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Zero hours contracts are both illegal and immoral and UK businesses should not use them. Discuss.

Introduction

Recent years have witnessed growing controversy surrounding the use of zero hours employment contracts by a number of high profile UK employers including the sports products retailer Sports Direct, the pub and bar chain JD Wetherspoon, and the delivery courier Hermes (Neville, 2013; Wood, 2016). According to Acas (2014, online), zero hours contracts, which are sometimes known as 'hours as required', are "an employment contract between an employer and a worker, which means the **employer is not obliged to provide the worker with any minimum working hours, and the worker is not obliged to accept any of the hours offered**". These **contracts** seem to be particularly unique to the United Kingdom (Leighton, 2002). The controversy of such employment arrangements arises for zero hours contracts offer little in the way of job security for workers, and may potentially enable employers to exploit their workforce (Pennycook, Cory and Alakeson, 2013). Detractors argued that the use of such working practices tips the balance of power in the employment relationship towards the employer, and away for the employee, which represents a violation of the psychological contract (Adams and Deakin, 2014). Campaigners are therefore attempting to dissuade businesses from their use. Debate seems to focus on two aspects of zero hours contracts – the extent to which they are ethical and moral, and the extent to which they are legal (Pennycook et al, 2013; Adams and Deakin, 2014; Acas, 2014). This paper examines these twin aspects and investigates whether businesses should avoid engaging in this practice. The paper is structured into four core sections. The first section explains the recent rise in the use of zero hours contracts. The next section examines the use of zero hours contracts from a moral perspective. Attention then turns to the legal aspects of their use. A short conclusion sets out the findings of the paper, and makes recommendations to employers with regards to the use of this type of employment contract.

The rise of zero hours contracts

Zero hours contracts have emerged in an economic context in which the notion of flexibility is increasingly valued by employers and workers alike (Adams, Freedlan and Prassl, 2015). Employers demand flexibility as a consequence of the increasingly precarious economy and labour market, while employees seek flexibility as a means of supporting an increasingly mobile and transient lifestyle (Brinckley, 2013). In this sense, some commentators have argued that zero hours contracts are sacrificing to both parties in the employment contract. At the same time, zero hours contracts may be seen a way to maintain employment rates in the context of an insecure economy. For instance, referring to the UK's slow recovery from the recession of 2008 to 2012, Hopkins and Fairfoul (2014, p. 1) point out that "while the jobs recovery has been seen to be positive, the lack of correlation with GDP means that productivity per worker has fallen and this, along with other factors, has meant that average wages have stagnated and fallen back to 2002 levels in real-terms". In other words, given evidence that even workers on permanent employment contracts have been unable to secure wage rises, and the current level of competitiveness of the labour market, workers are less reluctant to turn down seemingly adverse employment terms and working practices (Brinckley, 2013). The fact that 90 per cent of workers at Sports Direct are on zero hours contracts has been attributed to such economic conditions (Neville, 2013).

However, research suggests that zero hours contracts are not as widespread as the media would suggest. Such employment arrangements are more readily found in industries, sectors and occupations that in the past have made great use of other forms of non-standard working, such as temporary work and part-time work, and

where work tends to be low paid (Head and Lucas, 2004; Rubery, Keizer and Grimshaw, 2016). Thus, zero hours contracts tend to be concentrated in sectors such as retailing, the hospitality industry and transportation. However, other sectors that have previously been known for offering employees superior levels of job security have also begun to offer zero hours contracts. For instance, research by Hopkins and Fairfoul (2014) suggest that such employment arrangements are on the rise in the Higher Education sector.

The moral arguments for and against zero hours contracts

Both Murphy and Loftus (2015) and Head and Lucas (2004) use dual labour market theory to examine the degree to which causal, contingent employment contracts are morally questionable. This theoretical framework argues that there is not one single labour market, but two labour markets, a primary and secondary market, that act in parallel with one another (Murphy and Loftus, 2015). The primary segment of the labour market consists of capital-intensive means of production. Workers that are found in this segment are afforded higher incomes and superior working conditions than those found in the secondary segment; as a consequence, these workers also occupy higher social statuses (Head and Lucas, 2004). The secondary segment, on the other hand, is largely comprised of labour-intensive means of production (Murphy and Loftus, 2015). This means that this segment must draw more heavily on the unskilled labour force. The limited skills of this segment of the workforce means that these workers have limited bargaining power; as a consequence, work in the secondary segment is less well paid and offers more adverse working conditions than work in the primary segment of the labour market (Murphy and Loftus, 2015). Theorists have described this segment as 'bleak houses' or 'black holes' (Head and Lucas, 2004). According to labour market theory, labour demand in both the primary and secondary segments are highly contingent on the state of the economy (Sparrow and Cooper, 2012). Where the economy is booming, workers in the secondary segment have greater opportunities to move upwards through occupational hierarchies and into the primary segment. However, where the economy is flailing, the opportunities of secondary segment workers are far lower (Sparrow and Cooper, 2012).

