

Zero-Hours and Short-Hours Contracts



Usdaw
*Union of Shop, Distributive
and Allied Workers*
Executive Council Statement
to the 2014 ADM

Foreword



Zero-hours contracts hit the headlines last summer with reports that some of the UK's biggest high street businesses were widely using these contracts.

The use of zero-hours contracts in some situations may be legitimate, fitting the needs of business and employees. However, when it was established that over one million workers are on zero-hours contracts it was obvious that employers are abusing and misusing these contracts.

It became clear that something needed to be done. The first thing the Union did was look at how zero-hours contracts impacted on Usdaw members. The Union surveyed Usdaw members. A link to an online survey was emailed to as many members as possible. We had a great response with over 2,000 members responding.

The good news is that zero-hours contracts are not found in most Usdaw-organised workplaces. But there are exceptions. Where workers are on zero-hours contracts, Usdaw is tackling the problem with the aim of delivering employment security and guaranteed hours.

Zero-hours contracts are not an isolated issue. Short-hours contracts are in many ways a bigger issue of concern for Usdaw members. Again, short-hours may fit the needs of individual employees. But there are many short-hours workers who would like longer hours and would like additional hours guaranteed.

Underemployment – not getting the working hours you need – is a problem facing many workers in 2014. The Coalition Government is boasting that unemployment has fallen but underemployment is a big problem.

If we are looking at workers on insecure contracts and no guaranteed hours, there is still the ongoing issue of employers using loopholes in the Agency Workers Regulations to avoid equal pay for agency workers. To tackle the exploitation of agency workers, and stop the undercutting of existing terms and conditions, these loopholes need to be challenged.

This Executive Council Statement identifies what is happening over zero-hours and short-hours contracts, details the experience of Usdaw members, and outlines how the Union will campaign and lobby for more secure employment and guaranteed hours for all workers.

A handwritten signature in black ink that reads "John Hannett". The signature is fluid and cursive, with a large initial 'J'.

John Hannett
General Secretary

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Section 1: Tackling the Abuse of Zero-Hours Contracts

It is estimated that one million workers in the UK are on zero-hours contracts. Today one in every four businesses employs people on zero-hours contracts.

Workers on zero-hours contracts

Workers on zero-hours contracts have no guaranteed hours and agree to be available for work as and when required. They have little job security — their working hours can disappear with no notice.

They have no guaranteed income. Pay packets can vary from one week to the next. They may also have problems accessing mortgages, loans and renting as it is difficult, if not impossible, to show a secure income.

Workers on zero-hours contracts are not defined as 'employees' and as a result lose out on important employment rights, including:

- Statutory redundancy pay.
- Statutory notice periods.
- Unfair dismissal rights.
- TUPE rights.
- Collective redundancy consultation.
- Family-friendly rights.



Employers using zero-hours contracts

Companies widely using zero-hours contracts include:

- McDonalds.
- Burger King.
- Sports Direct.
- Domino's Pizza.
- Subway.
- Cineworld.
- JD Wetherspoon.

Zero-hours contracts are also widespread throughout the social care sector with an estimated 300,000 care workers on these contracts. Other businesses using zero-hours contracts include the Tate galleries and Buckingham Palace.

Zero-hours contracts in the UK workforce

There are about one million zero-hours workers in the UK according to a report published in November 2013 by the Chartered Institute of Personnel and Development (CIPD).

The report found that one in four employers use zero-hours contracts. Private sector companies that use zero-hours contracts estimate that nearly a quarter of their workforce are employed on these contracts. In the hotels/catering and leisure sector, over a third of the total workforce are employed on zero-hours contracts.

Some people may believe that a zero-hours contract is a good starting point in employment – a stepping stone to a more permanent secure job. But the facts suggest this is not the case. More than half of zero-hours workers have been working for their current employers for more than three years.

Working hours of zero-hours workers

Many people, understandably, assume that the hours of workers on zero-hours contracts vary a lot from one week to the next, but this is often not the case.

