

SHOOSMITHS

Understanding Atypical Working: The Employment Rights Bill and Implications for Zero Hour Contracts

Kate Dodsworth - Partner
Phil Crowe – Partner
Simon Fennell - Partner
Jo Tunnicliff - Senior Associate

Connect with your speakers on LinkedIn



Simon Fennell
PARTNER



Jo Tunnicliff
SENIOR ASSOCIATE



Kate Dodsworth
PARTNER



Thank you for joining!

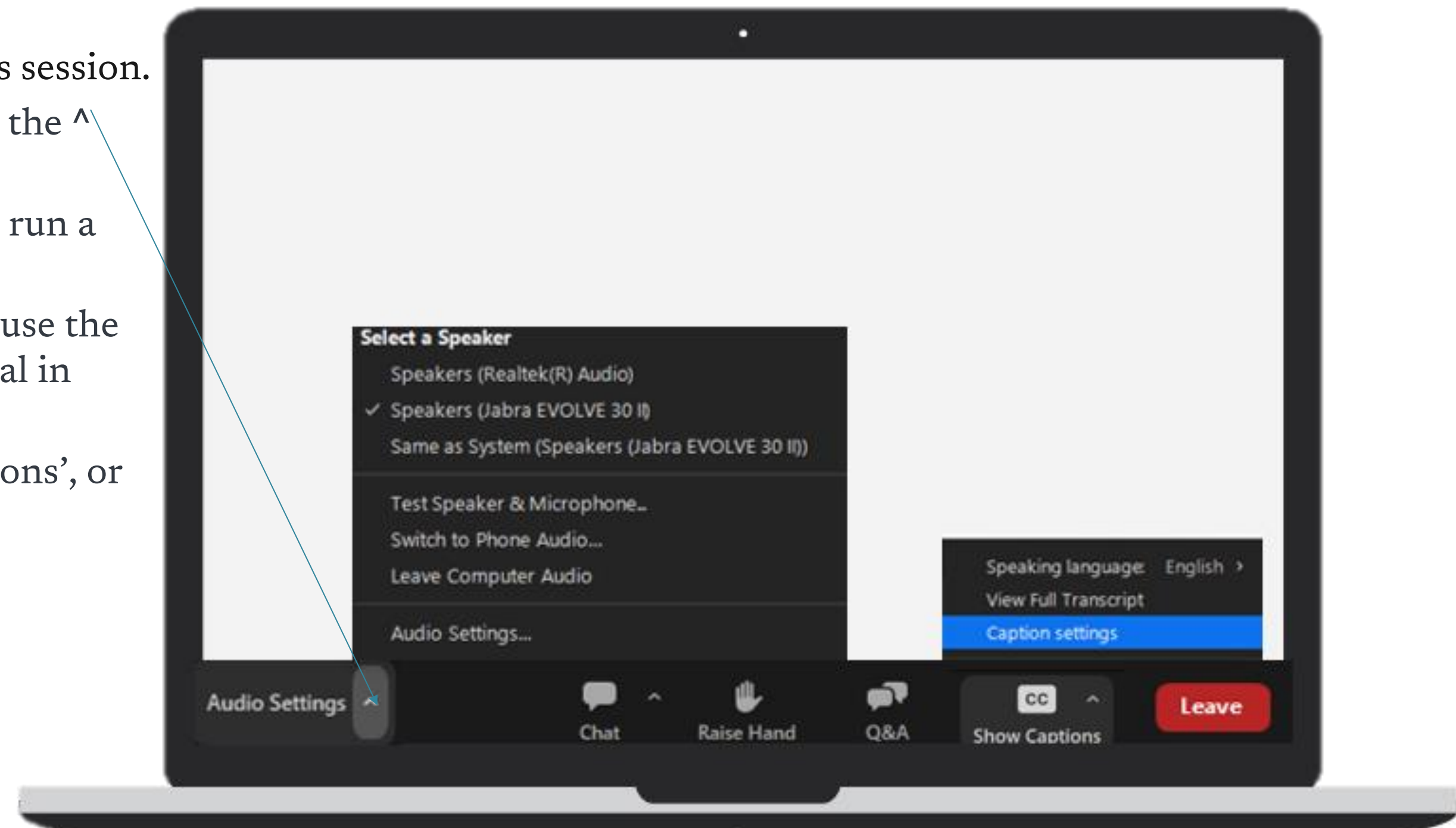
All delegates are automatically muted throughout this session.

