



Anti-casualisation **Legal Toolkit**

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1. Introduction

UCU is committed to working to eliminate use of insecure, 'casual' contracts in the workplace.

'Casual' contracts are not unlawful. Subject to the rules and regulations governing them, use of, for example, fixed term contracts or zero hours contracts are legally available to any employer. The problem is that these casual contracts leave people with uncertain employment situations and potentially considerably less rights in the world of work.

UCU has a campaign to try to reduce the use of casual contracts and other ways employers try to reduce the rights of those working at their organisations. Accessing the law and taking legal cases are not the primary means by which we pursue this campaign because the working practices in and of themselves are not against the law.

What we can do however is try to ensure that those rights that do exist are pursued, legally if necessary, and therefore it is always important to check that, whatever contract an individual has, nothing in it or in the actual day to day reality of the work, breaches the law.

In addition, the research has shown that casual contracts and insecure ways of working are more likely to be offered to women, black and ethnic minority workers, and younger workers and we can therefore consider whether a discrimination element exists that we might be able to pursue legally.

It is important to remember that legal claims are an individual process and even if we win a case, it does not necessarily change things for other casually employed staff.

However, by pursuing any individual legal claims that are possible and viable in terms of chances of success, we build the availability of the facts of successful cases to support the collective steps taken by UCU members. This can assist in showing employers that they need to address the collective points being made as doing so may well reduce the chance of successful claims being taken against them by individuals, in addition to achieving better employment relations with their staff.

2. Types of 'casual' employment

Zero hours

Some employers recruit individuals for casual work on what are known as 'zero hours' contracts. A 'zero hours' contract ('ZHC') is generally understood to mean a contract under which an employer is not obliged to offer, and the individual is not obliged to undertake, any work in any particular week.

The Office for National Statistics (ONS) collects statistics on ZHCs as part of the Labour Force Survey (LFS), which asks workers about their employment arrangements. The release of the survey from April 2018, which covered the period from October to December 2017 (ONS: Contracts that do not guarantee a minimum number of hours (April 2018)), provided the following information about the types of people working on a ZHC:

- The majority are women (54.7% compared with 46.8% of those not working on a ZHC).
- They are more likely to be at the youngest end of the age range (36.0% of people are aged 16 to 24 compared with 11.4% of people not working on a ZHC).
- A large proportion are part-time workers (66.0% compared with 25.3% of those not working on a ZHC).

Analysis by the TUC of the Labour Force Survey results released by the ONS on 15 February 2022 revealed that a higher proportion of black and ethnic minority workers are engaged on ZHCs than white workers. The TUC has said that the analysis shows "structural racism in action" and repeated its call for ZHCs to be banned.

"Zero hours contract" is not a legal term and it does not have one universally accepted definition.

Section 27A(1) of Employment Rights Act (ERA) 1996 defines a ZHC as:

"...a contract of employment or other worker's contract under which -

- (a)** the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and
- (b)** there is no certainty that any such work or services will be made available to the worker."

An employer makes work or services available to a worker "if the employer requests or requires the worker to do the work or perform the services" (section 27A(2), ERA 1996).

Zero-hour workers will typically have "worker" status under the employment legislation and will be entitled to certain basic employment rights, such as the national minimum wage, paid annual leave and discrimination protection. Some individuals working under ZHCs may, in fact, be "employees" and will therefore be entitled to a greater spectrum of employment rights.

Exclusivity clauses in ZHCs are not permitted i.e. the employer cannot insist that the zero hours worker refrain from working anywhere else. If anything in your contract, or anything that is said to you, implies that you cannot take work with another employer whilst on a ZHC then please seek advice.

In most cases, while a worker is actually working on an assignment under a ZHC, they will enjoy worker status, and may enjoy employee status. This therefore raises the issue of whether, over time, the individual accrues sufficient continuity of service to be entitled to the various employment protections which require continuity, such as (for employees) the right not be unfairly dismissed or to a statutory redundancy payment. Consideration of the issue of continuity in the context of a ZHC involves an assessment of:

- Whether there was a contract in existence at all when the individual was not actually undertaking work for the employer.
- If there was, the nature of that contract, and whether the individual was an employee or a worker when actually working for the employer, and between assignments.

