



Employment Law Information – Update

Zero Hour Working Practices – Not Zero Hour Contracts – The Real Test

The case of Ticketline Trading as Ticket Master and Sarah Mullen DWT1434 <http://www.workplacerelations.ie/en/Cases/2014/April/DWT1434.html> which issued on 10th April is an important decision clarifying the issue in relation to what are commonly called zero hour contracts.

The Court in this case set out a detailed overview of the legislation.

The Court held that the employee, in this case, had a contract which was operated as though she was required to be available for work at all times. This is in line with Section 18 of the Act which refers to contracts where there is a certain number of hours, or, as and when the employer requires him or her to be available for work, or, both a certain number of hours and when the employer requires him or her to be available for work.

The Court found that where the employer requires an employee to keep themselves available for work the employee comes within the scope of Section 18 of the Act.

This case has significant implications for both employers and employees. It goes further than the normal “zero hour contracts” situations.

If a contract of employment requires an employee to work say 40 hours per week and the employer does not provide work then the employee may bring a claim under the Payment of Wages Act but may also bring a claim under the Organisation of Working Time Act.

Under the Organisation of Working Time Act the employee would be entitled to claim 10 hours pay for each week. However, in addition, the Organisation of Working Time Act provides for compensation of up to 2 years wages.

A number of employers will have what are commonly called “zero hour contracts”. However, the actual wording of same, and, the way they operate in practice will now be subject to review as to whether the employee does have rights under the Organisation of Working Time Act. In our view, clearly if the employer requires the employee to be available or if the contract provides for a set number of hours or a combination of either of these two situations the employee will have a claim against the employer.



The case is also important in that it confirms that the Labour Court will not look just at the written terms of any contract but will also look at what the relationship between the employer and the employee was. The Court will consider what representations and statements were made by or on behalf of the employer. In this case the Labour Court accepted that the statements were made on behalf of the employer which required the employee to be available for work. As a result of this the Labour Court awarded compensation of €3000. The experience in Ireland is different than that in the United Kingdom. In the UK, There is no obligation on an employer even if they require an employee to make themselves available, to pay the employee or to suffer the potential of a claim under the equivalent of Section 18 OMTA if work is not provided. The Irish legislation is different. There is some advice issuing from certain entities that the alternative is to provide a contract as a “casual worker”. Merely calling a contract a “casual employment” is not in itself sufficient. A court in Ireland will look behind the title of any contract to find out what it actually says. The most recent decision of the Labour Court enables the Court to look at what the actual relationship between the employer and employee was. In addition the Court will look to see what was said to the employee by way of statements or representations. Employers who are considering either zero hour contracts or casual contracts of employment need to carefully look at all documentation to make sure that there is no requirement whatsoever for the employee to be available to work.

In addition, employers must make sure that managers or supervisors do not say anything to such employees which could be deemed to be a requirement for the employee to be available or required to be available to work.

Conclusion

If you have questions concerning casual employment contracts or zero hour contracts the firm of Richard Grogan & Associates would be pleased to assist you.

We can be contacted on 01 6177856 or by email: info@grogansolicitors.ie

Before acting or refraining from acting on anything contained in this Guide legal advice from a Solicitor should be obtained.

2 May 2014