Submission of Tom Buckley

to the

Employment and Equality Committee of the Parliament of Finland

On the Citizens Initiative for stable work

Introduction

- I am the Assistant National Secretary of Unite Union.
- Unite Union is a New Zealand Trade Union which represents 7000 employees who work in the service sector.
- A majority of Unite’s membership works in the Fast Food industry.

Introduction

- New Zealand has a total workforce of 2,560,000 employees.
- Some estimates put the number of workers on zero hour contracts at 97,400.
- In 2014 Unite Union initiated a campaign to end the practice of Zero Hour Contracts in New Zealand.
- In March 2016, legislation passed in New Zealand’s Parliament which outlawed the practice of Zero Hour Contracts by an amendment to the Employment Relations Act 2000.

Zero Hour Contracts

- In New Zealand zero hour contracts were commonly used, particularly by large employers and in low income jobs.

- Zero hour contracts offered employees no minimum hours and there is no commitment to offer work but requires the employee to work at the discretion of the the employer. These contracts often included provisions that required employees to work at any time during a day or work and restricted employees from accepting secondary employment.

- Unite has found that zero hour contracts are widely used in many industries in New Zealand including; Fast Food Restaurants, Cinemas, Casinos, Hotels, Aged Care, Retail and Property Services.

Zero Hour Contracts

- Unions have attempted to negotiate the removal of these contracts from workplaces through collective or to minimise the impact of these provisions over the past 10 years. These attempts have largely been unsuccessful.

- Zero hour contracts have mistakenly been referred to by some people as “casual” employment agreements.

- In New Zealand Casual employees must be irregular and intermittent employment and the offer of work can be declined by the employee. The courts have ruled that being put on a roster changes the status of the employment agreement to that of a regularly employed worker.

Zero Hour Contracts

- Worker’s on zero hour contracts report that they feel that their employment is precarious and they often feel vulnerable. This breeds a culture of fear for workers that promotes poor behaviours in the workplace, like bullying, favouritism, exploitation and harassment.

- The Ministry of Business, Innovation and Employment wrote in a Regulatory Impact Statement on zero hour contracts: “A root cause of this problem is the inherent power imbalance between the parties to the employment agreement. Employees on low incomes tend to be young and inexperienced workers or low qualified and tend to get work where possible. This means these employees have less bargaining power and therefore less ability to negotiate out of this risk being placed upon them.”

- In early 2015 Unite surveyed it’s 7000 members asking if they would like more work, 80 percent of the respondents indicated that they would want more work.

Negotiating the removal of zero hours contracts

- Unite Union ran a public campaign to end the practice of zero hour contracts in the fast food sector initially and other industries.
- In early 2015 all major employers in the Fast Food sector had agreed to remove zero hour contracts.
- All of the Fast Food sector employers agreed to guarantee 80% of the average hours worked over the previous three months.
- Skycity Casino (which employees 3000 workers) agreed to abandon the use of zero hour contracts in August 2015.

Legislative reform

- Under increasing public opposition to zero hour contracts the Government to agree to reform the legislation and ban the zero hour contracts.

- On the 10 March 2016 Parliament voted unanimously to ban zero hour contract which was implemented on 1 April 2016.

- These changes were included in ss 67C-H and ss 103(1)(h) of the Employment Relations Act 2000.

Legislative reform

- An obligation to have agreed hours of work in all employment agreement, which includes any or all of the following provisions:

    - the number of guaranteed hours
    - the start and finish times
    - the days of the week the employee will work
    - any flexibility in the start and finish times or days of the week the employee is required to work

Legislative reform

- An availability provision may be included in an employment agreement but only that can require the employee to perform work which is conditional on the employer offering work.

- However to include an availability provision the employer must offer the employee guaranteed hours in the employment agreement and have a genuine reasons based on reasonable grounds to include the availability provision.

- If an availability provision is included in an employment agreement the employee must be reasonably compensated having regard for:
  - the number of hours the employee is required to be available;
  - the proportion of the hours that the employee must remain available for compared to their guaranteed hours
  - the nature of restrictions resulting from the availability provision
  - the rate of payment for the work the employee is available
  - if the employee is remunerated by salary the rate of the salary.

Legislative reform

- Any work in addition to the guaranteed hours and an availability provision can be refused be an employee and the employee will not be treated adversely for refusing this work.