The contractual arrangements used by the employer may be such that, between assignments, there is no contract in existence at all between the employer and the individual: each assignment is a separate contract. If this is

the case, the individual will accrue continuity only when they are actually working on an assignment.

Whether there is a contract in existence at all when the worker is not actually working involves an assessment of whether there was an intention to create a legally binding relationship in respect of that period. A ZHC may be structured as overarching contracts (also known as "umbrella" contracts), so that there is a continuing contractual relationship with ongoing obligations between the business and the individual regardless of whether the individual is engaged in carrying out work at the time. Even where a ZHC states that there is no continuing relationship between engagements, if, in practice, there is a well-founded expectation of further engagements, that could be sufficient to create an overarching, employee or worker, contractual relationship covering periods between engagements.

As stated above, if there is no overarching contract, the individual will accrue continuity only when they are actually working on an assignment. It is important to note that continuity is calculated on a week-by-week basis. Therefore, if the individual does some work for the same employer in each week to be taken into account, even if that work done is only for a day or a part of a day at a time, they will accrue continuity of employment with that employer.

To break continuity, the worker must have stopped work for a full calendar week (from Sunday to Saturday) or more. A period of less than one week does not break continuity (sections 210(4) and 235(1), ERA 1996). However, longer breaks may not break continuity if they fall, for example, when no teaching is being undertaken by the institution.

With no obligation on the employer to offer work, or on the ZHC worker to do any work, is it possible for a ZHC to continue indefinitely with no work being done? Can repeated refusal to accept work by the ZHC worker amount to a resignation? There is no straight forward answer to this as each case will be dependent on its actual facts.

In terms of whether there is a notice requirement to end a ZHC, this again depends on the circumstances of the individual. A "worker" ZHC would not normally include any provision for termination on notice, but those with

"employee" status have a statutory right to a minimum period of notice, as follows:

- One week's notice where the period of continuous employment is between one month and up to two years.
- One week's notice for each year of continuous employment, where continuous employment is between two and 12 years.
- 12 weeks' notice where the period of continuous employment is 12 years or more.

If you are on a ZHC and have not been offered any work for a prolonged period of time, seek advice on what rights you have – if any – to notice and / or a redundancy payment.

Fixed-term

Fixed-term contracts are those which terminate either after a specific term, or on the completion of a particular task, whether or not determinable on notice.

All employees on a fixed-term contract have the right, from the outset, not to be treated less favourably by their employer than a comparable permanent worker, on the grounds of their fixed-term status:

1. as regards the terms of their contract, e.g. in relation to:
 - pay, contractual sick pay, contractual maternity pay, etc
 - access to pension schemes
 - training
 - leave, maternity leave, career breaks, etc
 - other benefits, e.g. company cars, health insurance, etc
2. by being subjected to any other detriment, such as pressuring them to work extra hours, selecting them for redundancy, or dismissing them

A comparable employee does not have to be undertaking exactly the same work but must work for the same employer and be engaged in broadly similar work.

Employers may avoid liability for less favourable treatment if they can show that it is objectively justified.

Where an individual on one fixed-term contract, or on a series of fixed-term contracts, is employed for four years or more, and is then re-engaged on a further fixed-term contract, or the contract is renewed, the contract will (subject to certain exceptions) be commuted into a permanent one.

Unfortunately, employers in our sectors rely on those “certain exceptions” (known as objective justification) in a wide variety of circumstances. Whether or not the circumstances amount to an objective justification needs to be determined on a case by case basis. However, we do not believe that the use of fixed-term external funding is, of itself, an objective justification for keeping a member of staff on a fixed-term contract beyond 4 years. The argument to continue to use fixed-term contracts is also likely to get weaker as time goes by.

