

Ending
zero-hours
contracts
in further
and higher
education

A UCU BARGAINING & CAMPAIGNING PACK

About this guide



This bargaining guidance has been published by UCU to help branches to negotiate and campaign to eradicate zero-hours contracts at their institution.

This guide will:

- ▶ help you to identify zero-hours contracts
- ▶ help you to understand why they are widely used in further and higher and education and why they are so exploitative
- ▶ help you to develop a bargaining and campaigning strategy for ending use of zero-hours contracts at your institution
- ▶ provide you with detailed bargaining advice to help you negotiate to ensure that staff are not employed on zero-hours contracts
- ▶ provide you with campaign resources and ideas to support your negotiations

Note: at the time of writing (summer 2024) we are expecting new legislation to outlaw the use of exploitative zero hours contracts so now is a good time to get ahead of the legislation and ensure that the transition to more secure contracts is transparent and fair.

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1 Understanding zero-hours contracts in post-secondary education

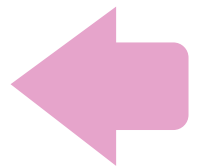
What is a zero-hours contract?

Zero-hours contracts have no legal definition. The term refers to a particular characteristic of casualised contracts which share a common feature. This is perhaps best summed up by a recent Institute of employment rights report which defined a zero-hours contract as one under which ‘an employer agrees to pay for work done but makes no commitment to provide a set number of hours of work per day, week or month’.

How zero-hours contracts appear in adverts, contracts and job descriptions*

- ▶ *Lecturer, part-time, hourly-paid, temporary, various hours (subject to student enrolment numbers)*
- ▶ *Hourly-paid Lecturer – English (Further Education)... Please note, hours are not guaranteed.*
- ▶ *I am pleased to confirm the offer of the post of Zero-Hour Lecturer at the university...Your hours of work will be scheduled at the beginning of each trimester. Your timetable is subject to alteration, after consultation with you, should the teaching requirements in the school change. You may remain on the payroll for up to 52 weeks without working, before your employment will be terminated.*
- ▶ *You and the university agree that the hours that you will work in each period of engagement may vary according to the demand for your duties. This will enable the university to respond to fluctuations in demand. You agree that there may be occasions when no engagement will be offered to you by the university.*

*These are excerpts from real adverts and job descriptions



Zero-hours contracts in post-secondary education

Since 2017/18 the Higher Education Statistical Agency (HESA) has been collecting data on the use of zero hours contracts. The latest HESA staff data we have access to (2021/22) indicated that 4410 academic staff were employed on zero hours contracts. Most of these were employed on teaching only contracts where there made up 5% of all such staff - a percentage that has not changed in the last few years.

Further, in Higher education, HESA collect data on the employment of 'atypical' contract academic staff. The number of such staff employed in 2021/22 was 62,700 many of whom will be on a zero hours contract. So it is worth checking the local figurers for both zero hours contract staff and atypical staff to establish the true number of zero hours staff employed locally.

In English Further education colleges, data from or own 2023 Freedom of Information (FOI) request indicates that 16,808 staff are employed on zero hours contracts.

In Adult and Community Education (ACE), our FOI request in 2023 showed that 66% of ACE tutors and ACE Learning Support Staff are employed on a zero hours contract in England.

However, in all sectors there are huge variances in the use of zero hours contracts. Some institutions employ hundreds of staff in this way and some do not use them at all.

This shows that the decision to use zero hours contracts is a choice, not a necessity, with some employers using such contracts to avoid their obligations to staff.

It seems that there is no particular profile of an institution that determines whether or not it will use zero-hours contracts.

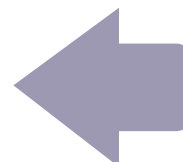
Employing people on zero-hours contracts is not a necessary policy choice for a college or university, but many appear to see it as a convenient option to exploit.

Zero-hours contracts: flexible, cheap – and precarious – labour

Zero hours: the management myth

Carefully managed, responsible use of zero-hours (variable-hours or 'hours to be notified') contracts can bring significant benefits for both employee and employer, in the form of flexibility and efficient administration where the nature of the work entails limited and/or unpredictable hours.

UCEA evidence to Scottish Affairs Select Committee inquiry on zero-hours contracts 2013-14.)



Zero-hours contracts aren't completely new in FE and HE. They are just one of the forms of hourly-paid, part-time contracts used in our sector. But their use does seem to have grown in the last couple of decades.

We believe that the use of zero-hours contracts is another symptom of a generalised management desire to keep staff costs low by holding down pay and conditions, combined with the increasing competitive pressures on colleges and universities and the popularity of HR strategies that urge the importance of 'lean management' and flexible' workforces.

However, UCU also believes that colleges and universities may be using zero-hours contracts as a way of avoiding having too many fixed-term contract staff and having to deal with issues of less favourable treatment, rights to permanence and redundancy rights. Far easier, it seems, to keep a permanent pool or bank of zero-hours contract teaching staff who can be made effectively redundant when necessary by simply not giving them any hours and thus avoiding having any legal obligations relating to redundancy.