- A requirement to reasonable compensation for work that is cancelled and restrictions on stopping workers from taking up secondary employment.

Impact of the end of zero hour contracts

- Collective agreements negotiated in 2015 banned zero hours contracts in the fast food sector and at Skycity Casino have now been in place for 18 months. There has been no reduction in employment as a consequence of the ban.

- The new law has been in effect for six months and there has been no reduction in employment as a consequence and unemployment has reduced following the introduction of the new legislation.

- Unite has been directly involved in removing the practice from Hotels and Property Services following the introduction of the new legislation and there has been no reduction of employment as a consequence.

Impact of the end of zero hour contracts

- Casual employment remains lawful under the new legislation.
- The Ministry of Business, Innovation and Employments Regulatory Impact Statement (13 August 2015) highlighted that their only concern about reduction of employment as a consequence of the legislation was that “principle based legislation can have a chilling effect on employment practices (as employers may become more risk adverse).”
- In the same regulatory impact statement the Ministry stated: “Initial stakeholder feedback suggests that the direct short term costs for some employers will not be significant.” They also commented that in relation to the broader labour market “the proposals should improve the labour market matching process and help to lift productivity.”

Impact of the end of zero hour contracts

- Unite has not seen any reduction in jobs as a consequence of this legislation.

- The price of a Big Mac from McDonald’s in New Zealand is $6.00 NZD (3.60 euro). In Finland a Big Mac costs 4.60 euro. Unite has not seen any significant increase in prices of goods sold by employers transitioning from the use of zero hour contracts.

- Unite has seen no increase in prices of goods or services as a consequence of these reforms.

Testimonials from Workers before the law changed

- A Burger King employee Brett Patterson said “Because we’ve got zero hours in our contract - like never guaranteed - I find myself always trying to fight for the hours. It’s hard when you get sick, because when you get sick you can’t be there as much to fight for the hours.” (Radio New Zealand, 13 November 2014)

- Stephanie Phillips a McDonald’s Employee. Ms Phillips says she suffered three broken ribs and punctured lung in an accident outside of work, but didn’t want to call in sick at McDonald’s in Orewa. “I kept working because I needed the hours, because I have a son, and they told me hours get cut if you don’t come to work.” When she started coughing up blood, Ms Phillips claims the restaurant manager said she couldn’t go home unless someone covered the shift. (Three News, 1 Dec 2014)

- Martha, a 19-year-old KFC worker in Wellington, got into a dispute with her boss over whose job it was to finish a task. When she refused to do it, the “big boss” reminded her that he was hiring new staff - an implicit threat that her hours would be cut. “In my head, I was thinking “is that a threat? Are you threatening me… Are you serious? I’ve been working here for four years.” And for I'm to just say that … I wasn’t mad, it was just hurtful. (The Wireless, 2nd December 2014)

Testimonials from Workers before the law changed

- Oliver says that flexibility doesn't go both ways. "It's not flexibility if you're in a position where you have to do it, or you have to be on call, so if your manager calls you on your day off and says "do you want to come in and work', a lot of the time, the answer is 'yes I have to, because I am not going to have enough money in my pay at the end of the week." (The Wireless, 2nd December 2014)

- A fast food worker, Rhys Manuka Smith, 24, say that breeds a culture that pits staff against each other – whoever is the friendliest with the boss will get the most shifts. "Honestly sometimes it feels like high school, when this is supposed to be a professional workplace. There shouldn't be things like that, and it should be fair for everybody." Rhys says there are not enough checks and balances against the power given to management by being able to roster people off or cut their hours. (The Wireless, 2nd December 2014)

- Paige Grace, 20, employed by Burger King "You can't say I've got a job when you're not letting me work my hours … make me redundant and pay me out, don't sit me on zero-hours, so I get paid nothing, but I can't get another job."

Testimonials from Workers before the law changed

- Dallas Merlo Sims, 21, a Wendy’s employee says the way the company uses the zero-hour contracts is “kind of stink”. He believes they are wielded as a punishment. “If they get real mad at you, you do something wrong or against procedure, you can have your hours done, no hours next week, which is kind of stink.”

- Victoria Hopgood a McDonald’s employee said “All of us are on like zero hour contracts, it is the most stressful thing for all the employees I know. Zero hour contracts can be used as a bullying toll, I know of instances where if people aren’t in the [manager of] scheduling hours best books they can get like eight hours a week.”