The failure to renew a fixed-term contract of an employee amounts to a dismissal, making it subject to legal protection, for example unfair dismissal protection. The types of dismissal will again depend on the circumstances but typically, if the reason for the dismissal is the employer wants no or less people to do a particular type of work (for example because external funding has ended or student recruitment has dropped), the reason will be redundancy. See: <https://www.ucu.org.uk/article/3547/The-ending-of-a-fixed-term-contract---some-information>

For further information on the Fixed-term regulations see: <https://www.ucu.org.uk/ftregs>

An area to be aware of is the contract claiming to be permanent but actually in reality is fixed term by virtue of ‘relevant factors’. This might be for example an apparently open-ended contract having the potential to be brought to an end by a relevant factor, for example the ending of external funding. Potentially this is then still a fixed term contract and the employee on that contract should not be treated less favourably than a comparable employee.

Agency worker

Agency workers may be either employees or workers, either of the agency or, less usually, of the end-user of their services. Commonly agency workers are part of a tripartite arrangement between the agency, the agency worker

and the end-user, with contractual relationships only existing between the agency and the agency worker, and the agency and the end-user. The relationship between the agency and the agency worker is usually that of employer and worker, but can be that of employer and employee. In certain circumstances a contract may be implied between the end user and the agency worker. Where this occurs, the agency worker is usually found to be an employee of the end user.

Agency workers are entitled to a number of statutory protections such as paid holiday, limits on working time, and protection from unlawful deductions from wages. Agency workers are also protected from discrimination under the equality legislation.

Certain agency workers also enjoy rights under the Agency Workers Regulations 2010, including the right:

1. to be treated no less favourably than a comparable worker in relation to access to collective facilities and amenities provided by the hirer to direct hires
2. to be informed by the hirer of any relevant permanent vacancies within the hirer, to give the agency worker the same opportunity as a comparable worker to find permanent employment with the hirer
3. after 12 weeks in the same role with the same hirer, to the same basic working and employment conditions (as defined) as a direct hire

See: <https://www.ucu.org.uk/agencyworkers>

Part-time workers

Part-time is not necessarily a 'casual' work situation and may in fact be a welcome option for many. All workers who work part-time have the right, from the outset, not to be treated less favourably by their employer than a comparable full-time worker, on the grounds of their part-time status:

1. as regards the terms of their contract, e.g. in relation to:
 - pay, contractual sick pay, contractual maternity pay, etc
 - access to pension schemes

- training
 - leave, maternity leave, career breaks, etc
 - other benefits, e.g. company cars, health insurance, etc
2. by being subjected to any other detriment, such as pressuring them to work full time, selecting them for redundancy, or dismissing them

Unless it is inappropriate, the pro rata principle will be used in comparing the treatment of part-time workers with full-time workers. This means that in comparing rates of pay, the comparison will be of the effective hourly rate (i.e. taking into account the lower number of hours that the part-time employee works), rather than of the absolute sum received per week or per month.

Employers may avoid liability for less favourable treatment if they can show that it is objectively justified.

Hourly paid staff are usually part-time workers who are paid an hourly rate of pay rather than an annual salary. These contracts are often 'casual' and may be zero hours, variable hours and / or fixed-term.

Term-time only staff are part-time workers who are not paid throughout the 12 months of the year but only for teaching weeks.

Employment status

Many employment rights depend on whether you are deemed to be an employee, worker or self-employed (with employees having the most rights and self-employed the least). There is no single legal definition of the term 'employee', but courts will look at a number of factors in determining whether or not the individual is an employee (see below in myth buster). Remember, your status depends on a number of factors, not just what your employer says.

3. Time Limits

Any potential legal claim will be subject to a time limit to take legal action, and this time limit will be strict. If the time limit is missed, it is more than likely that the potential legal claim fails at that stage as it will not be possible to progress it.