Precariousness, dependence and vulnerability

The particularly unpleasant feature of a zero-hours contract is that the employer is under no obligation to offer any hours of work.

There is a very obvious power imbalance in the employment relationship in a zero-hours contract and this is reflected in the experience of people who are employed on them:

- ▶ Employees have no guaranteed, regular level of income which makes basic things like paying bills and planning for the future difficult.
- ▶ Work can disappear with almost no notice, creating many of the effects of redundancy but without access to any redeployment process, redundancy avoidance measures and no right to redundancy pay.
- ▶ Employers can demand work is performed at very short notice. Because employees are dependent on their employers for more work in the future, they feel extra pressure to take on the work regardless of workloads or circumstances.
- ▶ Irregular work patterns make it difficult to claim some benefits to supplement or replace income.

Zero-hours contracts leave staff more vulnerable, more dependent and more precarious than any other form of contract.

This has other advantages for managements as vulnerable staff are more likely to feel pressure to keep their heads down and not stand up for themselves. One of the biggest things that staff on zero-hours contracts tell us is that they feel afraid to speak up because they are dependent on managers for any future work.

Zero-hours contracts: the experience*

You never know what work you are going to get and whether it'll be enough to survive.

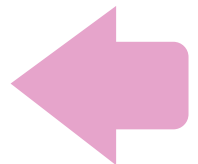
There is also the precariousness of not knowing whether you will have another contract... Distributing teaching among casual staff is often a grace-and-favour affair – you have to ingratiate yourself to be given teaching the following year.

Not knowing if you'll be paid from one month to the next is a horrible situation. It plays havoc with your mental health as you have no way of telling if you have enough money to pay the bills or not.

Zero-hours [employees] get the work on patronage and it's clear that you can be dropped if you cause a fuss... People just accepted what they were told because if you put your head above the parapet, it would get shot off.

I was, in theory, able to decline the extra hours, but I need the money and am conscious of the fact that 'flexibility' will be taken into consideration when teaching allocations are made in the future... clearly, these conditions are exploitative and rely on workers' desperation.

*These are real quotes

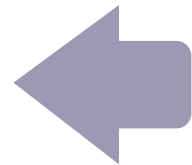


2 Developing your branch strategy on zero-hours contracts

UCU's policy and bargaining objectives

UCU policy on zero-hours contracts:

Congress deplores the increase in casual and zero-hours contracts in education, in all roles, including academic staff, professional support and outsourced workers, and outsourced employees.



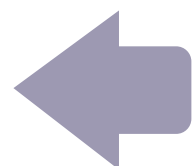
The peculiar nature of zero-hours contracts means that employees can be nominally permanent while in fact their contracts guarantee absolutely no work or income and give the employer absolute discretion to change the hours of work from day to day or course to course.

As we noted above, this is presumably what makes them attractive to employers: they can retain a bank of hourly-paid part-time staff on these contracts while maintaining absolute discretion over whether they offer any work.

Our broad aim is to improve the continuity and security of employment for staff on zero-hours contracts and to stop our colleges and universities racing to the bottom in their employment of staff. That means we have to campaign and bargain for contracts that give employees some basic entitlements from their employer.

Key bargaining objectives:

- ▶ *ensuring employee status with relevant employment rights*
- ▶ *employment on appropriate pay spines*
- ▶ *guaranteed hours and continuity of employment*
- ▶ *equal treatment compared to other teaching staff*
- ▶ *transfer to permanent employment contracts that bring greater job security.*



Bargaining and campaigning strategy

The political and press attention that has been focused on zero-hours contracts is helpful in two ways.

Firstly, it makes it more likely that employers will want to be seen to act and creates a better climate for focused branch campaigning and bargaining.

Secondly, it provides us with an opportunity to open up the wider question of casualisation. The use of zero-hours contracts is tightly bound up with wider issues of casualisation. For example, UCU's view is that the widespread use of such contracts is itself a way for managements to seek to avoid their legal obligations when using fixed-term contracts. It may well be that managements will look to develop and use other forms of casualised contract as zero-hours contracts become less palatable.

If we want to ensure that these staff get a fair deal, our clear strategic interest lies in using this opportunity to make a case for a comprehensive agreement that ensures they are not simply dumped on another form of casualised contract.

Branches will have to balance the opportunity for focused campaigning and bargaining on a high profile issue with the need to address the wider issues of casualisation and adapt their strategy according to their local situations, in discussion with their regional officials.

3 Bargaining advice

Bargaining to secure employee status and employment rights

It's possible that some universities and colleges are classing staff on zero-hours contracts as 'casual' or 'atypical' workers, and they may claim that such staff are not employees. Employment law recognises two major categories of people who do work for other people (excluding self-employment): employees and workers. Both have a broad range of employment rights that derive from the law but there are important variations. Employees have more rights, including some very important ones that arise from continuous service, such as the right to claim unfair dismissal, the right to maternity or paternity pay and redundancy pay and rights. **UCU aims to ensure that all staff on zero-hours contracts are clearly employed as employees and not 'workers'.**

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Employee or worker?