One in every five employers using zero-hours contracts admit that workers on these contracts work broadly the same number of hours each week. This is double the number of businesses who state that ‘hours vary greatly each week’.

The Office for National Statistics (ONS) estimates that the average hours worked by someone on a zero-hours contract is 21 hours per week. CIPD arrives at a broadly similar figure – 24 hours per week.

Nearly one in every five zero-hours workers is on short hours – eight hours or less per week.

38% of zero-hours workers taking part in the CIPD survey say they would like to work more hours. That equates to 380,000 workers on zero-hours contracts who are underemployed and want to work longer hours.

Nearly half of the zero-hours workers reported that they receive little or no notice when work is cancelled.



Government underestimates zero-hours contracts

The Coalition Government have continually underestimated the number of workers on zero-hours contracts. Last summer, they released a report from the ONS claiming there were 250,000 zero-hours workers – less than 1% of the total workforce.

In the face of criticism that this ONS figure underestimated the problem Vince Cable admitted: “It is clear that they [zero-hours contracts] are much more widely used than we had previously thought”. He also wrote to the ONS to raise concerns about “the lack of reliable statistics that are available on zero-hours contracts”.

The ONS acknowledged, “We have followed the debate on zero-hours contracts, and there is a clear need for better statistics”.

No business need for zero-hours contracts

It is argued that zero-hours contracts provide business with the flexibility needed to meet fluctuating demands. Some commentators also claim that these contracts play a vital role in keeping people in employment.

However, some of the biggest, most successful employers do not use zero-hours contracts. Many of the businesses where Usdaw has trade union recognition do not have zero-hours contracts.

All businesses need flexibility. But Usdaw has negotiated flexible contracts to provide workers with guaranteed hours and still deliver the flexibility to meet the demands of the business.

There is no legitimate business need for the widespread use of zero-hours contracts.

Section 2: Short-Hours Contracts – The Growing Problem of Underemployment

Over the past 12 months we have seen increased media attention surrounding zero-hours contracts. However, it is fair to say that for many Usdaw members short-hours contracts and underemployment are just as important.

What are short-hours contracts?

Short-hours contracts are where an individual is employed for a small number of hours, for example for eight hours or less.

Whilst short-hours contracts will not suit everyone, they do provide some individuals with the opportunity to work who may be unable to work longer hours. For some Usdaw members, short-hours contracts allow them to combine work with other commitments such as parental/caring responsibilities. These contracts may also suit, for example, students who need an income to supplement their student loan but may not want long working hours.

Short-hours contracts work for some people but it is clear that they can be misused. A significant number of workers on short-hours contracts are regularly and consistently working additional hours. This can be a problem for several reasons:

- There is no guaranteed level of regular earnings and this can create uncertainty regarding bills and planning for the future.
- Many employee benefits are based on contractual earnings/hours therefore employees who consistently work additional hours may lose out on holiday pay/entitlement, maternity pay, sick pay and pension provisions.
- They have no guarantee of any additional hours they regularly work.

What is underemployment?

Underemployed workers are those people in employment who want to work longer hours. While the Government's official figures show that unemployment has fallen, there is clear evidence that underemployment has increased.

Over the past four years, the UK jobs market has seen a dramatic rise in underemployment. It is estimated that 1.5 million people are working part-time only because they cannot get full-time work. This shows that the jobs crisis is worse than the headline labour market figures suggest.

The scale and severity of the crisis in the economy means that many workers who were made redundant or faced an uncertain future are taking jobs on fewer hours than they need. At the same time employers are looking to find ways to keep their wage costs down. The result is a reduction in the permanent hours available and contracts for shorter hours becoming more common.

Whilst short-hours contracts and underemployment are often discussed together, it is important to understand that not everyone on a short-hours contract is underemployed. Underemployment is about getting fewer hours than you need – therefore it can apply to someone who works 20 hours just as much as it does to someone who works five hours.