- **For audio controls**, to change your audio, click on the ^ next to 'Audio Settings'
- From here you can select your speaker options and run a test
- If you are having issues using your computer, then use the **'Switch to Phone Audio'** option where you can dial in from a telephone and listen.
- To switch on subtitles, simply click on 'Show Captions', or click on the arrow and select 'View full transcript'

Please note:

The slide deck from the webinar will be shared following the session.

This session is being recorded.



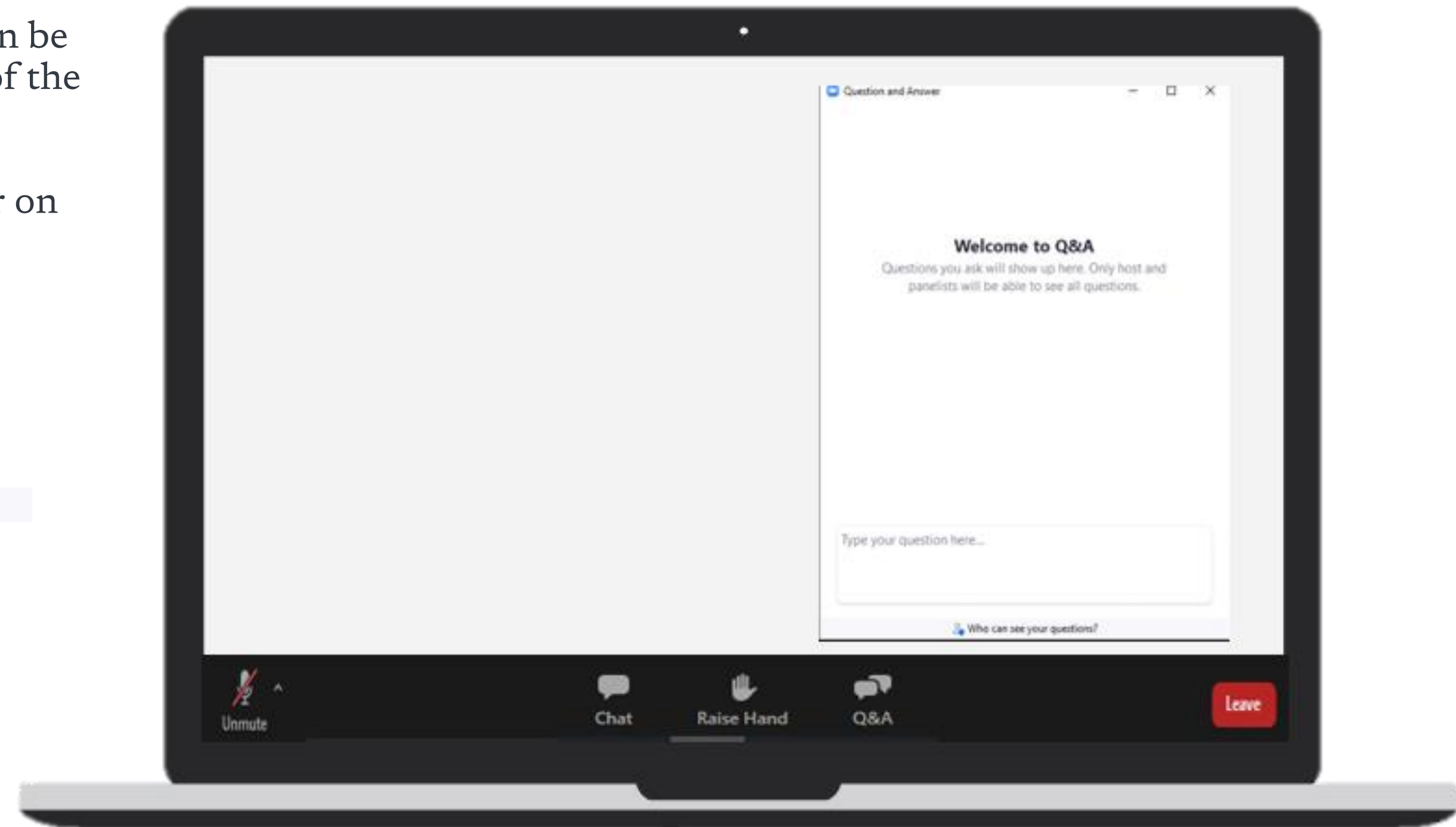
Ask a question

Please ask questions through the Q&A panel, which can be launched by clicking the **‘Q&A’** button at the bottom of the screen.