Whether or not staff who have zero-hours contracts are employees or workers will depend on their individual contract and on the individual reality of their employment relationship. In a situation where someone on a zero-hours contract took an employer to a tribunal to claim that they were an employee, the key tests that the tribunal would apply when making a judgment would be:

- 1 whether there is *mutuality of obligation* between the employer and employee. Broadly, that means that there is an obligation on the worker to do some work and an obligation on the employer to pay for it
- 2 whether the worker/employee must perform the service themselves or whether they can supply a substitute
- 3 the degree to which the employer can control the performance of the work.

While tribunals will start from the wording of the contract, case law has established that they must also look at the totality of the relationship *as it functions in reality*. For example, in circumstances where someone is employed on a zero-hours contract and provided with regular work which is regularly accepted, it is quite likely that the contract will be one of employment in reality, even if the contract states that it is not. *Because each decision may need to be taken on a case by case basis and the result may be different each time depending on the individual working circumstances, we should argue that it is more sensible to have a blanket policy that confirms that all casualised teaching staff are employees.*

The Association of Colleges (AoC) have recognised this and their own briefing note on zero-hours contracts notes advises that *'the safest approach for Colleges to take is to presume that individuals engaged under zero-hours could have the employment status of employees'*. Association of Colleges: *Defining Employment Status: Guidances for Colleges July 2013, p13*

Bargaining to ensure transfer or assimilation to pay spines and incremental progression

Staff on zero-hours contracts may also be paid by salaries or hourly rates that are disconnected from nationally agreed pay spines (or their locally agreed variants). All hourly-paid staff should be transferred onto the nationally agreed pay spines (or their locally agreed versions) and have the same access to pay progression as comparable full-time permanent staff.

In both further and higher education, national agreements make it clear that all teaching staff should be employed, graded and paid according to a single agreed pay spine.

Similarly, the *Part-Time Prevention of Less Favourable Treatment Regulation (2000)* and the Equal Pay act make it clear that these staff cannot be treated less favourably than comparable full-time staff and must have the same access to pay progression.

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Assimilation to the national pay spine in higher education

The National Framework Agreement requires all staff to be transferred to the national pay spine in a fair and transparent manner and have a normal expectation of progression. The key passages are as follows:

HE institutions applying this agreement will use the single pay spine detailed in Appendix B to determine pay rates for all staff (other than clinical academics) covered by national agreements in force on 31 July 2003. * including hourly-paid staff (p2).*

All staff covered by this agreement will have pay progression opportunities within the pay range for their grade.

Arrangements for such progression should be: designed to offer equal opportunities for all staff in each particular grade, and to reward the acquisition of experience and contribution; and operated with demonstrable fairness, transparency and objectivity.

Progression within each pay range will depend in part on an individual's length of service in the grade and in part on an assessment of their contribution; although staff will have a normal expectation of annual progression up to the contribution threshold for their grade, subject exceptionally to established procedures for dealing with performance problems (p3).

<https://www.ucu.org.uk/media/277/Framework-Agreement-for-the-modernisation-of-pay-structures/pdf/frameworkagreement.pdf>

You can find further bargaining advice on negotiating assimilation for hourly-paid staff:
https://www.ucu.org.uk/media/10065/Hourly-paid-assimilation-to-the-single-pay-spine-in-HE-Mar-12/pdf/ucu_hourly-paid_staff_-_assimilation_to_the_pay_spine_-_bargaining_guidance_2012.pdf

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Transfer to pay spines in further education

The Modernising Pay Agreement, signed with the Association of Colleges in 2004/5 recommended that colleges transfer all staff onto a harmonized pay spine by 1 August 2004 to the nearest higher point on the spine. Once on the spine, employees should have the same access to pay progression as equivalent comparable employees.

The *Part-Time Prevention of Less Favourable Treatment Regulations* give part-time employees the right not to be treated less favourably than full-time colleagues. Paragraph 2.2 of the national agreement signed with the Association of Colleges in 2008, which aimed to create guidance for colleges based on implementing the part-time regulations states that *'where applicable, incremental progression shall be applied in accordance with the provision for equivalent comparable full-time employees'*.

Bargaining to guarantee hours, continuity of employment and equal treatment

If we're going to help staff on zero-hours contracts, we need to win improvements for them that guarantee them regular income, that provide for continuity of employment and that ensure that they are no less favourably treated by their employers than full time and / or permanent staff.

The best way of achieving this is through a collective agreement that commits the employer to not using these contracts and moving existing staff onto better ones. This is also an opportunity to get an agreement that governs the way your institution uses a wider range of casualised contracts. There are several ways open to us to achieve this. You should aim to get a policy agreed that combines these in the manner that best suits your institution.