In relation to challenges that connect to contractual terms, there may for example be a breach of contract claim. This may, in certain circumstances, be a claim that can be taken in the Employment Tribunal ('ET') and, if so, the time limit to take action is a strict 3 months less 1 day from the date that the breach occurred or the date on which the individual became aware of the breach. Always assume the earlier of any possible time limit date and seek advice from your regional/national office.

A breach of contract claim may be one that has to be taken in the county court. This gives a much longer time limit of 6 years, but it is vital to check with your regional/national office to be sure that the shorter ET time limit does not apply.

If the potential claim is one of discrimination, the ET time limit will again be 3 months less 1 day from the date of the act of discrimination. This is a short time period and you may need to act quickly. Please see the UCUs 'Challenging Discrimination – How to build an effective case toolkit' : [https://www.ucu.org.uk/media/10706/Challenging-discrimination---how-to-build-an-effective-case/pdf/Challenging_discrimination_toolkit_22Oct19.pdf] as well as the other information available on the UCU website [<https://www.ucu.org.uk/article/1940/Equality-advice-and-guidance>]

4. What to do

It is important to bear in mind that casual contracts of all the forms outlined in this document are not in themselves unlawful. Whilst UCU are committed to trying to reduce the use of such employment practices in order to provide more people with security in relation to their employment circumstances, in terms of challenging an employment situation via any legal proceeding we have to look at whether the law as it stands has been breached.

If you are concerned that you may not be being treated in a lawful manner in relation to the contractual terms that you are working under, the first step for you to take is to approach your UCU representative.

The checklists below are designed to assist you in considering whether you may have a claim that could be pursued and also to put together the evidence that would be needed to enable to union to provide you with advice quickly.

In addition, in order to establish less favourable treatment under the Fixed-term employee or Part Time Workers Regulations, a fixed-term employee / part-time worker must identify an appropriate permanent / full-time employee/worker as a comparator.

The comparator must be:

- Employed by the same employer.
- Employed under the same type of contract (although it will obviously be permanent / full-time).
- Engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience.
- Working or based at the same establishment as the fixed-term employee / part-time worker or, where there is no such employee / worker who satisfies the three requirements listed immediately above, working or based at a different establishment and satisfying those requirements.

Unlike claims under the discrimination legislation, which allows claimants to base a claim on how the employer would have treated a hypothetical comparator, claimants under the Fixed-term employee and Part-time Worker Regulations must point to an actual full-time comparator in the same employment engaged on the same or broadly similar work. There is a limited exception to the "no hypothetical comparator allowed" rule, where the worker is comparing their old full-time status with their new part-time status.

Identifying an actual comparator can be very difficult and therefore it is worth considering in some detail right at the start of any consideration of a potential case. Without one, a case for less favourable treatment will not get off the ground.

The following checklist relates to those of you who believe that, whilst not as a result of discrimination, you are in fact not being dealt with lawfully, for example you have been given a series of temporary contracts but never made a permanent member of staff, or you have a zero hours contract leaving you with no idea of the level of work that may be available to you but your employer will not allow you to seek work elsewhere.

Documents you may have:

- a.** Written contract
- b.** Written terms and conditions
- c.** Offer letter
- d.** Any documents updating your role or work to be carried out including any emails
- e.** If nothing in writing, a detailed account of any verbal conversations around start of role including details of dates of conversations and who you spoke to
- f.** Detailed accounts of any verbal conversations around the tasks you undertook including dates and parties
- g.** Detailed accounts of any verbal conversations around extension or continuation of role including dates and parties
- h.** Timesheets

- i.** Invoices for payment
- j.** Evidence of any payment

If you believe that you have been discriminated against and that discrimination is the reason that you are in an insecure employment situation e.g. you are on a fixed term contract or a zero hours contract, please use the following checklist:

- 1.** Record/diary of acts of discrimination
- 2.** Your narrative (a short statement of factual circumstances and how it has impacted on you)
- 3.** Details of comparators
- 4.** Copies of employer policies relevant to your case; for example:
 - a sickness absence procedure
 - b harassment policy and procedure
 - c dignity at work procedure
 - d redundancy selection procedure
 - e job description/person specification
 - f recruitment and promotion policy and procedure
 - g grievance procedure
 - h disciplinary and dismissal procedure
 - i any other procedure (please describe)
- 5.** Copies of all relevant correspondence (email and letters)
- 6.** Relevant telephone notes
- 7.** Meeting notes - your own and the employers
- 8.** Text messages
- 9.** Any other documents (please list)

First meeting with your UCU representative

Use the checklists (the first or both if appropriate) above to help you organise your thoughts and gather the necessary evidence together before meeting your UCU representative.

Inform your UCU representative of any relevant developments in your case (e.g. if you become ill, change jobs, move house, accept an offer of alternative employment or the employer offers a settlement payment etc).

If you need reasonable adjustments or other assistance such as an interpreter, documents in large print, a hearing loop, regular breaks etc inform your UCU representative in advance of your meeting. Your contacts can be found on the UCU website: <https://www.ucu.org.uk/yourcontacts>

If you do not get a response from your UCU representative within three days, please contact your regional/national office
<https://www.ucu.org.uk/regionalofficials>

Your UCU representative will commit to keeping you informed in accordance with the guidance for UCU representatives 'Handling Case Work' (see <https://www.ucu.org.uk/Caseworkers>) including responding in good time and treating you with due consideration and respect.

Remember:

- Your case may be one of many that your UCU representative is dealing with so keep to deadlines and meetings.
- Keep your UCU representative up to date.
- Your UCU representative may test your evidence by asking probing questions. This doesn't mean they don't believe you or are siding with the employer they are doing what any good union rep would do – anticipate what arguments the employer may make so they can present your best case.
- Don't overload your UCU representative as this can result in your best points getting lost. Less is often more.

- Listen to your UCU representative's advice and consider it carefully.
- Keep an open mind and consider all options.
- Don't lose your sense of perspective – health, happiness, friends and family are important too, as are you.
- Your UCU representative is a volunteer who also has their own job so may not be able to respond to you immediately.
- Your UCU representative cannot do everything for you; it is your case

Pursuing a grievance

Your UCU representative may advise you to pursue your concerns through the formal local grievance procedure if initial informal steps do not result in a solution. What can be suggested by your representative will depend on the nature of the issues and what can be challenged as being unlawful or unfair. Remember an internal grievance will be able to consider unfair practices, or practices that are contrary to local policies. The law will only test whether there is evidence that the employer has behaved unlawfully.

It is very important to keep in mind that pursuing a grievance does not stop the time limit for a legal claim.

Model letters are available to challenge detrimental treatment under the part-time and fixed-time regulations and to challenge the continued use of a fixed-term contract beyond 4 years.

See:

<https://www.ucu.org.uk/article/3568/Part-time-work-regulations-2000-requesting-a-written-statement-from-your-employer>

<https://www.ucu.org.uk/article/3566/Fixed-term-regulations-requesting-a-written-statement>

<https://www.ucu.org.uk/article/3567/Fixed-term-regulations-requesting-confirmation-of-permanence>

Your employer should have a grievance policy that you can follow. If needed, ACAS has a template letter to use to raise a formal grievance Grievance letter template | Acas. If you believe that your treatment is as a result of discrimination then UCU has a template letter to follow here

https://www.ucu.org.uk/media/10706/Challenging-discrimination---how-to-build-an-effective-case/pdf/Challenging_discrimination_toolkit_22Oct19.pdf

If your grievance has not been upheld you should appeal. This is important for two reasons:

- 1** It shows the employer that you do not accept the outcome.
- 2** It is really important in the event a legal claim is pursued because any compensation awarded if a legal claim is successful can be reduced by up to 25% for an unreasonable failure to comply with the ACAS Code.