- Type your question in the box below and press enter on your keyboard to send

Type your question here...

 Who can see your questions?



Agenda

- This is our third webinar in a series of webinars relating to the changes flowing from the Employment Rights Bill
- Current approach to atypical working
- Determining employment status
- Zero hour contracts
- Proposed reforms to atypical working under the Employment Rights Bill

Determining Employment Status (1)

– why does it matter?

- Employee – has the most rights (e.g. National Minimum Wage, paid holiday, parental leave, redundancy pay, the right to bring unfair dismissal claims)
- Worker – not entitled to make flexible working requests or take parental leave
- Self-employed – limited employment rights



Determining Employment Status (2)

– legal tests

- Multiple test (**Ready Mixed Concrete v Minister of Pensions [1968]**)
 - Under the control of the employer
 - Personal service
 - Nothing inconsistent with employment
- Mutual obligations test (**Carmichael and another v National Power plc [2000]**)
 - The employer must be obliged to offer work and the individual must be obliged to do that work

Determining Employment Status (3)

– landmark cases

- Employment status can sometimes be difficult to determine
- Various tests have developed through case law
- **Uber v Aslam, Farrar and others [2021]** - Uber drivers found to be workers
- **Pimlico Plumbers Ltd and another v Smith [2018]** – Plumber found to be a worker
- **Independent Workers Union of Great Britain v CAC [2023]** – Deliveroo drivers not required to do work personally and so were neither a worker or employer
- Labour government long term aim is to merge the categories of employee and worker

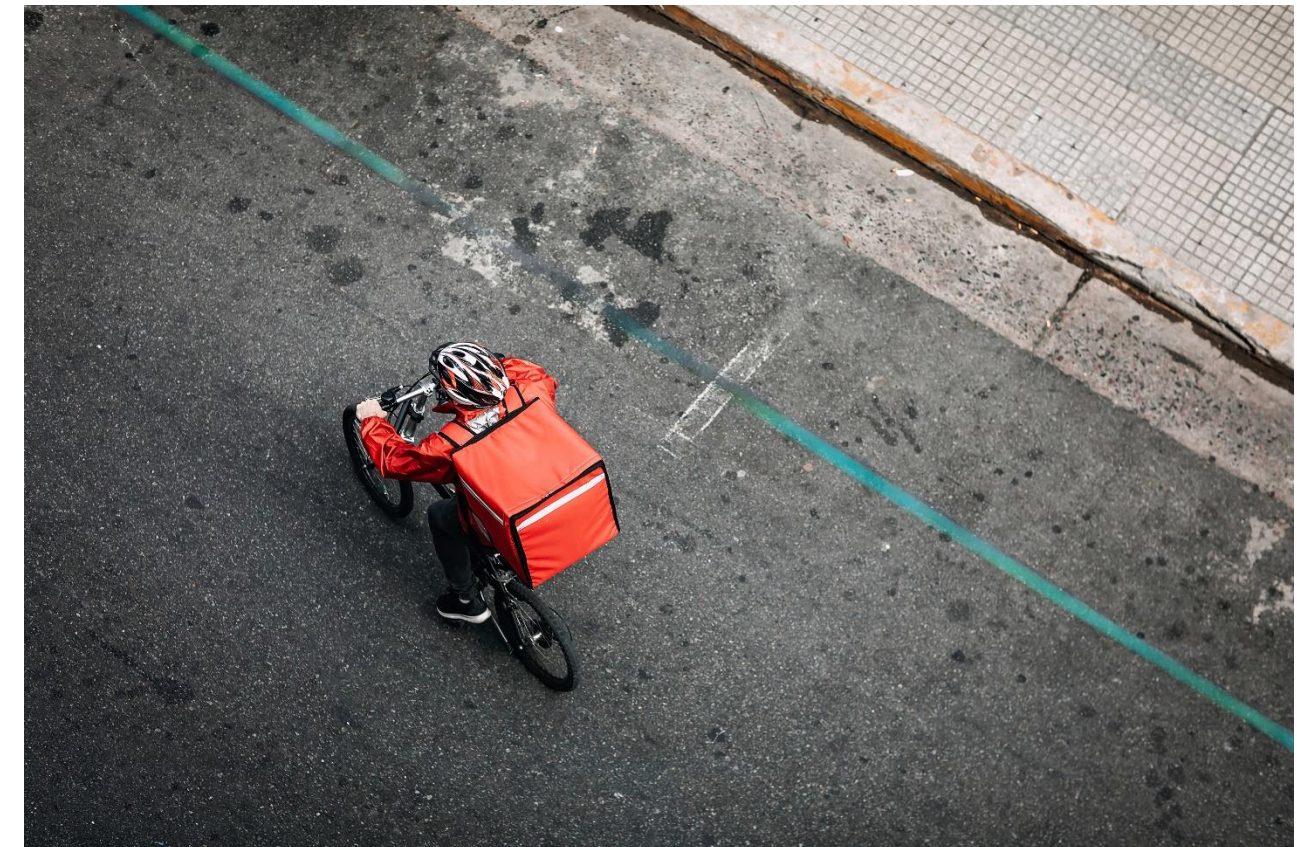
Some practical examples...

