

# Guide - Non Guaranteed Hours & Implied Contracts

v2.0



**The purpose** of this fact sheet is to provide information for Managers on the difference between workers and employees, and the different types of contract we use, including the implications of implied contracts.

### **Worker –v- Employee**

A **worker** is usually an Agency worker, or someone employed on a casual / supply / relief basis. Casual, supply and relief are all the same – the person works as and when they are needed, usually covering short term sickness or annual leave. There is no ‘mutuality of obligation’; this means that the worker does not expect to receive work on certain days or at certain times, and the council does not have any obligation to offer any work. They must feel free to turn down work with no repercussions. Once a worker starts to expect work, and the manager expects them to work, or to work a regular pattern, their employment starts to shift towards being an employee.

An **employee** has an obligation to turn up for work and to carry out the duties of their role, and in return the council has an obligation to provide this work and pay them for it. An employee usually has a written contract. Employees have more employment rights than a worker under legislation and the Single Status Agreement:

<b>Both worker &amp; employee</b>	<b>Employees ONLY</b>
National Minimum wage	Increments & continuous service
Paid annual leave	Parental Leave
Rest breaks	Right to request to work flexibly
Maximum working week	Maternity/paternity/ adoption pay
Nightshift limits & health assessment	Time off for antenatal care & dependants
Protection for Whistleblowing	Written statement of reasons for dismissal
Right to be accompanied at disciplinary/grievance	Written statement of particulars/contract of employment
Part time work protection	Sick pay
Unlawful deductions from wages protection	Protection under TUPE
Right to exercise any of the above rights	Unfair dismissal rights
Protection against discrimination	Redundancy pay

### **Zero-hour contract**

Zero-hour contracts are different to relief workers. With zero-hours, the employer has no obligation to offer any work, but when they do the worker must accept the work, usually at short notice. The council does not offer zero-hour contracts, only relief contracts.

### **Implied Contracts**

When a relief worker can argue that they have a regular pattern of work, regardless of whether it's for 4 hours a month or 40, they will most likely have an implied contract. This is when they have no physical written contract, but they have all the rights of a regular contracted employee. There are many rights that employees receive from their first day, such as sick pay, which we would be required to back pay if a worker becomes an employee through an implied contract. As soon as a regular pattern of work is identified, we should offer them a contract and HR will work with you to identify the most appropriate type of contract. The alternative is to ensure

workers do not establish a regular pattern of work to start with and relief workers are truly ad hoc workers.

### **Establishing a regular pattern of work**

A regular pattern of work is when there is either:

1. A minimum number of hours worked per month
2. Working any hours every month
3. Working the same months each year (seasonal staff)

When considering if there is a pattern of work, HR look at a worker's working pattern based on Payroll's reports. Therefore in order to ensure a worker does not establish a regular pattern, there must be breaks where they have not worked for a month/several months at a time. If there is any pattern established, they may have a valid argument for a contract of employment and we would need to honour this.