The same applies where an employer unreasonably fails to comply with the ACAS Code. If that is the case and a legal claim is successful, compensation can be increased by up to 25%.

Consider what grounds you will appeal on and discuss and agree with your UCU representative.

Remember to check the grievance procedure for the time limits for lodging an appeal and remember that allowing time for an appeal to be heard is not a valid reason to miss a time limit for a legal case. If it is short time before an appeal must be made and you are concerned about not having sufficient time to produce a full appeal letter, you can send out a holding appeal letter but first check with your UCU representative if the employer will accept a holding appeal.

Non-legal resolutions

Even though an appeal against the outcome of a grievance may be unsuccessful your UCU representative may still be able to negotiate a resolution. This may include a collective resolution. For example, if, during the process, failings in the employer's procedures have been identified.

Legal resolution

If a resolution cannot be reached through the formal procedures, your branch may suggest you take legal advice. Your branch will raise this with the regional/national office who will discuss with you whether legal advice will support your case.

If legal advice is sought and it is positive, your case will then become part of UCU's legal scheme.

Please keep all your documents and evidence. Legal advice will rely on your evidence and the documents from the internal processes.

UCU's legal scheme sets out your rights and obligations. When accepting an offer of legal services, it is important that you read these and, in particular, understand the criteria for offering legal services (1.4) and how UCU runs employment claims (5.5)

https://www.ucu.org.uk/media/5929/UCU-Legal-Scheme-RegulationsOctober-2017/pdf/ucu_legalscheme

5. Myth buster

The following are statements that have been used by management to try to deny staff on casualised contracts their rights. Our aim is to give you and your representative some arguments to use in response.

Management statement

You can't have a permanent job even after 4 years or you haven't worked for 4 years continuously.

Arguments in response

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 limit the use of successive fixed-term contracts. Fixed-term employees with four or more years of continuous employment who have their contracts renewed or are re-engaged on a new fixed-term contract are deemed to be employed on a permanent (or indefinite) contract unless a further fixed-term contract can be objectively justified.

To make use of the regulations to argue for a permanent contract you do need to have been employed for at least 4 years. However, some breaks in employment will not break your continuity of service for example breaks over the summer when no student teaching is undertaken. It is important to keep contracts and messages that detail your working pattern so that we can try and establish continuity of service. You will also maintain continuity of service if you have been TUPEed from one employer to another.

Management statement

You are funded by a fixed-term research grant

Arguments in response

Many employers use the objective justification (OJ) argument to deny permanent contracts to those employed in posts underpinned by fixed-term external funding – especially research staff.

However, the existence of fixed-term funding should not, of itself, be used as an objective justification.

Following case law that established this point (see https://my.ucu.org.uk/app/answers/detail/a_id/305/~/fixed-term-contracts-and-ucu-sponsored-employment-tribunal-case) our advice has been that fixed-term contracts should only be used on those occasions where the employer can demonstrate a real need, i.e. that the employer can identify facts evidencing an objective which can only be met by the use of a fixed term. Where an objective is identified but can be achieved by alternative means which do not involve the use of a fixed-term contract, the employer will not have established a real need.

Even where a real need is established the use of a fixed term contract may not be justified if, after consideration of all the facts, it is apparent that the detriment caused to the employee by remaining on a fixed term contract outweighs the expected benefits accruing to the employer by the use of a fixed term contract. It follows that on every occasion the employer must adopt an individual approach to the issue rather than apply a blanket rule.

Management statement

We don't know whether the work will continue

Arguments in response

This statement could be true of any work at any time. However, it is another attempt to use the OJ clause to deny staff, who are on a fixed term contract ('FTC'), a permanent contract. It would be up to the employer to demonstrate a real need to use a FTC that is not out-weighted by the detriment to you of using such contracts. In this case, there would at least need to be evidence that the employer believes that the work will probably not continue. The more sure they can be about the work continuing, the weaker their argument becomes. So, how long you have been in post, how long the work has been funded, whether there is any evidence the work will be stopped in the future etc. would all need to be examined.

