules. They are also deprived of such benefits as statutory sick pay and Jobseeker's Allowance.

### **ZERO-HOURS CONTRACT WORKERS CAN BE 'EMPLOYEES'**

Many zero-hours contract workers will be employees. The likelihood of zero-hours contract workers qualifying as employees has grown in recent years as the courts have increasingly looked at the entirety of the employment relationship when determining an individual's employment status rather than just concentrating on the terms of their contract.<sup>46</sup>

Nevertheless, it is not uncommon for employers to inform zero-hours staff that they are not 'employees' or to issue contracts which state that zero-hours contract staff are not entitled to basic 'employee rights'. In some instances this is due to a lack of awareness. The recent CIPD survey highlighted the level of confusion amongst employers on employment issues. More unscrupulous employers will adopt such practices as a means of purposefully evading employment rights obligations.

Such practices can only be challenged if an individual is willing to take a claim to an employment tribunal. Many, especially the lower paid, are likely to be deterred from doing so by the new employment tribunal fees and the fear of losing their employment and income.

### **LACK OF CONTINUOUS EMPLOYMENT**

Whilst a zero-hours contract worker may be an employee when they are actually working, they will still lose out on basic workplace rights because they lack the necessary continuous employment. For example, to qualify for unfair dismissal protection or statutory redundancy pay an individual must have worked continuously for the same employer for at least two years.

As a general rule where an individual's employment stops for a week or more, their continuity of employment will be broken.<sup>47</sup> If they return to work for the same employer, then their qualifying period will be reset to zero. Because many zero-hours contract workers work irregularly they never accrue enough service.<sup>48</sup>

### **AGENCY WORKERS**

Agency workers, whilst often working on a zero-hours contract, nevertheless often find it difficult to prove that they are an employee. This is because of the tripartite relationship between the agency worker, the hirer and the agency. In most cases agency workers will not be an employee of the hirer for whom they do work.<sup>49</sup> Some will be able to prove they are employees of the agency.<sup>50</sup>

### **FALSE SELF-EMPLOYMENT**

Employers are increasingly looking for ways to label individuals as self-employed in order to avoid employment and tax obligations. They often use 'boiler-plate' clauses – for example stating that an individual can provide a substitute to do their work for them or that individuals must provide their own tools. Such clauses are designed to prevent individuals from qualifying for employment rights. Some employers have even gone as far hiring out key equipment which individuals need to do their job and arguing that they are self-employed as a result. Take for example hairdressers that rent out salon chairs to stylists or logistics firms which require couriers to hire their delivery bike or van. Many such workers may be classified as self-employed even though they have all the characteristics of employees.

### **EXTENDING THE FLOOR OF RIGHTS - THE CASE FOR REFORM**

The rules on employment status are in urgent need of reform and modernisation. Rules on who qualifies for statutory employment rights have failed to keep pace with changes in the UK labour market. While the number of those employed in so-called 'flexible' or casual work has been growing rapidly, much of UK employment law has remained wedded to the

notion that a long term and stable employment relationship is the norm. Those who do not conform to this norm, including freelancers, casual workers, agency workers, homeworkers, those on zero-hours contracts and the falsely self-employed are not protected. This is often the case even though they have all the characteristics of employees.

The huge complexity of employment status rules creates confusion for employers and workers alike. It can also create administrative burdens for employers who try to navigate the rules and decide who qualifies for which rights and when.

The inconsistent application of statutory employment rights has helped to create a two-tier workforce. The core workforce continues to enjoy the benefits of job security, protection from arbitrary treatment and other work-related benefits associated with ongoing permanent employment, including enhanced contractual rights to sick pay and pension entitlements.

In contrast individuals engaged in more 'flexible' forms of work bear all the risk in the workplace. They can legally have their regular employment terminated at a moment's notice, have no guaranteed hours and are not entitled to redundancy pay. As a result they are more dependent on welfare provisions during periods of unemployment. For those whose wages are already low, this insecurity of employment means they have an even greater chance of facing persistent in-work poverty.

The inconsistent coverage of basic employment rights leads to incoherent policy outcomes. For example, whilst employers and some policy makers argue that so called 'flexible employment' is an attractive option for those with children or older relatives responsibilities, individuals classified as 'workers' or as 'self-employed' lose out on most family friendly rights, including the right to request to work flexibly. 'Workers' are entitled to statutory maternity pay but have no rights to return to their jobs after taking the corresponding leave. Similarly, fathers employed on a casual basis are entitled statutory paternity pay but not to rights relating to statutory paternity leave.