Usdaw's position

Times are tough and we know that many members are struggling financially to make ends meet. The Union wants to see members getting the hours they need to support themselves and their families.

Underemployment is about workers not getting the hours that they need. This can apply to part-time workers working a number of days just as much as workers with contracts for only a few hours. We need to ensure that employers are fair in how they distribute any available additional hours.

The Union also wants to see workers getting contracts that reflect their normal working hours. Too many workers regularly work additional hours but these extra hours are not guaranteed in their contracts.

A key solution to underemployment is a return to solid economic growth, which is why Usdaw believes that the Coalition Government must be focusing more of its attention on growth and investment, rather than cuts and austerity.

Short-hours contracts and underemployment are also being addressed by the Union through our negotiations with employers. Usdaw is working to get the appropriate policies, ensure the right staffing structure and maintain employment security. We have also negotiated a variety of flexible contracts which recognises the need for business flexibility whilst ensuring that pay and benefits are linked to actual hours worked rather than contractual hours.

Usdaw reps are playing a key role in the workplace by:

- Ensuring policies and agreements regarding minimum hours are being followed.
- Being vigilant where short-hours contracts are being used unfairly or disproportionately.
- Helping members who are underemployed and need more hours.
- Supporting members who are regularly working additional hours and would like to see their contractual hours increased.



Section 3: Usdaw Members' Experience – The Headline Findings of the Survey

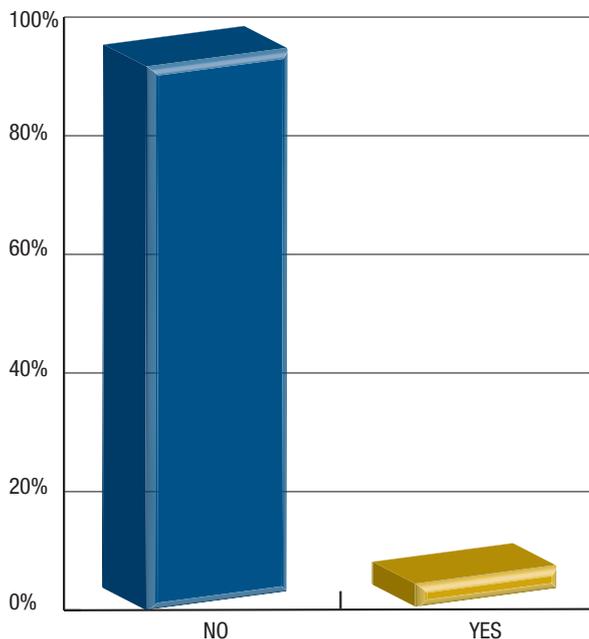
The Union has recently carried out a zero-hours and short-hours survey of Usdaw members. The survey was completed by 2,223 Usdaw members. The full results of the survey are outlined in Section 4. This survey is one of the biggest and most comprehensive studies so far carried out on zero-hours and short-hours contracts.

Whilst only a very small minority of Usdaw members are on zero-hours contracts, nearly a quarter of respondents know family or friends who are zero-hours workers. This would seem to confirm the estimates that around one million workers are on zero-hours contracts.

Zero-hours contracts

The survey found that only a small proportion of Usdaw members (less than 5% of those surveyed) are employed on zero-hours contracts. The vast majority of members (over 95% of those surveyed) have contracts with guaranteed hours.

Are you employed in a zero-hours contract?



Of the respondents to the survey who are on zero-hours contracts, the overwhelming majority would prefer contracts with regular hours. The evidence is that workers do not like zero-hours contracts.