Fractional contracts

The simplest and fairest way to achieve our objectives would be to negotiate an agreement that moves as many employees as we can off zero-hours and hourly-paid contracts and onto fractional contracts (a part-time contract expressed as a fraction of a full-time equivalent, for example, 0.5 FTE).

This is easier to argue for where employees are working a large number of hours regularly. Fractional contracts would ensure that staff who are regularly working a large number of hours are paid properly and receive all the same terms and conditions enjoyed by full-time colleagues on a pro-rata basis. This is particularly the case where someone is working a significant part of a teaching year. 'Significant' might be defined as anything that represents more than 0.1 of a teaching year, for example.

It's important to ensure that posts are fractional in every respect. That means that the fractional contract must include pro rata access to incremental progression and pro-rata access to all other terms and conditions.

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Making the case for fractional contracts in further education

The National Agreement, signed with the Association of Colleges in 2008 recognised that fractional contracts represented the best way of ensuring that part-time workers were being treated fairly.

'16.2: Both sides recognise fulfillment of the requirements of this agreement and the Part-Time Workers Regulations 2000 can be best achieved by using fractional contracts of employment for part-time employees.'

Determining fractional contracts

Whether you're in further or higher education, the principles governing how you calculate what fraction of a contract hourly-paid staff are the same, though there are some differences of approach.

To calculate a fractional contract/pro rata salary, you need to establish:

- 1 the correct grade and pay point within the grade for the comparison
- 2 the measure by which a full-time equivalent post is determined in order to compare the hours worked
- 3 the number of hours actually worked by the members of staff.

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Determining fractional contracts for teaching and lecturing staff in further education

Grade: The correct grade for zero-hours staff in FE should be on the 8 point lecturer scale brought in by the *Modernising Pay Agreement* in 2004.

Full-time equivalent: A full-time equivalent would be measured by the teaching contact hours of a full-time lecturer at your college

Number of hours worked: The measure of the number of hours worked used to determine what fraction of a full-time teaching contract zero-hours staff should be transferred to would therefore be the teaching contact hours being worked. Note, this can be as much as 100%.

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Determining fractional contracts for teaching and lecturing staff in higher education

Grade: The correct grade will be established by role analysis and the national academic role profiles and will be grade 7 (Ac2) or above (from point 30 of the national spine upwards). For the national role profiles see: www.ucu.org.uk/index.cfm?articleid=1969#profiles

Grading must be established with reference to the duties actually carried out and not just those in the current job title.

Full-time equivalent: For a post-92 university, a full-time equivalent post is measured with reference to the national contract which establishes a maximum of 550 formal teaching hours per year and 18 hours per week (in some institutions it may be lower).

Some pre-92 universities have workload agreements that measure formal teaching hours, in which case a full-time equivalent comparator will be determined in the same way.

In those pre-92 universities and other institutions where formal teaching hours are not used to measure full-time equivalence, we have to work out fractions in a different way. We can do this by calculating the number of hours worked by a comparable employee on a full-time contract. This would be calculated as follows: assuming a full time working week of 37 hours, six weeks of annual leave (30 days) three working weeks of public holidays and closure days:

$52 - (6+3) = 43$ working weeks
 43×37 hours = 1591 hours a year

Number of hours worked: In post-92 universities and those institutions with a simple formal teaching hours workload model, this is simply worked out with reference to the formal teaching hours worked by the zero-hours member of staff.

In pre-92 universities and other institutions that don't use formal teaching hours to measure full-time equivalence, we need to refer to all the hours worked by the member of staff, including preparation, course design, marking, student support, supervision, administration, attendance at meetings and many other things besides.

You can find detailed advice on calculating hours worked for hourly-paid staff in pre-92 universities for the purposes of fractionalisation at: www.ucu.org.uk/3537

Variable-hours contracts

Employers will argue against fractional contracts on the grounds that they need flexibility to deal with fluctuating student demand.

UCU branches should attempt to get agreement on moving as many zero-hours or hourly-paid staff as possible onto fractional contracts.

However, one way of negotiating around the need for flexibility is to seek agreement on the use of variable-hours contracts with guaranteed minimum hours.

Variable-hours contracts should only be used in situations where the requirement for flexibility by employers could not be accommodated by more traditional fractional contracts AND where their introduction will improve the position of our members.

The key objectives here are:

- ▶ to ensure that variable-hours contracts have a reasonable guaranteed minimum hours of work per year
- ▶ to ensure that there are controls on an employer's ability to change these hours
- ▶ to ensure there is a path for staff on variable-hours contracts to move to fractionalised contracts.

