

## University and College Union response to BEIS Taylor review consultation on enforcement of employment rights May 2018

The University and College Union (UCU) is the UK's largest trade union for academics and academic-related staff in higher and further education, representing over 110,000 members working in universities, colleges, training providers, adult education settings and prisons.

UCU supports the extension of the HMRC NMW unit's remit to cover enforcement of contractual and statutory holiday pay and statutory sick pay.

### **Introduction: precarious employment and access to holiday and sick pay**

Zero hours contracts of some description are used in at least half of the UK's colleges and universities. Some universities like Sheffield Hallam, Nottingham Trent, City, London Metropolitan University and others use zero hours employment contracts. But equally scandalous is the widespread use of worker status for teaching staff. Through these arrangements academics are employed as 'workers' akin to agency workers. They are typically paid by the 'assignment', can be hired and fired at will and do not accumulate employment rights like protection from unfair dismissal, rights to redundancy pay and access to statutory maternity and paternity pay or occupational parental leave and pay schemes.

Shockingly, the so-called 'elite' universities, including the Russell Group, are the worst offenders. Very large numbers of academics in these universities are being employed through 'atypical' staff arrangements. Many of these will be PhD students who teach, many of them using this teaching to fund their way through their PhDs. Many others will be people attempting to piece together a living out of bits and pieces of casual teaching. Where there are very large numbers of atypical academic staff it can be indicative of the existence of bank worker arrangements in which academics are employed via contracts for services as 'workers'. Worker arrangements are known to be used by the universities of St Andrews, Bath, Birmingham, Cardiff, Durham, Exeter, Kent, Leeds, Nottingham, Sheffield, Swansea, Warwick and UCL. There is nothing in the patterns of working of these teachers that justifies the use of worker arrangements.

Similarly, some FE colleges are making use of wholly owned subsidiary companies to take on hourly paid staff and hire them back into the college. These lecturers are put on worker or agency worker contracts which mean they have fewer employment rights. **Sheffield College**, for example, employs hourly paid staff to teach at the college through its wholly owned subsidiary company, 'Sparks Ltd'. **Bradford College** does the same using its wholly owned subsidiary company, 'Beacon Recruitment and Placement Services'. **Doncaster College** has a wholly owned subsidiary company called DC Teach Ltd which it uses to hire in temporary academic staff.

While these agencies do provide genuine temporary workers, they have also increasingly been used to provide cheaper front line teaching. Bradford College's 'Beacon', for example, provided back to its parent college almost 200 teaching staff over a 12 month period, working more than 30,000 hours for the college. Beacon's agency workers do not have access to college pay scales, they have only statutory maternity and paternity leave and pay, and they have only a NEST pension.

In addition to the problems of the lower contractual entitlements they carry, zero hours contracts and worker arrangements embed the starkest possible imbalance of power in the workplace. This makes workers highly reluctant to assert their rights, even if they know they have them.

### **Q1 Do you think workers typically receive pay during periods of annual leave or when they are off sick?**

No. Eleven years after rolled up holiday pay was declared unlawful, a disturbing number of universities, colleges, adult education service providers and prison education services continue to employ the practice meaning that many casually employed staff do not take their holiday or are not paid the correct amount for their holiday.

Many workers and hourly paid staff report that there is no allowance for sick pay in their contracts and are unaware about their entitlement to statutory sick pay.

- *"I have never received holiday pay within my hourly paid contract"*
- *"We don't get holiday pay at all and we are not paid if we are off work due to illness or compassionate leave."*
- *"If I am sick for a few days I am not paid, so I try to go to work even if I am not feeling well."*
- *"For one of the universities I work for, sick pay is generally not included in the contract. There have been times when I have taught while I was very ill because all my teaching is condensed to one day and I simply could not afford to miss this day due to illness."*
- *"There's no sick pay available with my contract so when I am ill and can't work I don't get any money, meaning that I often go into work poorly."<sup>1</sup>*
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Many other precariously employed staff also report that they do not earn enough to qualify for statutory sick pay. A survey of members on insecure contracts in 2016 revealed that at least 14% earned less than £500 per month, indicating that they would struggle to access the threshold for statutory sick pay. Around 15% also said that they had experienced problems accessing sick pay even when they were entitled to it.

- *"I was very ill 7 years ago with a diagnosis of cancer. I didn't have enough contributions to receive Statutory Sick Pay. I used to be paid 10 pounds an hour with*

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<sup>1</sup> Quotes throughout this response are taken from the results of a survey of casualised staff conducted in Spring 2015. The results formed a [report published in May that year](#).

*no holiday pay. I am now paid holiday pay but my hourly rate of pay has gone down to £8.36 bringing it up to 10 pounds an hour!!"*

- *"I needed to miss a day's teaching owing to illness and was told that I wasn't eligible for sick-leave/pay so have to make up the hours another time - somewhat difficult when I have another job."*
- *"Because there was no sick pay available when I was hospitalised, I had to go back to work 2 months before consultants said I should, on horrible medication so I could barely function. This delayed my full recovery considerably."*
- *"I do not get paid sick pay if I do not work, not even SSP; this has led me to come into work at times when I should have stayed at home simply because I cannot afford to take the time off."*

Many other staff remain unaware of their rights to statutory sick pay, often because their contractual and employment rights are never explained to them.

- *"I didn't know about statutory sick pay - I have often gone to work when unwell."*
- *"I have never received holiday or sick pay whilst being employed by ---- University, and I am not aware that I am entitled to either."*

It's also common for workers not to assert any rights to sick pay because of the grotesque imbalances of power that are embedded in these contracts. Workers who are dependent on the allocation of teaching work to get by are reluctant to assert their rights for fear of losing work at a later date.

### **Q3. What barriers faced by individuals seeking to ensure they receive these payments?**

As indicated above, the biggest barrier faced by workers in seeking to assert their rights to sick pay and holiday pay is the imbalance of power they face in the workplace.

- *"I have never taken a day off when I was sick as I was afraid I would not be paid for the hours I was supposed to teach."*
- *"It has never been made clear to me what I am entitled to and I am made to feel awkward when I ask such questions. As such, I would never attempt to access sick pay."*
- *"I never claim sick pay as I am afraid my employers will use poor health as a reason to fire me - it also reduces my attractiveness to other employers."*

This imbalance of power can only be tackled by raising the floor of employment rights, policing this through more effective state enforcement and enabling unions to organise and conduct effective collective bargaining

### **Q 4: What would be the advantages and disadvantages for business of state enforcement in these areas?**

UCU agrees with the TUC that effective state enforcement of basic workplace rights would help to ensure that exploitative employers cannot undercut employers who comply with employment law.

### **Q5. What other measure, if any, could government take to encourage workers to raise concerns over these rights with their employer and the state?**

The best solution to the problems raised here lie in enabling effective collective bargaining. UCU has been able to tackle issues relating to the underpayment or non-payment of holiday

pay in a number of universities recently. In each case, workers were able to raise issues collectively through their union, the union raised the issue collectively with the employer and negotiated a collective solution which was then communicated to all staff, raising awareness of workers' rights and entitlements in the process.

Similarly, recent agreements that have moved staff off zero hours contracts and onto proper employment contracts have been able to bring staff into occupational sick pay schemes and led to workers receiving proper sick pay. In addition to state enforcement of entitlements, government must recognise the key role of unions and collective bargaining in ensuring decent standards of work and must remove obstacles to union organisation.