Short-hours contracts

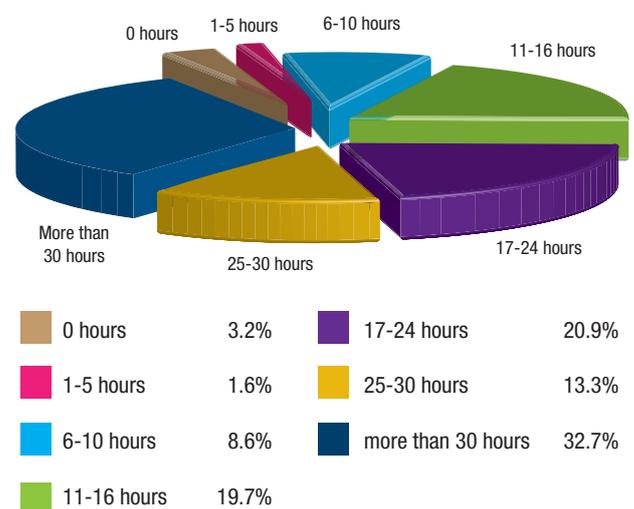
In the survey, we took the opportunity to ask members about their experiences and views on short-hours working.

The survey found that a very small number (less than 2%) of respondents were employed on contracts of five hours and less. Just under 9% of respondents are contracted for between 6 and 10 hours per week.

Short-hours contracts are being used in many parts of retail but despite this the majority of Usdaw members are employed on contracts for more than 17 hours per week, with nearly a third of respondents contracted for 30 hours or more.

The survey results show that the majority of Usdaw members are still employed on traditional part-time or full-time contracts. This suggests that workplaces where Usdaw has recognition are only using short-hours contracts in a very limited number of situations.

Contracted hours per week



Underemployment

The survey found that a significant number of Usdaw members are underemployed. They would like more hours and they would like additional hours to be made regular and guaranteed.

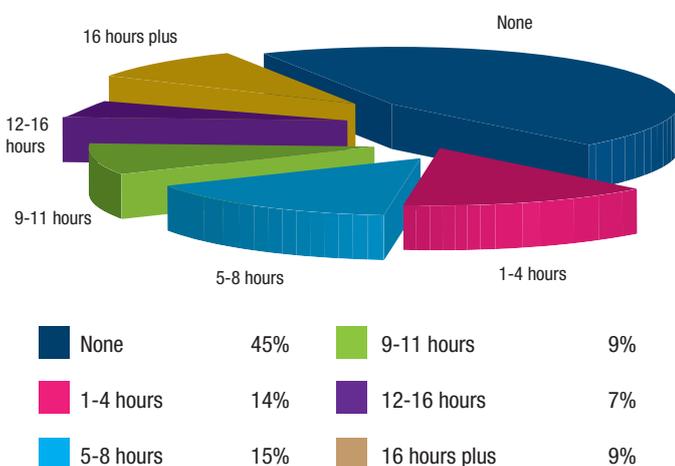
Over half of respondents regularly work additional hours above their contracted hours. Of these, three in every four would like to have these additional hours guaranteed.

One in four respondents who work additional hours only work a few additional hours per week. A similar number regularly work 5 to 8 additional hours. One in every six members work a large number of additional hours (9 to 16 hours). A small but still sizeable group of members (9%) regularly work a very large number of additional hours (more than 16 hours) each week.

Nearly a third of members, who indicated that they do not currently work any additional hours, stated they would like to have more hours. However, underemployment does not affect all Usdaw members with two in every three respondents who do not work any additional hours indicating that they are content with their current number of hours.

Overall, the survey confirms that there is a serious underemployment problem in the UK. The average Usdaw member wants to work more hours and where members currently work additional hours they would like to see these additional hours guaranteed.

Additional hours regularly worked per week



Should zero-hours and short hours contracts be a campaigning priority for Usdaw?

Over 90% of respondents have said that zero-hours contracts and short-hours working should be a campaigning priority for Usdaw.

The overwhelming majority of respondents believe that zero-hours workers should have:

- Rights to some guaranteed hours.
- Rights to contracts that reflect their normal hours.



Section 4: The Zero-Hours Contacts and Short-Hours Contracts Survey – The Detailed Results

In 2013 the Union surveyed as many members as possible using an online link.