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Safeguards for the use of variable-hours contracts in further and higher education

- 1 The terms and conditions in variable-hours contracts should be the same as for comparable permanent full-time or fractional staff, except that there is some flexibility in the hours of work built into the contract.
- 2 Variable-hours contracts should specify a reasonable guaranteed minimum number of hours work per year.
- 3 There should be agreement on a threshold (expressed as a percentage of a full-time equivalent contract) above which staff could move onto permanent, non-variable fractional contracts. This percentage should be as low as possible to maximise the opportunity for staff to move to permanent, pro-rata (non-variable) contracts.
- 4 The guaranteed minimum should be based on a realistic expectation of the workload. This could be assessed by looking back over a number of years to calculate the average hours and use that as the minimum. The minimum should not be set so low as to be, in effect, a zero-hours contract.
- 5 The ratio of the guaranteed minimum to the flexible hours will need to be negotiated. The more flexibility that employers have to increase the flexible hours before triggering the right of the member of staff to have their minimum hours increased, the more likely they are to try and set the minimum hours at an unrealistically low level. The objective, from our perspective, is to get the guaranteed minimum hours set as high as possible.
- 6 Any agreement should ensure that part-time and hourly-paid staff on variable-hours contracts are entitled to a review of their guaranteed minimum contracted hours. Such a review should be at least annual but should be earlier in certain circumstances.
- 7 If total average hours actually worked are in excess of the original minimum hours, staff should have the right to have their minimum hours increased accordingly.
- 8 No agreement on variable-hours should allow for the employer to reduce the member of staff's working hours to less than the guaranteed minimum hours without triggering redundancy procedures.

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Making the case for variable-hours contracts in further education

When negotiating on variable-hours contracts, further education branches can refer to paragraph 13.1 of the 2008 agreement with the Association of Colleges on the use of part-time employees, which states that *'Both sides recognise the value to colleges of the employment of variable-hours contracted employees to meet fluctuations in demand for work of a particular kind. It is desirable that such contracts should specify a minimum of contracted hours.'*

Hourly-paid contracts

It may be the case that some staff wish to remain on hourly-paid contracts rather than move onto fractional or variable-hours contracts. During negotiations, it may also be necessary to allow the option that some staff might wish to remain hourly-paid, or on variable-hours contracts. Our policy calls for minimizing the number of people on hourly-paid contracts. However, if hourly-paid contracts are retained by institutions, we have to make sure that these are used for staff who wish to be on them and that they are as good as possible.

This means ensuring that hourly-paid lecturers have a decent comprehensive rate that ensures employees are paid for the full range of duties, a contract of employment that recognises employee status and contains a guarantee of hours together with some mechanism for ensuring continuity and predictability of employment.

There are a number of ways of ensuring continuity of employment for hourly-paid staff. One option is to create permanent hourly-paid staff posts for those who wish to remain on such contracts. Another option is to seek an agreement that staff will be offered a permanent contract after a certain period of working on fixed-term contracts (no more than four years in any case).

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Calculating hourly rates in further education

The 2008 national agreement on part-time staff with the Association of Colleges notes that in order to fulfil the principle of equal pay for work of equal value, colleges should ensure that employees on part-time contracts are *'paid an equivalent hourly rate to a comparable employee employed on a full-time contract'*.

The most common formula for calculating an hourly rate is:

$(\text{Total full-time annual salary} / \text{annual working days}^*)$
 $\times (\text{weekly working days} / \text{weekly working hours}) = \text{hourly rate}$

*Annual working days = 365 – weekends, annual leave and bank holidays and closure days

This creates an hourly equivalent to the contractual 'normal' working week. This hourly rate must be paid for contracted working hours and not just for teaching hours.

Contracted hours for an hourly-paid lecturer should contain at least the same ratio to non-teaching hours as in a full-time equivalent contract.

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Calculating hourly rates in higher education

For equal pay purposes, the rate of pay for hourly-paid staff must be related to the pay and grading of non-hourly-paid staff, so it's vital to determine the appropriate grade for any staff remaining on hourly-paid contracts. The posts of hourly-paid staff should be subject to the same role analysis process as for non hourly-paid employees, to determine their appropriate pay grade.

There are then two approaches to payment:

- 1 payment for each hour worked to deliver effectively the teaching and any other related duties required by the institution, for example preparation, marking, student support, administration, research, attendance at meetings and development
- 2 calculation of a comprehensive rate which includes payment for teaching and all associated work such as preparation, marking, student support, administration, research, and development.

Holiday pay should be paid separately when holiday is taken – holiday entitlement should be calculated on a pro-rata basis and should be paid accordingly.

Variable hours and part year workers can have their holiday pay rolled up into a comprehensive rate but it must be clearly identifiable and must represent holiday entitlement equal to staff doing comparable work. See <https://www.ucu.org.uk/circ/pdf/UCUBANAB35.pdf> for more details

If a comprehensive rate of pay is being used then the UCU method of calculation assumes a weighting of at least 2.5 for every teaching hour to take account of preparation, etc.

However, the weighting of 2.5 should be increased by local agreement where it can be demonstrated that the time taken to prepare, etc, is greater than 1.5 hours for every teaching hour. For example, marking can add significantly to workloads and there can be a case for weighting multipliers or establishing marking pay rates to properly reflect this.