What are Zero Hour Contracts?

- An agreement where there is no obligation to provide or undertake work
- Advantage: Flexible arrangement which can suit both the employer and employee e.g. hospitality sector where there are peaks in demand, students and people with caring responsibilities
- Disadvantage: Lack of security and certainty in terms of working hours and income

What are Zero Hour Contracts?

- No mutuality of agreement and no obligation to do work
- Individuals on zero hour contracts are most likely to be workers
- Exception: where an individual is undertaking a regular pattern of work despite being on zero hour contract e.g. they work 9am – 11am every weekday

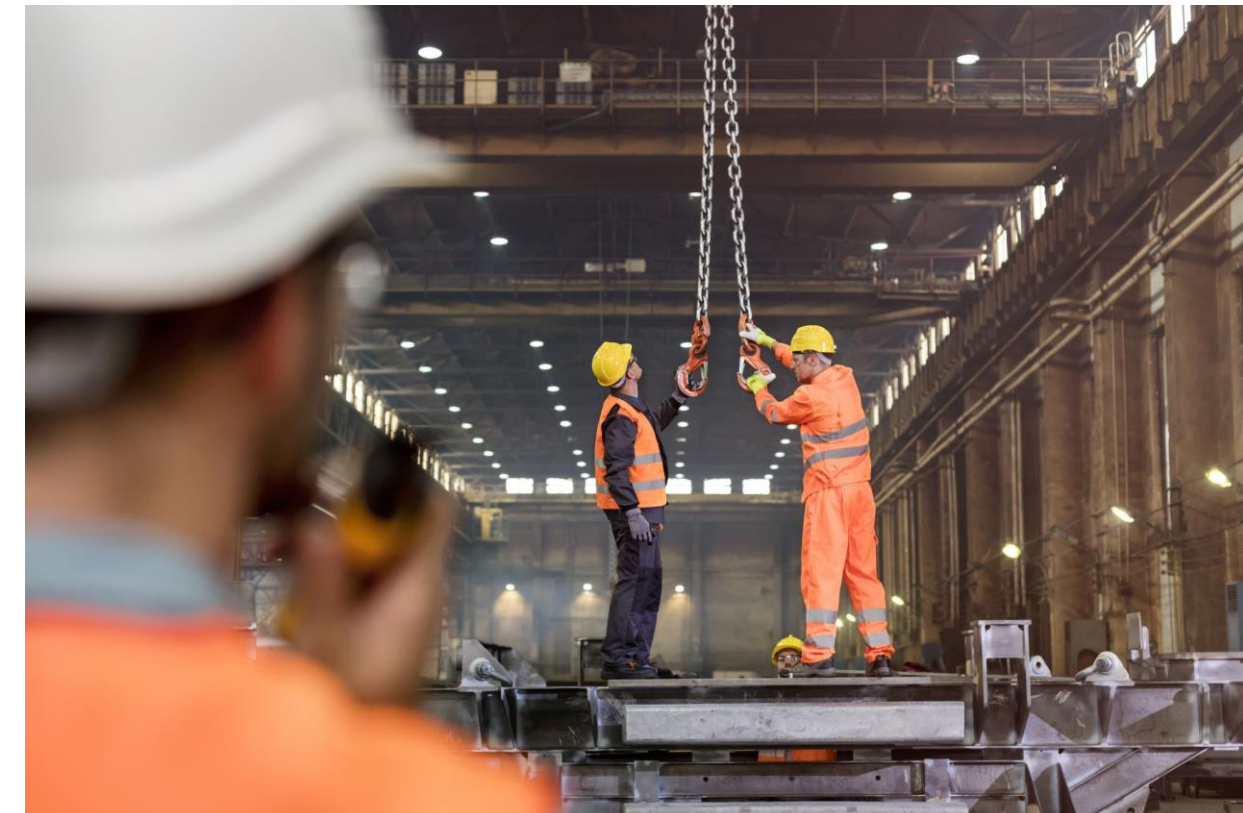


Zero Hour Contracts: Exclusivity Clauses

- Clauses prohibiting the employee from working elsewhere
- Small Business Enterprise and Employment Act 2015 set out the provision for making exclusivity clauses unlawful in zero hour contracts
- Enacted in the Exclusivity Terms in Zero Hour Contracts (Redress) Regulations 2015 meaning exclusivity clauses in zero hour contracts are unenforceable

The Employment Rights Bill: What are the changes?

- Right for qualifying workers to be offered guaranteed hours
- Right to reasonable notice of a shift
- Right to reasonable notice of cancellation of or change to a shift
- Right to payment for cancelled, moved and curtailed shifts
- Collective agreements for contracting out



Guaranteed Hours

- What we know:
 - Employers will be required to offer a guaranteed hours contract to qualifying individuals
 - Qualifying individuals will be those on zero hour contracts and low hour contracts who regularly work over their specified hours
 - NB: means employers cannot avoid these requirements by having workers on a contract guaranteeing minimum but low number of hours
 - The hours offered must reflect the hours worked over a defined reference period
- What we don't know:
 - Low hours definition will be subject to a consultation – the result of this will be key as it will determine the scope of the changes
 - The length of the reference period – likely to be 12 weeks, could create significant administrative requirements

Guaranteed Hours

- What we know:
 - Will be the ability for workers to stay on zero hours contracts if they want to
 - When a guaranteed offer is made, the individual will have the right to negotiate the offer
 - If the employee accepts the offer, they will start working under the varied contract the following day unless otherwise agreed
 - If there is no response to the offer, the worker will be presumed to have rejected the offer
 - The employer cannot alter the terms and conditions as part of the offer (i.e. reduce pay)
 - If the worker resigns or is dismissed during the reference or offer period, the offer is treated as withdrawn
 - Workers cannot be subject to a detriment because they have accepted or rejected any guaranteed hours offer
- What we don't know:
 - Will there be a time limit for the worker to respond to the offer?
 - How long after each reference period cycle will the employer have to make an offer?

Right to reasonable notice of shifts and cancellation of shifts

- What we know:
 - If shifts are changed, cancelled or curtailed at short notice, the employee will be entitled to compensation
- What we don't know:
 - What will constitute 'short notice'
 - What the compensation will be – suggestion that this will be what the employee would have earned had they worked the shift

Contracting Out

- What we know:
- Employers will be able to bargain with a Trade Union in order to contract out of the provisions, provided this is replaced with another contractual arrangement i.e. incorporated into the individual's employment contract
- What we don't know:
- The parameters that will be put in place here

Who else will this apply to?