We received a total of 2,223 responses to the survey and the detailed results are listed below:

1. Are you on a zero-hours contract?

Yes	97	4%
No	2,091	96%
Total	2,188	

2. If zero-hours, would you prefer a contract with regular hours?

Yes	86	
No	4	
Total	90	

3. Do you have any friends or family on zero-hours?

Yes	488	23%
No	1,648	77%
Total	2,136	

4. Would they prefer a contract with regular hours?

Yes	446	
No	21	
Total	467	

5. How many hours a week are you contracted for?

Zero-hours	68	3.2%
1-5 hours	32	1.5%
6-10 hours	185	8.7%
11-16 hours	417	19.6%
17-24 hours	448	21.0%
25-30 hours	284	13.3%
more than 30 hours	698	32.7%
Total	2,132	

6. Do you regularly work additional hours?

Yes	1,168	55%
No	967	45%
Total	2,135	

7. How many additional hours do you regularly work per week?

None	967	45%
1-4 hours	297	14%
5-8 hours	319	15%
9-11 hours	193	9%
12-16 hours	142	7%
more than 16 hours	195	9%
Total	2,113	

8. If you regularly work additional hours, would you like these hours guaranteed?

Yes	804	
No	268	
Total	1,072	

9. If you don't currently work additional hours would you say ...

I'm content with my number of hours	568	
I'd like more hours	297	
I'd like fewer hours	44	
Total	909	

10. Do you think zero-hours workers should have rights to some guaranteed hours?

Yes	2,109	95.8%
No	37	1.7%
Don't know	56	2.5%
Total	2,202	

11. Do you think workers should have a right to contracts that reflect their normal hours?

Yes	2,121	96.3%
No	21	1.0%
Don't know	60	2.7%
Total	2,202	

12. Do you think zero-hours and short-hours contracts should be a campaign priority for the Union?

Yes	2,008	91.1%
No	45	2.0%
Don't know	150	6.8%
Total	2,203	

Section 5: Agency Workers – Winning Equal Pay and Treatment

One of the biggest groups of workers affected by zero-hours or short-hours contracts is agency workers. Agency worker contracts are typically offered without any guarantee of work or even a rate of pay.

Agency work has for many years been among the most vulnerable and insecure employment. Agency workers have also typically been engaged on lower terms and conditions than permanent staff.

It has been estimated that over a third of all employers use agency workers in their business. Usdaw believes the real figure might even be higher.

The use of agency staff has been defended on the basis that it gives business the flexibility to respond to short-term business fluctuations. The evidence is that agency workers are being used increasingly on a semi-permanent basis. One in every four employers admits to employing agency workers for periods of more than 12 weeks.

The big increase in the numbers of agency workers means there is a growing population of workers who have no guarantees of working hours or a regular pay packet.

Agency Workers Regulations

Following a lengthy campaign by the Trade Union Movement the Agency Workers Regulations were introduced to the UK in 2011. The Regulations stated that agency workers should receive equal pay and treatment with permanent staff after 12 weeks in the same role.

The regulations were supposed to tackle the exploitation of agency workers. This would also stop the situation whereby employers were using agency staff to undercut the existing terms and conditions of permanent employees.

It was also hoped that by ensuring that agency workers were no cheaper than permanent staff, employers would be more likely to offer permanent contracts of employment, reducing their dependency on agency labour.

Swedish Derogation

Unfortunately, many employers across the UK have taken advantage of a loophole in the Agency Workers Regulations known as the ‘Swedish Derogation’.

Under the Swedish Derogation, agency workers can be employees of the agency rather than agency workers. As such, they are not covered by the regulations’ provisions for equal pay. This also means that Swedish Derogation agency workers may be entitled to lesser rates of overtime and holiday pay.

The Swedish Derogation was agreed at a European level to cover specific types of agency contractors who would be worse off if they were given equal pay and treatment to permanent staff. This could occur in certain European countries where people in industries such as journalism and computer software design are given a premium in exchange for accepting temporary short-term contracts.



