

**Submission of the  
Public Service Association Youth  
Network (PSAY)  
to the  
Transport and Industrial Relations  
Committee  
on the  
Employment Standards Legislation Bill  
2015**



## Introduction

- 1.1. This submission is made on behalf of Public Service Associations Youth Network (PSAY), a formal network within the Public Serve Association (PSA) for members aged 35 and under. We seek to increase participation and engagement by young members in the union and in advocating for better policy, practice and public opinion on issues that impact on young workers
- 1.2. The PSA Youth Network endorses the submissions by the PSA and the over one-thousand submissions made by PSA members. We are however making our own submission as the Employment Standards Legislation Bill (the Bill) will disproportionately impact on young workers.
- 1.3. PSAY can be contacted in relation to this submission through national co-convenor Caleb Gordon at [caleb.gordon@wmt.org.nz](mailto:caleb.gordon@wmt.org.nz) or on 021 0221 2547
- 1.4. PSAY wishes to make an oral submission to the Committee in relation to the Bill.

## 2. Amendments to the Parental Leave and Employment Protection Act 1987

### 2.1. PSAY support the changes to parental leave, particularly:

- Extending paid parental leave to non-standard workers and those who have recently changed jobs;
- Extending entitlements to a wider group of primary carers other than biological and formal adoptive parents;
- Enabling workers to take unpaid leave flexibly;
- Introducing "keeping in touch" hours;
- Extending unpaid leave to workers who have been with their employer for more than 6 months but less than 12 months;
- Allowing workers to resign and still receive payments.

2.2. These changes will help to reduce inequalities in income and opportunities for women and carers in the labour force. However, there are still more amendments the Government should make to parental leave including the extension of paid parental leave to six months which is shown to deliver healthier babies and means parents are more likely to re-enter the workforce after having children.

**3. New sections 67C-67F of the Employment Relations Act 2000 - "Zero Hours"**

3.1. PSAY does not support these changes.

3.2. The government promised it would outlaw zero hour contracts. However, instead, the Bill seeks to legitimise these unethical employment practices by bringing some of the worst aspects of zero hour contracts into law. The Bill would institutionalise an existing form of insecure work and is likely to encourage employers to use them.

3.3. If an employer requires a worker to be available for work outside their contracted hours they will have to include an availability clause in the employment agreement, which must include compensation for being available for work. However, there is no lower threshold for how low this compensation can be - it could be as little as \$1. Or, the compensation could be rolled up into salary and an employer could avoid paying anything extra at all.

3.4. Like 90 day trial periods, zero Hours agreements are often forced on workers with very little bargaining power to negotiate secure hours. They can't work for another employer during the specified availability period, and they may be unable to plan many other activities such as family time, childcare and travel.

3.5. PSAY oppose these changes as yet another backwards step in employment law.

4. **New section 67G of the Employment Relations Act 2000 - "Shift Cancellation"**
- 4.1. PSAY does not support this change.
- 4.2. Having cancellation clauses allow employers to remove certainty of hours and income at little or no cost which is unfair to workers and their families who need to pay for basics like rent, food and childcare costs each week.
- 4.3. Like zero hour agreements, no minimum level of compensation is set. This means that an employer may compensate a worker for a cancelled shift with (for example) meal vouchers which would be unfair for workers carefully budgeting to make ends meet
- 4.4. Some employers may be incentivised to break eight- or ten-hour shifts into a series of one or two hour shifts that may be cancelled with having to pay for the shift (only the minimal compensation)
- 4.5. Like the zero hour part of the Bill, the fundamental issue is that employees who have little or no bargaining power won't get a fair deal. Again, this section of the Bill is likely to make workers and their families worse off.

**5. New section 67H of the Employment Relations Act 2000 - Restricting or Prohibiting Secondary Employment**

5.1. PSAY does not support this change.

5.2. While this section may have been intended to prevent employers from unnecessarily restricting secondary employment for employees, the provision has been poorly thought through.

5.3. Under current law, the question of whether accepting other work breaches an employee's duty to their employer will always depend both on the nature of the interest that the employer is trying to protect and whether the new job infringes on this interest.

5.4. This new provision makes things worse for workers because it allows an employer to state blanket restrictions on secondary employment in an employment agreement that many workers will be afraid to challenge.

## **6. Strengthening the Enforcement of Employment Standards**

6.1. PSAY support the changes that introduce tougher sanctions for serious breaches of minimum employment standards and that impose clearer record keeping requirements on employers

6.2. Infringement offences are a welcome addition though the \$1,000 tariff is low compared to other laws (such as health and safety). It is important that an infringement offense is not a cheap way out of giving workers what they are due.

6.3. PSAY support the ability for workers and their unions to take action for penalties against their employers. However we note that the new remedies may only be sought by a Labour Inspector. With only about 50 Labour Inspectors in the country (much less than half as many per worker as Australia), the Labour Inspectorate remains chronically understaffed.

## 7. Moving beyond zero hour contracts and insecurity for young workers

7.1. The issues of zero hour contracts became a nationwide talking point, largely thanks to the work of members of Unite and First unions. Particularly prominent in this campaign were their young members who often risked damaging their already precarious employment arrangements by speaking out against their employer and their unethical hiring practices. As a result tens of thousands of people took a variety of actions to express their opposition and disgust to these unfair employment arrangements.

7.2. Responding to this outcry, the Government promised action and made indication it would end zero hour contracts. The expected legislation is tellingly absent from this Bill with the opposite instead being presented.

7.3. The public and workers can expect no end to zero hour contracts. As it stands this Bill provides employers with a firm, explicitly legal way to demand insecure working arrangements from their workers. This Bill is an outrage, enshrining rather than outlawing what young workers and tens of thousands of people voiced their opposition to. The Select Committee now has an opportunity to ensure that the public expectation that zero hour contracts be ended is heard.