The application of dual labour market theory might therefore suggest that the use of zero hour contracts by firms is not morally questionable, but in fact a responsible and logical way of dealing with the fluctuations and vagaries of the economy (Sparrow and Cooper, 2012). Head and Lucas (2004) describe this approach as 'distancing' and suggest that where it must be used, it can be to the benefit of both employer and employees. However, the empirical research undertaken by Head and Lucas (2004) in the hospitality industry also suggested that unionised employees were able to resist the imposition of zero hours contracts, and that employers deliberately targeted non-unionised employees for such contracts. Furthermore, employers seemed to be using the contracts not because they needed to, but because it was a "conscious strategy... to reinforce the individualistic nature of the employment relationship" (Head and Lucas, 2004, p. 702). The authors go on to conclude that "such an asymmetrical arrangement clearly works in the interests of employer flexibility, at the expense of employees" (Head and Lucas, 2004, p. 702). These conclusions confirm those of media investigations into some of the more prominent corporate examples of employers that use zero hours contracts (Neville, 2013; Wood, 2016). For instance, the courier firm Hermes has used zero hours contracts to justify paying its delivery drivers as little as £1 per hour, a figure that is far below the minimum wage (Wood, 2016).

Others (e.g. Brinckley, 2013; Adams et al, 2015), have questioned whether zero hours contracts do in fact offer employers the benefits that they expect. The notion of the psychological contract contends that in the employment relationship, both parties have mutual expectations about the input, duties and responsibilities of each (Sparrow and Cooper, 2012). Employees agree to provide their labour, while employers agree to supply a range of rights and conditions associated with employment status (Adams et al, 2015). Zero hours contracts could therefore be construed as a violation of the psychological contract for the use of 'hours as required' means that employers no longer have to provide the rights and privileges to which employees have a right (Adams et al, 2015). Furthermore, this can be detrimental to the working relationship as workers that perceive that employers are treating them poorly as less motivated to uphold their part of the psychological contract (Sparrow and Cooper, 2012).

The legal arguments for and against zero hours contracts

Non-standard working arrangements are far from novel and stem as far back as the Industrial Revolution (Brinckley, 2013). For instance, agency, contingency part-time and temporary work is very common in many sectors across Britain. It could therefore be argued that 'hours as required' is just another manifestation of what has come to be known as flexicurity, and is therefore perfectly legal and appropriate in the modern economy (Rubery et al, 2016). This perspective seems to be accepted by the courts, as exemplified by a legal case study described by Leighton (2002). A small group of stevedoring and haulage contractors on zero hours contracts took the employing firm to court. The workers demanded the status of employees which would enable them to claim legal rights such as a written statement of employment terms and conditions, sick pay and annual leave (Leighton, 2002). However, the court found that the use of zero hours contracts meant that the workers could not be defined in law as employees and therefore could not have access to these privileges. Importantly, in making its decision, the court found that both parties had "mutual economic interests lay in being accommodating to each other" (Leighton, 2002, p. 71).

In spite of this appraisal, some commentators continue to argue that zero hours contracts are legally invalid (Hopkins and Fairfoul, 2014). Hopkins and Fairfoul (2014) argue that zero hours contracts vary in terms of characteristics and applications, and are thus not well understood by either employees or employers. For instance, some zero hours contracts enable workers to work elsewhere and be called upon as required while others demand that employees remain constantly available for work (Hopkins and Fairfoul, 2014). In contrast, other forms of non standard working arrangements are clearly defined in law. This lack of clarity means that employers are able to misuse and mould zero hours contracts for their own ends.

Concluding remarks

This paper examines the rise in zero hours contracts of employment and examines the extent to which such working arrangements are advisable for firms from both a moral and legalistic perspective. Drawing on the discussion set out above, the paper draws a number of conclusions. First, ostensibly zero hours contracts offer advantages to both employees and employers in terms of flexibility and the maintenance of employment rates in the context of a recessionary economic climate. The use of 'distancing' can help firms to respond quickly to changes in demand and market conditions through zero hours contracts, while workers can avoid unemployment by agreeing to causal terms. However, such arrangements can, and often do, lead to a skewing of the employment relationship in favour of the employer and to the detriment of the worker. Zero hours employment contracts are not, in fact, illegal in the United Kingdom, and have obtained support from the law courts in real life cases. However, as pointed out by Leighton (2002, pp. 71 – 72), "with a few exceptions such one sided employment relationships are unusual in other EU member states and, indeed, there is often some incredulity on the part of lawyers and managers that such a working relationships can be legally valid". Thus, while legally valid, there remain moral concerns about the use of zero hours contracts, particularly with respect to the impact on the job security of workers and the ability of employers to exploit such contracts in order to eschew their rights and responsibilities towards workers. It is therefore recommended that businesses do

not use zero hours contracts.

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