The Agency Workers Directive contained a safeguard that Swedish Derogation agency workers would be paid for at least four weeks when in between assignments. Unfortunately in the UK, these Swedish Derogation agency workers are only entitled to half as much as they received during their last assignment or minimum wage rates.

As agency workers are typically employed on a zero-hours contract, agencies can also avoid having to pay a worker between assignments by offering a minimum of one hour's paid work per week.

The number of agency workers on Swedish Derogation contracts has grown rapidly since the regulations came into force in 2011. The Recruitment and Employment Confederation estimates that one in six agency workers are now employed on a Swedish Derogation contract.

The Swedish Derogation has been used in the UK to avoid giving agency workers equal pay, which is clearly against the spirit of the Directive. The Directive states that countries must prevent the misuse of the Swedish Derogation.

The trade union challenge over the Agency Workers Regulations

The TUC has now lodged a formal complaint to the European Commission against the use of these Swedish Derogation contracts.

Usdaw is supporting and fully involved in the TUC complaint over how the Directive has not been fully implemented in the UK. The Union has been helping the TUC to put its challenge together. Usdaw has provided supporting information and evidence on our experience on how Swedish Derogation contracts are being misused in the UK.

Any complaint to the European Commission is a lengthy process. Usdaw will continue to provide full support to the TUC's efforts to challenge this abuse of the Directive.

The Union is also campaigning and lobbying for the Labour Party to make the Agency Workers Regulations effective regulations that will deliver equal pay and treatment, tackle the exploitation of agency workers and stop employers using agencies to undercut existing terms and conditions. Usdaw is working hard for a commitment that a future Labour Government will remove the Swedish Derogation loophole from the regulations.



Section 6: Usdaw – Campaigning for More Rights for Workers

Uzdaw wants to see workers on zero-hours contracts having rights to contracts that guarantee their normal working hours. We want all workers to get the working hours they need and we want these working hours to be guaranteed in their contracts.

Contracts that reflect normal working hours

Uzdaw is campaigning for employers to be under a legal obligation to offer workers a contract reflecting the employee's normal working hours. In order to assess what the individual worker's normal working hours are, Usdaw believes the starting point should be to look at the hours worked and the working pattern in the previous 12 weeks.

This proposal would benefit not just zero-hours workers but would also extend the rights of short-hours and part-time workers who regularly work longer hours.

Some guaranteed hours

The Union wants to see all workers being given a clear indication at the start of the contract as to the hours they are likely to be expected to work.

Uzdaw would like to see workers having a guaranteed minimum number of hours from the first day of employment. Some guaranteed hours from day one is attractive for two reasons. Firstly, it gives workers at least some guarantees of work instead of none. Secondly, if workers have some contractual hours, they have more employment rights than if they were on a zero-hours contract.

Limited exceptions

There would need to be some exceptions for the small number of circumstances where the use of zero-hours contracts might be legitimate. However, many of these potential exceptions could be dealt with by the use of annualised hours and other flexible contracts.

Employment rights for all

In line with TUC policy, Usdaw believes that all workers should have the same floor of employment rights. This includes unfair dismissal protection, statutory redundancy pay, rights to paid time off for trade union duties, family-friendly rights such as maternity leave and paternity leave, and the right to request flexible working.

Currently, workers on zero-hours contracts are not defined as employees and lose out on important employment rights. Usdaw would like to see a single definition of 'worker' used to determine who qualifies for all statutory employment rights.

Close the loopholes in the Agency Workers Regulations

The aim of the Agency Workers Directive was to deliver equal pay and treatment for agency workers. However, since the regulations came into force, the Swedish Derogation loophole has been widely used by employers to continue paying agency workers less than permanent employees. Usdaw fully supports the TUC complaint to Europe.

The Government needs to act

The Coalition Government has continually underestimated the numbers of workers on zero-hours contracts. They have announced a series of reviews and consultations but there are no proposals. In the face of growing evidence they have refused to recognise there is a problem and consistently failed to act.