7.4. It is our young workers who are disproportionately affected by zero hour contracts. The PSA represents thousands of young people and PSAY ensure that they have a voice that is heard. It is clear from conversations with our members that zero hour contracts do not work for them, and given a choice they would not be in them.

- 7.5. Our young workers are being failed by the current legislation and the Bill as it stands will only make the situation worse. Insecure working arrangements prevent these young workers from living their lives and from fully participating in society. The Bill as it stands will only limit young workers by establishing a damaging lifelong understanding and engagement with what work is.
- 7.6. From the moment they enter the work force young workers frequently encounter messages that they are not important. 90 day trial periods, youth rates and zero hour contracts are all ways of making sure that young workers are made to feel expendable. This sends entirely the wrong message to people at the start of their working lives, and will impact on their relationship with work from then on. For these young people their working life is framed as disposable and insecure.
- 7.7. Insecurity has become the unfortunate norm for too many young workers. The traditions of a job-for-life known to their parents are long gone. Even in the public service where such work was formerly thought to be obtainable, ongoing restructuring and a huge increase in the use of fixed-term contracts have made the notion of secure work entirely alien. For many workers under 35, this is all they have known work to be.
- 7.8. The relationship with work for young people has become a transient one. When all you have experienced and think is attainable is insecure work, coupled with a significant power imbalance between employer and worker, the outcome is a relationship between worker and workplace that is transient.

- 7.9. This is both bad for the worker and bad for the economy. For the worker, a transient relationship means a less fulfilling work experience, less use of training and professional development and ultimately, a less productive worker. This makes workers lives poorer while also negatively impacting the economy. The transient nature of insecure work means no one wins.
- 7.10. There are only gains to be had from enshrining measure that allow secure work to be accessed by everyone rather than introducing changes that are yet more backwards steps in employment law
- 7.11. Christine Erhel and Mathilde Guergoat-Larivière from the Centre for European Policy Studies note that security in employment improves labour market performance.

*Security must be understood here in a broad perspective, including job protection, but also safe working conditions, fair wages and access to social protection. All these components of security in work may increase productivity and labour market participation, and therefore favour growth and labour supply. In addition, many security mechanisms work as automatic stabilisers, which are particularly helpful during economic downturns. Increasing economic security in general – and that of workers, in particular – can foster productivity growth. Thus, the various dimensions of job quality can increase workers’ productivity and have a positive influence on economic growth and employment creation.<sup>1</sup>*

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<sup>1</sup> Erhel, C. & Guergoat-Larivière, M. (2010). Job quality and labour market Performance. CEPS Working Document No. 330/June 2010. Retrieved from: [http://aei.pitt.edu/14580/1/No\\_330\\_Ehrel\\_and\\_Guergoat\\_on\\_Job\\_quality\\_revised\\_final.pdf](http://aei.pitt.edu/14580/1/No_330_Ehrel_and_Guergoat_on_Job_quality_revised_final.pdf)

- 7.12. Just as workers lives are improved by secure employment so too is labour market performance and productivity growth. The proposed changes in the Bill aimed to address zero hour contracts look to only serve to encourage them along with casualization and on-call jobs. Just as young workers will not benefit neither to will the New Zealand labour market in terms of growth and competitiveness.
- 7.13. The absurdity of it all is that we can have both secure work and flexible work. Nobody wins when the two are seen as opposites that must be traded off against each other. Taking a different point of view, one that recognises that security in work is a prerequisite for genuine security would see provisions such as zero hour contracts banned. Instead we would see a scenario where the nature of an employment relationship is one of balance, where workers are able to retain their dignity and their needs have an equal voice next to those of their employer.
- 7.14. The Select Committee have an opportunity to send young workers a strong message. One that tells them that they are part of society, not apart from it; that their participation is welcome. The issues this Bill sought to address are massive and unfortunately the shortcomings of it are just as large. That doesn't have to be the case, we have a chance to transform the lives of worker. Having positive work experiences, feeling valued and having it known that their opinions count will have positive spin off effect beyond the workplace, into engagement with local communities, participation in our democratic process and more.

**8. Zero Hours, shift cancellation and secondary employment: What I would like to see**

8.1. PSAY think people should be entitled to know from week to week what they are going to earn and (as far as possible) when they are required to work. People need to plan their own and their family's lives and pay their bills.

8.2. PSAY would like to see:

- Certainty of hours – agreed and specific hours of work as far as possible.
- Where an individual works regular hours, their employer should be legally required to issue them with a written contract which guarantees them their existing work pattern on an on-going basis.
- Any additional availability should only be allowed on top of those agreed hours
- If shifts are cancelled the period of notice must be reasonable and in any case, not less than 48 hours.
- Compensation for availability and shift cancellation must be reasonable, e.g. half pay for a cancelled shift.
- Requirement for employers to justify the use of availability clauses, similar to the compulsory justification for fixed-term agreements as established in section 66 of the Employment Relations Act 200
- Similar requirements for employers to justify the use of casual employment agreements. Too many employers are using casual employment agreements in lieu of part-time agreements.

- Workers should be able to get second jobs unless there is a real, provable conflict with their existing work.

**9. Contact details**

- 9.1. As previously noted, PSAY wishes to make an oral submission to the Transport Industrial Relations Select Committee on the Bill.
  
- 9.2. Caleb Gordon, PSAY national co-convenor can be contacted at [caleb.gordon@wmt.org.nz](mailto:caleb.gordon@wmt.org.nz) or on 021 0221 2547.