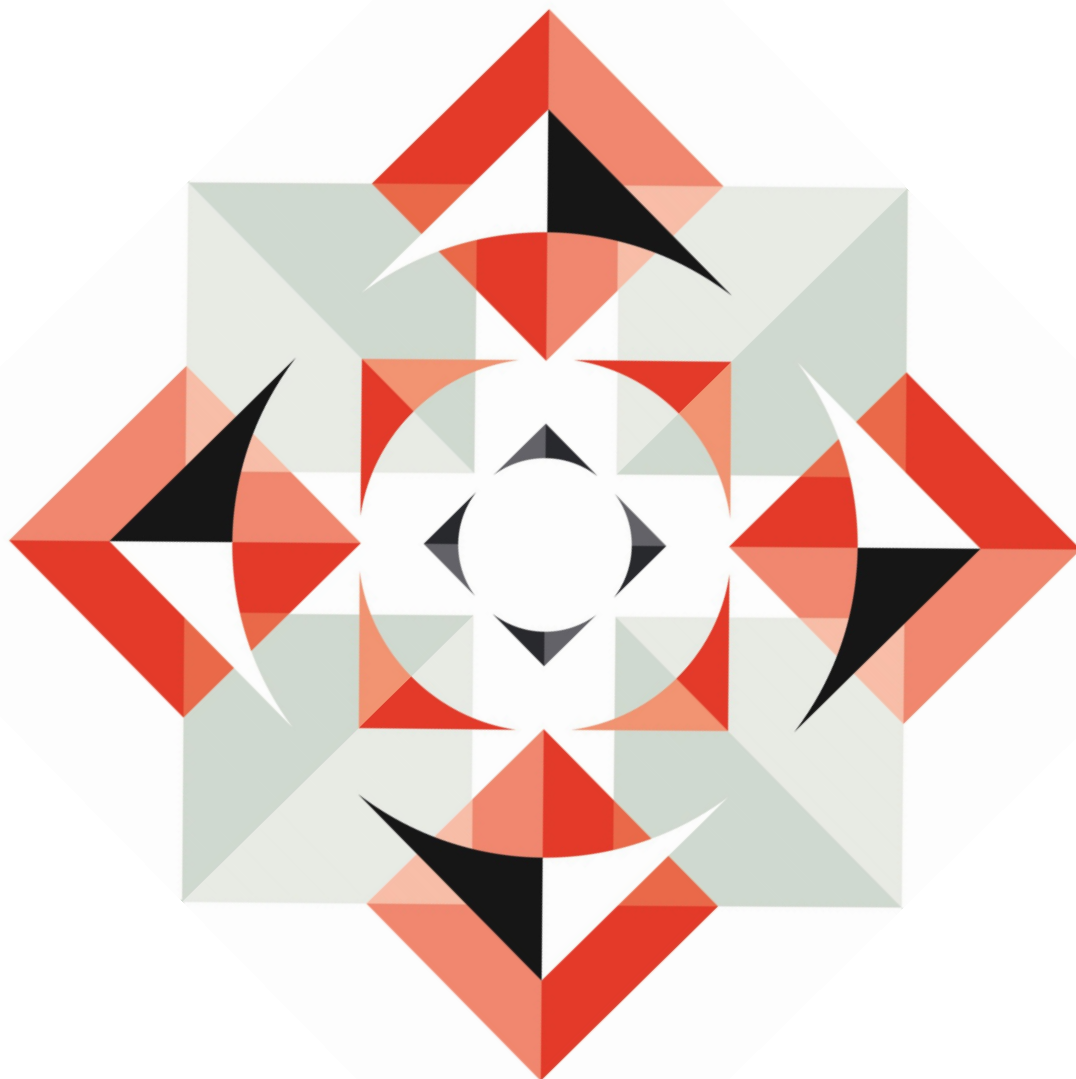


Contingent working



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Introduction

Globalisation, rapid technological advances and changing demographics all mean that many organisations are under growing pressure to become more agile in order to be in the best position to respond quickly to market changes. Engaging staff in ways which provide more flexibility than the traditional model of full-time '9-5' permanent employment can support these strategic objectives. Different working arrangements can also provide short-term or seasonal support for businesses or to temporarily fill a particular skills shortage.

Alongside this, more and more people are choosing a contingent work style, to accommodate interests or responsibilities outside of work.

In this Inbrief we summarise the main alternatives to employing staff on a full-time permanent basis.

Employment status and legal rights

No matter which type of working arrangement is used, all individuals fall into one of three employment status categories: employee, worker and the self-employed. Specific legal rights, protections and obligations attach to each category (see our Inbrief on Employment Status for further information).

Fixed-term working

Fixed-term contracts can be used for employees to work for a set period of time or to work on a set project. These arrangements can give employers certainty and flexibility. The contract usually expires automatically, at the end of the term or project, without the need for notice (although some fixed-term contracts also provide for early termination on notice before the expiry of the fixed-term). Fixed-term arrangements are particularly useful for absence cover, to meet increased short-term business demands or the completion of a specific project.

Employees working under fixed-term contracts are protected by the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 which requires that they are treated no less favourably than comparable permanent employees. For example, employers cannot exclude fixed-term employees from pension or other contractual benefits schemes, unless the employer can objectively justify the treatment.

The expiry of a fixed-term contract is treated as a dismissal for unfair dismissal purposes. Fixed-term employees have the right to bring an unfair dismissal claim if they have been employed for two years or more. Although the reason for the dismissal will usually be potentially fair (i.e. for redundancy or 'some other substantial reason'), employers also need to follow a fair procedure before the contract expires.