Management statement

You are not an employee

Arguments in response

The fixed-term regulations only apply to employees. However, whether or not you are an employee is a matter of fact and the employer cannot simply

deny you employee status by declaring that you are not an employee. Your status will depend on a number of factors including:

- control i.e. the extent to which the employer decides what tasks the individual does and how they do them
- integration i.e. the extent to which the individual is part of the organisation
- mutuality of obligation i.e. the extent to which the employer is required to offer the individual work and whether they are expected to do it
- economic reality i.e. the extent to which the individual bears any financial risk

It should also be noted that the Part-time regulations apply to the wider category of 'worker' rather than 'employee' so even if you cannot evidence you are an employee you can probably demonstrate you are a worker – unless you are genuinely self-employed.

Management statement

You are a Graduate Teaching Assistant (GTA) i.e., a PGR undertaking paid teaching work

Arguments in response

Paid GTAs have a dual role within the university – one as a student (the PGR part) and one as a member of staff (the GTA part). Being a GTA does not mean you do cannot use the legislation to seek a permanent contract. The employer may try and use the objective justification clause but it would be down to the employer to demonstrate a real need to use a FTC that is no out-weighed by the detriment to you of having such a contract.

Being a GTA does not mean you do cannot use the legislation to seek no less favourable treatment. It is difficult to imagine what justification could be used to treat GTAs less favourably.

Your status as a GTA should also not affect your rights in relation to dismissals, discrimination and, potentially, notice and redundancy.

Management statement

You have only had one contract in this department

Arguments in response

It does not matter if you have changed departments or jobs – the test is how long you have been employed by the same employer.

The right to a permanent contract only applies if you have had more than one contract with the same employer or have had your contract renewed.

Management statement

You are an agency worker

Arguments in response

Your rights as an agency worker usually derive from the agency that employs you – not the ‘end user’ of your services e.g. a College or University. So you would need to establish that you meet the criteria for a permanent job with the agency that employs you.

Management statement

You are on an ‘as and when’ contract

Arguments in response

‘As and when’ or zero hours contracts are not excluded from the legislation. However, the legislation does not give you the right to a better contract – merely to regard your current contract as permanent. Having a permanent zero hours contract will not necessarily be of any benefit and the main issue you are likely to want to try to address with a zero hours contract is the lack of guaranteed work.

Management statement

You aren’t entitled to the same T&C as permanent staff

Arguments in response

The Fixed term employees (Prevention of Less Favourable Treatment) Regulations 2002 give fixed-term staff the right to be treated no less favourably than comparable employees on permanent contracts.

Similarly, the Part-time workers (Prevention of Less Favourable Treatment) Regulations 2000 give part-time staff the right to be treated no less favourably than comparable workers on full-time contracts.

However, the right not to be treated less favourably in both sets of regulations only applies if the treatment is not justified on objective grounds.

Management statement

You have been here less than 2 years

Arguments in response

The less favourable provisions of both sets of regulations are Day 1 rights – there is no qualifying period.

Management statement

Your role isn't comparable to a permanent member of staff

Arguments in response

This is often difficult to demonstrate but your comparator does not need to be doing work that is exactly the same as you – just work that is broadly equivalent. It does need to be noted though that finding a suitable comparator is difficult and can prevent claims going ahead.

Management statement

You are an agency worker

Arguments in response

Agency workers have day 1 rights to access to all facilities and amenities provided for directly employed workers such as canteen, staffroom, childcare facilities, sporting and social facilities, etc. Employers must provide objective justification for blocking access.

If you have been with the same hirer for 12 weeks you have the right to the equalisation of some T&C including:

- key elements of pay
- normal working hours
- rest periods and breaks and
- annual leave

For more details see: <https://www.ucu.org.uk/agencyworkers>

Management statement

You are not entitled to a redundancy payment

Arguments in response

Employees with at least 2 years' service are entitled to statutory redundancy pay if they are dismissed for reason of redundancy. The dismissal is a redundancy dismissal if the reason is that the employer has stopped carrying on the business for the purposes of which the employee was employed by him, has stopped doing business in the same location or (as is more usual for us) the employer requires less employees to carry out work of a particular kind.