- These measures will also be adapted and applied to agency workers
- Won't impact those on full-time contracts who occasionally work overtime
- No expectation to guarantee hours where work is genuinely temporary



Fixed Term/Limited Term Contracts

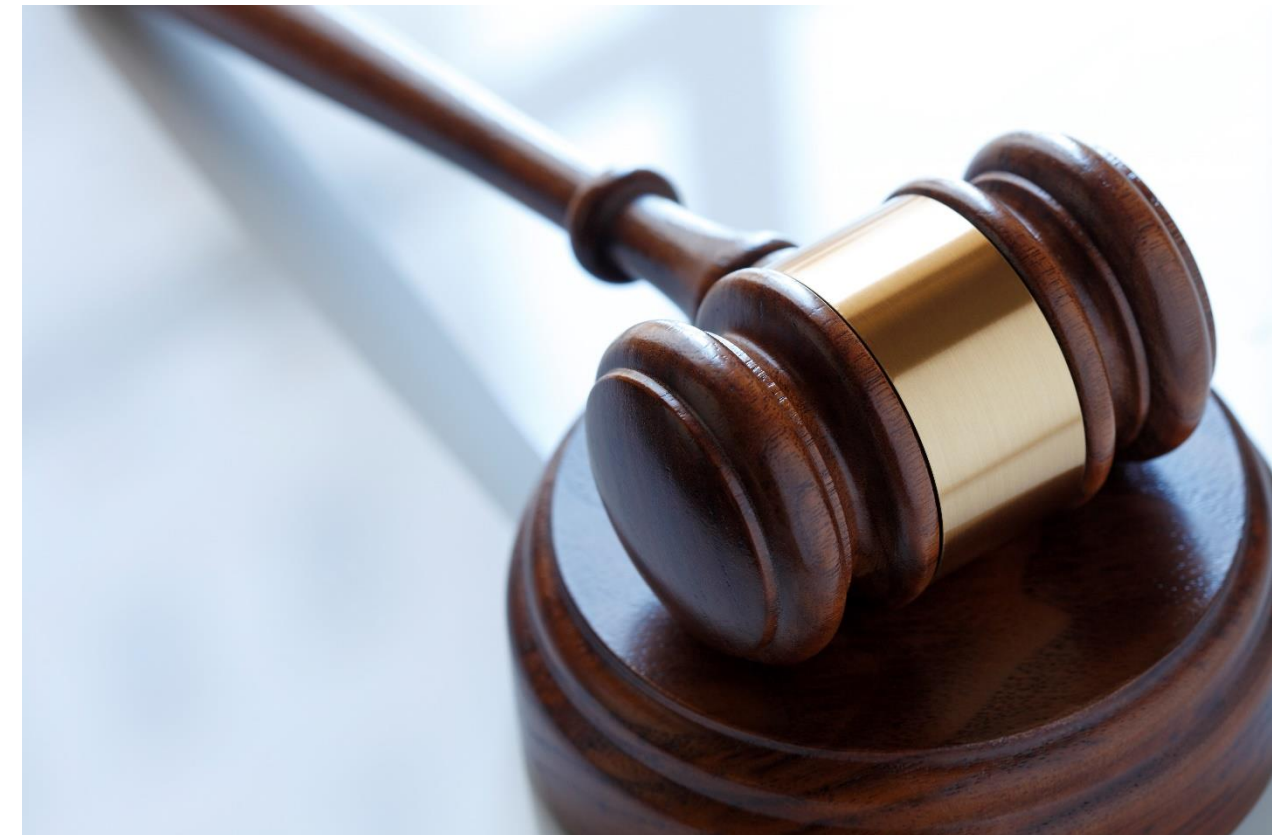
- A limited term contract can be offered where it is 'reasonable'
 - the worker is needed for a particular task and the contract will be terminated when that task is performed
 - the worker is only needed until the occurrence of an event (or failure of an event to occur) and the contract will be terminated when that occurs (or doesn't occur)
 - there is only a temporary work need and the contract will be terminated when the employer reasonably considers that need has ended e.g. maternity cover.

Other Requirements

- New requirement for employers to take reasonable steps to ensure workers are given specified information in relation to their rights to guaranteed hours during the first two weeks, the ‘initial information period’
- Important to note: if you already have existing workers on zero hour contracts they will need to be informed of their rights within two weeks of this law coming into force, regardless of their start date

Implications of Breach

- Workers will have the right to bring employment tribunal claims for breach of these duties
- Amendments to the Employment Rights Bill also extend time limits for such claims to 6 months
- Could have significant cost implications for employers



Zero hours contracts: Next Steps

- Consultation published on application of these measures to agency workers
- Consultation on definitions, length of reference period (likely 12 weeks), terms to be offered and review periods promised
- Further regulations will then be made to bring these provisions into force

Questions?

SHOOSMITHS

FOR
WHAT
MATTERS