## POLICY RECOMMENDATIONS

The TUC believes that employment status rules should be reformed to ensure that not only zero-hours contract workers, but also casual workers, agency workers and freelancers, are protected from mistreatment at work. Consideration should be given to the following policy proposals:

- ▶ All economically dependent workers should qualify for the same decent floor of statutory employment rights.
- ▶ Existing 'employee' rights should be extended to all workers. This could be achieved by:
  - Adopting a new, single definition of 'a worker' which covers all current employees and workers and applies to all statutory rights.
  - Alternatively, employee-only rights could be uniformly or incrementally extended to 'workers'.
- ▶ There should be a statutory presumption that all workers qualify for statutory employment rights. The onus should rest with the employer to convince an employment tribunal that an individual is genuinely self-employed.
- ▶ The rules on continuity of employment should be changed to ensure casual workers who experience breaks in employment qualify for employment rights.

## DIFFICULTIES ENFORCING WORKPLACE RIGHTS

Those with atypical employment status face a higher risk of having the few rights they do have disregarded – for example facing health and safety risks and discrimination at work. For example, there is also growing evidence of breaches of national minimum wage legislation in the home care sector, with a significant proportion of care workers not receiving pay for travel time.<sup>51</sup>

In such a precarious situation it is very difficult for workers to complain if they are treated badly – their employers can simply tell them not to bother coming back.

In recent years the government has also adopted a range of policies designed to weaken the enforcement of workplace rights. These include:

- ▶ The introduction of fees for employment tribunal claimants, which have priced many individuals – particularly women and low-paid workers – out of access to justice.<sup>52</sup>
- ▶ Cuts in funding for all statutory enforcement agencies, including the Health and Safety Executive (HSE), Gangmasters' Licensing Authority (GLA) and the HMRC National Minimum Wage Enforcement Team.
- ▶ Restricting the remit and powers of the GLA.
- ▶ Excluding many the self-employed workers from some health and safety legislation.

As a result of these changes, vulnerable workers face a greater risk of exploitation and abuse. Rogue employers are able to flout the law with impunity. This creates unfair competition for reputable firms who comply with the law.

## POLICY RECOMMENDATIONS

- ▶ Employment tribunal fees should be abolished.
- ▶ The powers of the GLA to be restored and its remit be extended to include other high risk sectors, including construction, hospitality and social care.
- ▶ Health and safety safeguards to be applied to all working people, including the self-employed.
- ▶ Adequate funding should be provided for all enforcement agencies, to ensure they are equipped to respond to all reports of unlawful action and undertake proactive inspections.
- ▶ Increased priority to be given to the enforcement of rights for zero-hours workers, including ensuring that workers receive at least the national minimum wage during travel time.

## SECTION EIGHT

# WIDER SOCIAL IMPLICATIONS

**G**rowing casualisation and lack of basic protections at work has wider consequences for people's lives.

### ACCESS TO TRAINING

Those in insecure employment are far less likely to have access to training or career development opportunities.<sup>53</sup>

According to research commissioned by the UK Commission for Employment and Skills (UKCES)<sup>54</sup> workers on temporary or zero-hours contracts are less likely to have career development opportunities than those on permanent contracts. Only three in five (58 per cent) of people on temporary contracts who had received training in the past three months had it paid for by their employer, compared to 74 per cent of permanent workers. Those on flexible contracts often had to train themselves – with 17 per cent of those on zero-hour contracts paying for their own training, and 5 per cent relying on their family to meet the cost.

If temporary workers receive less training, and have to pay for their own, this poses a risk to the long-term skills for employers, whilst those on temporary contracts will find it harder to progress in their careers.



### HEALTH AND WELL-BEING

Those in temporary and precarious employment are also more likely to drift between benefits and work and are more likely to have poor health. Analysis of the British Household Panel Survey in the UK has shown that healthy men and women suffer adverse health effects in insecure, low paid work and those facing low earnings and insecurity were two and a half times more likely than those in better jobs to develop an illness limiting their capacity to work.<sup>55</sup> A recent report by the World Health Organization also highlighted the negative effects of temporary work on health and well-being. These included:



- Evidence indicates that mortality is significantly higher among temporary workers compared to permanent workers.
- Poor mental health outcomes are associated with precarious employment.
- Workers who perceive work insecurity experience significant adverse effects on their physical and mental health.<sup>56</sup>