You can find detailed advice on calculating rates of pay at: www.ucu.org.uk/3538

UCU branches in post-92 universities should refer to the JNCHES guidance from 2004 on hourly-paid lecturers, which can be found at:

https://www.ucu.org.uk/media/1918/JNCHES-post-92-hourly-paid-lecturers-guidance-Mar-04/pdf/jnches_hourlypaidlecturersguidance_1.pdf

BUT note: our view is that the multiplier of 2.5 is a minimum and does not include holiday pay.

Bargaining to ensure access to permanent contracts

Whatever solution is used to transfer staff off zero-hours contracts, we also need to argue that these staff should not be moved simply from one casual contract to another. Whether we're talking about fractional contracts, variable-hours contracts or hourly-paid contracts, there will be an additional argument to be had about whether they should be fixed-term or permanent.

For us, addressing the issue of zero-hours contracts is an opportunity to take on the wider issues of casualised employment and try to win greater job security for more employees. Management will aim to retain as much flexibility as possible. They may well resist any discussion of fixed-term contracts.

Our key bargaining objective is to ensure that staff moving off zero-hours contracts are not simply dumped onto fixed-term contracts but can have some reasonable expectation of continuity of employment. We can do this by negotiating a clear policy that:

- ▶ commits the institution to limiting and reducing the use of fixed-term contracts
- ▶ tightly delimits when it is appropriate to consider using fixed-term contracts and provides

for them to be made permanent at the earliest opportunity.

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Fixed-term contracts in further education

In further education, UCU signed a national agreement with the AoC in 2008 which establishes a recommended framework for good practice as follows:

'fixed-term contracts should only be used for transparent and objective reasons where there is a genuine fixed-term need. The list below describes general considerations that may make it appropriate to offer fixed-term contracts for periods of less than four years. This is not an exhaustive list but is indicative of a genuine short-term need:

The work is of a specialist short-term nature.

The work is of a discrete nature and does not form part of a wider ongoing learning programme.

The area requires a degree of specialist knowledge not available from within the college establishment.

The requirement is of a temporary nature to cover for employment absence, such as maternity leave.

The work is externally funded for a fixed period of time.'

In addition, UCU's view is that the tribunal case between Andrew Ball and the University of Aberdeen, which established that the cessation of external funding cannot in itself constitute an objective justification for using fixed-term contracts, applies to all cases of external funding changing and not simply research funding.

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Fixed-term contracts in higher education

The fixed-term prevention of less favourable treatment regulations 2002 state that employees must be placed on permanent contracts after four years of successive fixed-term contracts unless their continued use can be objectively justified and must be no less favourably treated than comparable permanent employees.

The tribunal case between Andrew Ball and the University of Aberdeen established that the cessation of external funding cannot in itself constitute an objective justification for using fixed-term contracts.

Some branches have successfully negotiated agreements that commit institutions to reducing their use of fixed-term contracts, moving fixed-term staff onto permanent contracts and treating the cessation of external funding properly as a potential redundancy, including building in mechanisms for redeploying staff whose contracts have ended.

UCU has produced detailed bargaining advice on negotiating a fixed-term contract policy in higher education. You can read this at:

www.ucu.org.uk/media/pdf/n/j/socc_ftpolicynegot_feb09_v3.pdf

ARGUMENTS TO USE IN NEGOTIATION

 **THEY SAY**

We don't really have zero-hours contracts here

 **WE SAY**

Are you sure?

The most fundamental common feature of zero-hours contracts is the absence of any guaranteed working hours. If your college or university is using any form of contract that does not guarantee to provide hours of work, it is using zero-hours contracts, whatever the job title claims.

UCU's Freedom of Information request asked for data on the number of staff employed on contracts under which the employer has no obligation to offer work and guarantees no minimum hours of work. The results showed that this kind of contract is in fact very widely used across the university and college sector.

 **THEY SAY**

Zero-hours contracts can benefit employees by providing valuable flexibility that they want

 **WE SAY**

There's very little evidence that people want to be employed on zero-hours contracts

This is a convenient myth. There's very little evidence that the vast majority of people employed on zero-hours contracts are happy to be on them.

Why is this? Because employees on these contracts are completely dependent on their employer to provide them with work. This unique level of dependence means that they fear being seen as rocking the boat and regularly take on and conduct work far beyond what they are paid for, particularly spending many unpaid hours marking work.

This is a common problem among the many thousands of hourly-paid lecturers in the sector but it particularly affects those with no guaranteed minimum hours and no expectation of work from their employer.

Ultimately, the easiest way to check what staff on these contracts want is to survey them. Every survey or consultation conducted so far indicates that the large majority of staff on such contracts would NOT choose to be so and feel highly vulnerable and open to exploitation.

If some staff genuinely want to retain flexibility over their hours, there are ways of achieving this by using properly regulated variable-hours contracts with guaranteed minima in them, rather than by using deeply exploitative zero-hours contracts.



THEY SAY

We need flexibility to cope with fluctuating student demand and other factors



WE SAY

It's not necessary to use zero-hours contracts to achieve flexibility

We understand the need for some degree of workforce flexibility, but the reality is that their use is not restricted to situations where work is limited or unpredictable. Teaching work is typically organized on an annual, or termly or semesterised basis.