Fixed-term employees who have been continuously employed for four years or more on a series of successive fixed-term contracts will automatically be treated as permanent employees (i.e. employed under an indefinite contract), unless the continued use of a fixed-term contract can be objectively justified.

Part-time working

A business may consider offering a part-time working arrangement if a role will need less than full-time hours to perform or if it can be shared with another employee.

Part-time employees and workers are protected by the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, which requires that they are treated no less favourably than full-time workers, unless that treatment can be objectively justified. For example, part-time workers are eligible to join pension schemes and receive pro-rated salary and other benefits.

All employees with 26 weeks' continuous employment have the right to request to work flexibly, which could include a request to work part-time. Whilst it will not always be possible for a business to accommodate a request to work part-time, businesses should ensure that they comply with flexible working legislation when dealing with a request and be aware of possible discrimination claims (for further information see our Inbrief on Flexible working: the right to ask).

Home working

The term 'home worker' is not defined in law but is used to cover situations where employees or workers work at home (on a full-time or a part-time basis) either exclusively or just for some of the time.

The benefits of home working arrangements can include reduced overhead costs, increased productivity, more motivation and better retention. However, employers should be mindful that managing these arrangements effectively is key. For example, keep in mind the risk of employees feeling isolated from other staff or receiving less development and mentoring opportunities.

When implementing home working arrangements, employers should ensure the contract reflects the home working arrangement, confidential information and personal data is protected, a home health and safety assessment is completed and that insurance and tax consequences are considered.



Self-employment

Those engaged in self-employed relationships are commonly referred to as 'independent contractors', 'consultants' or 'freelancers'. The relationship may be:

- > a direct relationship between the business and the individual, or
- > one relationship between the business and a limited company, and a second relationship between the limited company and the individual who is providing the services (but with no direct relationship between the business and the individual)

A self-employed person is either:

- > not obliged to provide personal service (i.e. they can send a substitute) and/or there is no mutuality of obligation (i.e. there is no obligation to offer or accept work), or
- > obliged to provide personal service and/or there is mutuality of obligation, but the individual is carrying on a business and the other party is a client

The self-employed will generally take business risks and retain business profits, negotiate and charge their own fee and deal with their own tax affairs. The business does not control how, when or where they perform the services, and they are not part of the business's organisational structure. See our Inbrief on Employment Status for further information.

Casual working

Casual workers are also known as 'bank' or 'zero-hours' workers, and are normally engaged on an 'as and when required' basis. Although there is a direct contractual relationship with the company, there is usually no obligation on the company to offer work or for the individual to accept any hours offered. Casual workers may have employee, worker or self-employed status (see our Inbriefs on Employment Status and Zero Hours Contracts for further details).

Types of casual work arrangements include:

- > zero hours contracts (no minimum hours of work or pay)

- > short-hours contracts (company is obliged to provide the worker with a minimum number of hours per week)
- > flex-up contracts (hours offered to a worker can be increased within a specified margin)
- > annualised hours contracts (hours are calculated on an annual basis and worker can negotiate schedule as long as they meet the basic annual minimum hours)
- > seasonal work contracts (worker is engaged for fixed or flexible hours for the duration of a particular season, e.g. Christmas)
- > bank staff contracts (company can call on a pool of workers when work becomes available, but there is no obligation on the worker to accept it)

Interns

The term 'intern' is not defined in law but is generally used to describe a situation where an individual gains work experience from an organisation. Internships vary depending on the sector and organisation, ranging from informal arrangements lasting a few days to more formal arrangements lasting for months with the promise of future employment. The number and range of internships (or work experience placements) has increased over recent years and there has been some controversy around the possible exploitation of interns and concerns about social mobility.

Unlike volunteers, interns will be entitled to be paid the national minimum wage and holiday pay if they are workers (or employees). The Government is encouraging organisations to pay interns irrespective of whether or not they qualify for the national minimum wage and is increasing its enforcement activities.

Agency workers

Agency workers or 'temps' are usually engaged by an employment business, such as a temping agency, to perform work for one of the employment business' clients (the 'end user'). An agency worker can either be a worker or employee of the employment business. It is very unusual for an agency worker to be considered

a worker or employee of the 'end user'.

Agency workers benefit from rights under the Agency Workers Regulations 2010 which provide for the following rights:

- > **Day one rights:** from day one of the temporary assignment, the right to the same access to job vacancies as permanent members of staff and collective facilities such as staff canteens, childcare facilities and transport services; and
- > **12 week rights:** after 12 weeks, the right to 'equal treatment', which entitles the agency worker to no less favourable treatment than comparable employees with respect to basic employment and working conditions

See our Inbrief on Agency Workers for further information.

Seconded

A secondee is an employee of one employer who is temporarily assigned to work for another part of the organisation, a group company or a different organisation altogether (the 'host').

Generally, the secondee continues to be employed by their employer throughout the secondment and returns to their employer at the end of it. During the secondment, the secondee is sometimes classed as a 'worker' of the host, depending on the circumstances.

It is advisable to have two secondment agreements setting out the terms and conditions of the secondment. One will deal with the agreement between the employer and the host and the other will deal with the agreement between the employer and the secondee. Both agreements should make clear that there is no direct relationship between the secondee and the host.

In the pipeline

Matthew Taylor, the Chief Executive of the RSA, published the Government commissioned Good Work Review in July 2017. This report made various recommendations in relation to employment status and contingent working arrangements.

In February 2018, the Government published its response and launched a consultation in relation

to a number of contingent working arrangements referred to in this Inbrief. Please refer to our specific Inbriefs on Employment Status, Agency Workers and Zero Hours Contracts for further information.

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