TUC campaign

At the 2013 TUC Annual Congress, Usdaw called for the TUC to 'make the case for new and extended rights in areas such as zero-hours contracts and agency workers'. Congress agreed that campaigning over this was 'one of the key priorities for the TUC in the year ahead'.

The TUC is campaigning and lobbying for an end to the abuse of zero-hours contracts and for workers to be guaranteed normal, paid working hours. Usdaw is fully supporting the TUC campaign and is playing a key role in developing the TUC's approach to zero-hours contracts.



Campaigning with Labour

In a speech to the TUC Congress, Ed Miliband stated, "We'll end zero-hours contracts where workers are working regular hours but are denied a regular contract". At Labour Party Conference Chuka Umunna stated, "We will act to outlaw zero-hours contracts where they exploit people".

Ed Miliband announced in September 2013 that a Labour Government would tackle the abuse of zero-hours contracts by taking action to:

- Ban employers from being able to require zero-hours workers to be available over and above their contracted hours on the off-chance that they will be needed.
- Ban employers from being able to require zero-hours workers to work exclusively for them.
- Ban the use of zero-hours contracts where employees are in practice working regular hours, unless employees specifically request it.
- Introduce a new Code of Practice, providing clarity for employers and employees about their rights and responsibilities.

Labour has launched an independent consultation on zero-hours contracts. Usdaw is highlighting the views and experiences of our members and we are making the case for effective policies to tackle the misuse of zero-hours contracts.

If we are going to make significant progress on zero-hours contracts we need a strong commitment in Labour's manifesto and we need to get a Labour Government elected at the next General Election.



Conclusion

Zero-hours and short-hours contracts are serious issues of concern. One million workers on zero-hours contracts is a clear indication that these contracts are being abused.

Usdaw believes that zero-hours contracts are justified in only a very limited number of situations. Their widespread overuse shows that employers are exploiting workers' fears about the present economic uncertainties to put pressure on them to sign up to insecure contracts. This abuse needs to be tackled.

The Coalition Government has continually underestimated the numbers of zero-hours contracts. They have launched consultations and reviews and this has become an excuse for inaction. Their failure to act has given the worst employers a green light to exploit vulnerable workers.

For many Usdaw members short-hours contracts and underemployment are even bigger issues of concern. The Coalition Government is quick to advertise small falls in unemployment but they fail to mention the problem of underemployment.

Short-hours contracts suit some workers, but a far greater number of workers are struggling to get the hours they need to support themselves and their families. Many workers are constantly trying to get additional hours. This is underemployment.

Many workers who get additional hours face the uncertainty of not having these additional hours guaranteed in their contracts. This is also a major problem that needs attention.

If we are looking at workers on insecure contracts and no guaranteed hours, there is the ongoing scandal of the loopholes in the Agency Workers Regulations that allow agencies to avoid equal pay for agency workers.

The Union's analysis of what is happening in the UK labour market is confirmed and evidenced by the results of the survey of Usdaw members carried out at the end of 2013. The proposals detailed in this Executive Council statement are based on the experiences of Usdaw members outlined in the survey.

Usdaw's plan of action to tackle the misuse and abuse of zero-hours and short-hours contracts includes the following key proposals:

- Usdaw wants to see more rights for workers on zero-hours contracts. The Union is lobbying for employers to have a legal obligation to offer all workers contracts that reflect their normal working hours. In order to assess what the individual worker's normal working hours are, Usdaw believes the starting point should be to look at the hours worked and the working pattern in the previous 12 weeks.
- An obligation to offer contracts that reflect workers' normal working hours would also have a positive impact for short-hours and part-time workers who regularly work longer hours. Too many workers regularly work additional hours without these extra hours ever being guaranteed in their contracts.
- Usdaw is fully supporting the TUC's efforts to challenge the loopholes in the Agency Workers Regulations that deny agency workers access to equal pay.

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