



What's new with zero hour contracts?

We have taken the opportunity in this newsletter to share some zero hour contracts trends.

- **Abercrombie & Fitch v Bordonaro (Italy)**

An Advocate General Opinion has been issued in this case, which involved an individual who had worked for Abercrombie for a year and a half on an on-call contract (the Italian equivalent to a zero hour contract). Under Italian law, these contracts are permitted for anyone aged under 25 and over 45 'in any event', but between the ages of 25 and 45 they are only permitted in certain circumstances. The individual normally worked three to five times per week but from July 2012 (after he turned 25), he was not included in the work rota. Abercrombie said that as he had turned 25, his contract was terminated since he was no longer permitted to have an 'on call' contract. The individual claimed that this was age discrimination and the Italian Court made a reference to the CJEU.

The AG's Guidance on this claim was as follows:

- Direct discrimination on grounds of age can be justified if it is objectively and reasonably justified by a legitimate aim;
- The assessment of the less favourable treatment ought to be a comprehensive assessment of the impact of the operation or rule;
- The encouragement of employment does constitute a legitimate objective, as does promoting flexibility. In this case, there were several legitimate aims, and it was for the Italian court to determine what the objective was; and
- The Italian Court needed to consider less intrusive alternatives to automatic dismissal of individuals when they reached the age of 25;

Looking at the dismissal of individuals at 25, whilst possibly supporting young employment "*merely postpones unemployment to the next age group*". *The AG's view is not binding on the Court and is only an opinion. The case will now be sent back to the Italian court for a decision.*

- **Santander and the 'one hour contract'**

As reported in the news, Santander has been using a subtle variation on the zero hour contract, to employ on-call customer service assistants ('CSA') employees on contracts that give employees at least one hour of work every month.

- **Exclusivity ban also applies where provision requires consent**

The Small Business, Enterprise and Employment Act 2015 prohibits the use of exclusivity clauses in any zero hour contract. This means that an employer cannot stop an individual from looking for work or accepting work from another employer.

As a point of clarification for employers, a restriction on preventing workers from working for others without the employer's consent is also invalid and unenforceable.

- **McDonald's offers fixed-term contracts to zero hour staff**

McDonald's (which is one of the biggest users of zero hour contracts in the UK) has announced that it will offer 115,000 of its zero hour workers the opportunity to switch to guaranteed hours contracts, following complaints from staff about the difficulty of obtaining mortgages and loans. In exchange for their zero hour contracts, staff will be offered a guaranteed number of hours in line with the number of hours per week they work. In a trial carried out by the fast food chain in 23 restaurants, they said that 80% of workers decided to stay on zero hour contracts due to the additional flexibility.