The need for some flexibility may necessitate a small flexible 'peripheral' workforce but it's not credible to suggest that this explains the huge scale of use of zero-hours contracts in further and higher education.

All institutions are feeling competitive pressures and changes in student demand, but not all of them are using zero-hours contracts. Almost half of institutions in further and higher education indicate that they are able to manage their flexibility in other ways.

There is no common 'profile' of institutions using or not using zero-hours contracts. Rather it appears to be a simple, and we would say, inadequate, management choice. Many employers find it perfectly possible to manage their flexibility without recourse to super-exploitative contracts.



WE SAY

Institutions using zero-hours contracts are threatening the quality of their education

Institutions may crave flexibility but they also need to protect quality and recognise their duties and responsibilities toward staff. Where they are widely used, zero-hours contracts can be damaging for the quality of provision. For example, whole areas of provision or subjects can rely on a completely unpredictable staffing complement. This can make effective workforce planning almost impossible. Similarly, excluding staff from robust recruitment, induction, training and professional development programs can affect the quality of provision.

NEGOTIATING CHECKLIST

	Yes	No	Partly	Comments
Has the employer confirmed that all casualised staff have 'employee' status (as opposed to being simply 'workers')?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Has the employer agreed not to use zero-hours contracts in any form?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Is there agreement on a mechanism for moving zero-hours staff to fractional contracts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
If variable-hours contracts are being used, is there a guaranteed minimum 'core' hours with a ratio of at least 2:1 in relation to 'flexible hours'.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
If variable-hours contracts are being used, is there a limit on how far the employer can reduce hours without triggering a redundancy process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
If variable-hours contracts are being used, is there an upper limit on flexible hours that can be added on without triggering an upward revision of core hours and/or fractionalisation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Will any remaining hourly-paid staff have defined hours written into their contracts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are hourly-paid staff paid an hourly rate equivalent to a full-time lecturer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Do staff being moved off zero-hours contracts have the same access to pay progression and no less favourable treatment in other terms and conditions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Is there a policy in place for transferring fixed-term staff onto permanent contracts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are any agency staff to be transferred to direct employment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

4 Campaigning to support your negotiations

Raising the profile of the issue of zero-hours contracts at your college or university can really help you to start and sustain negotiations. Here are some ways to build up a campaign in support of your negotiations.

Recruiting, organising and campaigning with staff on zero-hours contracts

- ▶ Actively recruiting members on zero-hours contracts helps us to speak with more authority when talking to the employer.
- ▶ People in general join the union when they can see that it's useful to them either individually or collectively, so when taking up the issue of zero-hours contracts staff, make sure you are publicizing that fact with email bulletins, leaflets and newsletters and ask your members to make sure that hourly-paid teaching staff are aware of these communications.
- ▶ Make sure that your recruitment materials make it absolutely clear why UCU is the union for casualised staff. You can point to the national union's work on zero-hours contracts, it's Stamp Out Casualisation campaign and its days of action on casualisation. And make sure you point to any local work or successes on casualisation.
- ▶ It's important to begin to map where your casualised staff are employed so that you can ensure that your communications and your recruiting activity are targeted and not wasted.
- ▶ One thing you can do is to submit a Freedom of Information request to your management jointly, together with other unions, to uncover the extent of the use of zero-hours contracts at your institution. It's important to ask the question in the way that ensures that all staff on these contracts are 'captured'. For help with this email: anticasualisation@ucu.org.uk
- ▶ A really good tactic is to launch a survey of these staff asking them details about their contracts, their teaching hours and their view of their job. Building an effective survey will be helpful in countering the employer's message that staff on zero-hours contracts are happy with flexibility. It also shows the union taking up the issue and gives you a reason to approach casualised staff and encourage them to participate and join the union.



Campaigns support – surveys and leaflets

You can find examples an example of a survey you can use at the back of this pack.

UCU leaflets for zero-hours staff are available for order on our website here:

www.ucu.org.uk/socc_materials

Using political and press leverage

- ▶ UCU is working nationally to build political support for taking action against zero-hours contracts at a legislative level but we can also use political support to help us win local collective agreements.
- ▶ MPs from across the political spectrum may be open to pressure from constituents drawing attention to the number of zero-hours contracts being used in their local colleges or universities.
- ▶ Encourage members to write to their local MP (particularly if they are likely to be sympathetic) drawing their attention to the number of zero-hours contracts in use in your institution and the problems this raises and asking them to support your campaign and write to the principal of your college urging them to end the use of these contracts and move their staff onto contracts that give greater continuity of employment.
- ▶ It can also be useful to look to use the local press to create extra pressure on your employer. You could issue a press release that draws attention to the issue of zero-hours contracts at a local college or university. To make it likely that a local paper will pick up the story, it will need to be connected to an event. This could be:
 - 1 the launch of a local campaign
 - 2 an MP writing a letter or making a statement of support
 - 3 a local stunt or meeting on your campus.