New research undertaken by the University of Cambridge shows that a range of flexible employment practices used in supermarkets in the UK and US – including zero-hours contracts – cause widespread anxiety, stress and 'depressed mental states' in workers as a result of financial and social uncertainty.<sup>57</sup>

Zero-hours contract workers responding to the TUC survey on job insecurity commented when asked about the impact of working irregular hours:

*“It impacts on my health due to hours worked and unable to eat regularly. It has already started to take its toll.”*

**Male zero-hours contract worker employed in the care industry**

*“Stress. It is incredibly stressful to not know if in a few months time whether you will have any work and any income. The so-called ‘flexibility’ isn’t really worth the stress and eventual depression this type of working brings.”*

**Female higher education lecturer on a zero-hours contract**

*“It also gives me anxiety not knowing when the next pay is coming in.”*

**Female working in the entertainment sector on a zero-hours contract**

## IMPACT ON FAMILY AND SOCIAL LIFE

While employers argue that flexible working arrangements assist individuals with caring responsibilities, the lack of a work guarantee, and related unpredictability of work from week to week (and day to day) can put a strain on families.

Zero-hours contract workers responding to the TUC survey on job insecurity submitted the following comments when asked about the impact of working irregular hours:

*“Working the hours I do gives me no personal time during the week to do general household chores. [I am] unable to do them during my days off due to family responsibility.”*

Male zero-hours contract worker employed in telecommunications

*“Irregular days off means difficult to see family, arrange appointments GP/dentist, etc.”*

Female zero-hours contract worker employed in hospitality

*“Don’t know my rota before the new week therefore I can never make plans. I always miss out on family events and rarely see friends because of it.”*

Male zero-hours contract worker doing two jobs in hospitality and food processing

*“[It’s] stressing the rest of the family.”*

Male cleaner on a zero-hours contract

*“I don’t see my sons as much as I want.”*

Male, transport sector



## SECTION NINE

# CONCLUSIONS

The TUC believes that endemic poor treatment at work should not be tolerated. There is an urgent need to challenge precarious employment and to introduce a framework of policies designed to encourage the creation of decent jobs, offering decent hours and pay. To this end we call on politicians to adopt and implement policies which deliver:

- ▶ Improved rights for zero-hours contract workers and others on casual contracts, including:
  - A right for all workers to receive a written statement on the first day of employment setting out terms and conditions, including expected hours of work.
  - Rights for all workers to notice before work is allocated or cancelled and to be paid for transport costs and lost earnings where a shift is cancelled at short notice.
  - A right for those workers who work regular hours to a fixed-hours contract reflecting their normal hours. Those whose work is irregular or intermittent should be paid an allowance rewarding the flexibility they provide employers.
- ▶ All workers to benefit from the same employment rights, including statutory redundancy pay, protection from unfair dismissal and family friendly rights. To this end, employment status law should be modernised, putting an end to the current two tier workforce.
- ▶ Equal pay for agency workers
  - Loopholes in the Agency Worker Regulations which prevent agency workers on pay between assignment contracts qualifying for equal pay should be closed.
- ▶ Better enforcement of employment rights for low-paid, vulnerable workers, including:
  - An end to employment tribunal fees
  - Increased priority and resources being devoted to enforcement of the national minimum wage
  - The remit of the GLA should be extended to high risk sectors.
- ▶ There should be better access for all workers to union representation and collective bargaining





*“The TUC believes that endemic poor treatment at work should not be tolerated. There is an urgent need to challenge precarious employment...”*

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In December 2014, the TUC shone a light on a growing jobs crisis, that of millions of low-paid workers trapped in insecure jobs. Decent Jobs Week saw campaigning up and down the country in support of decent, secure jobs that pay well.

The TUC is campaigning for:

- ▶ improved rights to give zero-hours workers more job security
- ▶ an end to the exploitation of casual workers by giving them the same rights as others
- ▶ equal pay rights for agency workers
- ▶ better enforcement of minimum standards for low-paid, vulnerable workers
- ▶ better access for all workers to union representation and collective bargaining.

The campaign will continue in 2015.  
For more information visit [www.tuc.org.uk](http://www.tuc.org.uk) or call 020 7467 1336.

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*Published by  
Trades Union Congress  
Congress House  
Great Russell Street  
London WC1B 3LS*

**[www.tuc.org.uk](http://www.tuc.org.uk)**

*January 2015  
ISBN 978 1 85006 963 8*

**£5 (free to TUC unions)**  
*Designed by TUC  
Printed by College Hill Press*