To be entitled to a redundancy payment you need to have been employed for at least 2 years. However, some breaks in employment will not break your continuity of service for example breaks over the summer when no student teaching is undertaken. You will also maintain continuity of service if you have been TUPEed from one employer to another and in some cases if you move (without a break) between certain employers (e.g. Post-92 institutions, FE Colleges, local government).

Management statement

Your job was fixed-term and you knew it would come to an end so you are not entitled to a redundancy payment

Arguments in response

It is likely to be unlawful to select fixed-term employees for redundancy

simply on the basis of their fixed-term status, unless their selection can be objectively justified.

It could be lawful to select fixed-term employees for redundancy on the basis of length of service, provided only that the same criteria are applied to any permanent staff and permanent staff in the redundancy pool have longer service.

Excluding a fixed-term employee from a redundancy pool or not considering them for suitable alternative employment on the basis of their fixed-term status is likely to be less favourable treatment, unless it can be objectively justified.

Those employed on fixed-term contracts (as defined in section 282(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) where the proposed dismissal would take effect on the expiry of the fixed term are excluded from the duty to collectively consult where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less (section 282(2), TULRCA). Where an employer is proposing to dismiss a fixed-term employee as redundant and the dismissal will take effect before the expiry of the fixed-term then this would be included in the duty to collectively consult.

The obligation to consult on an individual basis for redundancy with fixed-term employees whose contracts are coming to an end still exists.

Being on a fixed-term contract, does not, in itself, preclude you from the right to a redundancy payment. If the circumstances meet those of a redundancy and you have at least 2 years' service, you will be entitled to a payment.

Management statement

We aren't making you redundant, we are just not giving you any work

Arguments in response

If your contract allows the employer to reduce your hours to zero then they can legally keep you employed and offer you no work without compensation. This is one of the reasons we are so against the use of zero hours contracts. However, do carefully check your contract and any collective agreements in place and take advice before accepting this.

Management statement

You are a GTA and you are finishing being a doctoral student with us so you can't carry on with your GTA duties

Arguments in response

In this case, the employer is arguing that your dismissal is not for reason of redundancy but for 'some other substantial reason' which is a lawful reason for dismissal. However, it is for the employer to demonstrate that the reason is a substantial one that would stand up in court.

Management statement

You can have a redundancy payment but only the statutory amount, not the higher amount we offer to permanent staff who are made redundant.

The legal right to a redundancy payment only applies to the statutory amount. However, if your employer is offering permanent staff a higher rate of redundancy pay you may be able to challenge this as less favourable treatment. In which case they would need to demonstrate an objective justification for paying you a lesser amount.

Other sources of information

UCU survival guide for hourly paid staff

https://www.ucu.org.uk/media/4647/UCU-hourly-paid-survival-guide/pdf/ucu_hourlypaidsurvivalguide_jan20.pdf (which includes information on employment rights)

UCU Researcher Survival Guide

https://www.ucu.org.uk/media/4832/UCU-researchers-survival-guide/pdf/ucu_researchers-survival-guide_aug21.pdf

Stamp Out Casualisation in HE

https://www.ucu.org.uk/media/9407/Stamp-out-casual-contracts-HE-campaign-pack/pdf/ucu_he-casualisation-campaign-pack.pdf

A guide to challenging casualisation in FE

https://www.ucu.org.uk/media/9505/Further-adult-and-prison-education-casualisation-campaign-pack/pdf/UCU_FE_and_Adult_Ed_casualisation_campaign_pack.pdf

Holiday Pay for Hourly Paid Staff

<https://www.ucu.org.uk/circ/pdf/UCUBANAB24.pdf>