You should also try to identify someone who can be quoted on the issues of zero-hours contracts, even if anonymously.



Campaigns support – model MP letter

Dear

Use of zero-hours contracts at [insert name of your institution]

As you'll be aware, the University and College Union is one of many organisations to raise concerns recently about the increasing use of zero-hours contracts.

The use of such temporary contracts in education is far more prevalent than many people realise. Staff have no idea whether they will receive work and cannot plan their lives. Students often miss out on continuity and receive reduced access to staff employed on minimal hours.

Following Freedom of Information requests from UCU in 2023 and analysing the latest data from higher education institutions, we know that tens of 1000s of staff in further, adult and higher education are employed on zero hours contracts,

[Your institution] replied to our Freedom of Information request and told us that they employed [insert number] teaching staff on zero-hours contracts (or for HE insert the HESA data).

My local UCU branch is encouraging the management at [your institution] to end the use of these contracts and transfer staff to employment which provides them with guaranteed work and greater security of employment.

I would be very grateful if you could write to [principal/vice chancellor's name] and encourage them to commit to ending the use of zero-hours contracts at the institution.

I look forward to hearing from you.

Yours sincerely

Not sure who your MP is or how to write to them? Go to: <https://www.writetothem.com>

More help

You can find lots more guidance on how to lobby and campaign using the press and parliament in UCU's 'Getting the message across' toolkit, at:

www.ucu.org.uk/media/pdf/h/g/ucu_lobbyingtoolkit.pdf



Campaigns support – template survey

The template survey below suggests questions that branches can use to survey hourly-paid staff – including those on zero-hours contracts – at their institution to support campaigning and bargaining on casualisation.

Further, adult and higher education branches can adapt the questions to more closely suit their institutional arrangements

You can get help with turning this into an online survey for your branch by emailing the UCU campaigns team at campaigns@ucu.org.uk

TEMPLATE UCU SURVEY FOR HOURLY-PAID AND ZERO-HOURS STAFF

About you

- 1 Age
- 2 Gender
 M F other
 prefer not to say
- 3 Ethnicity

- 4 Department/Faculty/work area

- 5 Subject area

- 6 Job title

- 7 Are you currently studying for a postgraduate qualification?
 yes no

Information about your pay and working hours

- 8 What is your hourly pay rate?

- 9 Please list the duties that are included in this hourly rate: (eg teaching, marking, preparation, relevant meetings, administration).

- 10 Please list any duties you undertake that are not included in this hourly rate.

- 11 How much paid time is allowed within your hourly rate for marking and preparation?

- 12 How much time per teaching hour do you actually spend on marking and preparation?

- 13 Please list any other duties for which you are paid less than the hours that are necessary to complete them and give details.

- 14 Do you receive annual increments?
 yes no
- 15 If yes, are these increments automatic?

Are you on a zero-hours contract?

- 16 The basic definition of a zero-hours contract is one in which your employer does not guarantee you any hours of work or makes no ongoing commitment to provide you with work. Are you on such a contract?
 yes no
- 17 If yes, please give details – it would be helpful if you could insert the wording that your contract uses to describe your working hours (eg 'hours to be notified', 'hours as per timetable', 'no guaranteed hours', 'your hours will be determined by student numbers/enrolments' etc)

18 Are you on an agency contract?

yes no

If yes, please give details

Your experience of hourly-paid work

19 How do you rate your experience of hourly-paid work in terms of the following

Your hourly rate of pay:

very good fairly good

no opinion fairly bad

very bad

Your future job security:

very good fairly good

no opinion fairly bad

very bad

Your workplace/office facilities:

very good fairly good

no opinion fairly bad

very bad

Having enough paid time to prepare classes within paid time:

very good fairly good

no opinion fairly bad

very bad

Having enough paid time to mark work within paid time:

very good fairly good

no opinion fairly bad

very bad

Your opportunity to be involved in your department:

very good fairly good

no opinion fairly bad

very bad

Your workload:

very good fairly good

no opinion fairly bad

very bad

Your access to training and development opportunities:

very good fairly good

no opinion fairly bad

very bad

Your sense of being valued by your employer:

very good fairly good

no opinion fairly bad

very bad

19 Have you experienced unequal treatment as an hourly-paid member of staff, compared to your full-time or permanent colleagues?

yes no

If, yes, please give details

Your career

20 How many years have you been employed in hourly-paid teaching at any institution? (1-15+)

21 How many years have you been employed in hourly-paid teaching at this institution? (1-15+)

22 How many years have you been employed on a contract where your hours are determined by a timetable issued termly/yearly? (1-15+)

23 Over the course of your teaching career so far, how many fixed-term contracts have you had? (1-10+)

24 What was the length of the longest and shortest fixed-term contract you have had? (months/years)

25 If you are on a fixed-term contract, would you prefer to be employed on a permanent contract?

yes no

Please give details to explain your answer:

26 Do you have any other comments you would like to make?

NOT A UCU MEMBER YET?

Join online for as little as **£1.00**

per month:www.ucu.org.uk/join

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