

FDF response to the House of Commons Business and Trade Select Committee inquiry into Make Work Pay: Employment Rights Bill

Introduction

1. This submission is made by the Food and Drink Federation, which represents the UK food and drink manufacturing industry. We are the largest manufacturing sector in the country, with a footprint in every parliamentary constituency. Our industry has a turnover of more than £142 billion, accounting for 23% of total UK manufacturing, and Gross Value Added (GVA) of more than £38 billion. Small and medium-sized businesses make up 97% of our industry.
2. Food and drink manufacturers provide good jobs and great careers for nearly half a million people across every region and nation of the UK, and we support 4.3 million jobs in wider food supply chain. Colleagues who join our industry tend to stay with us – for example, around a third of our workforce have been with their employer for 10 years or more¹. We therefore support the intent behind the government's 'Make Work Pay' plans to reform the labour market and remove exploitative labour market practices. We welcome the opportunity to engage on the series of measures proposed in the Employment Rights Bill.
3. As the UK's largest manufacturing sector, food and drink can make a significant contribution towards the government's number one mission to deliver economic growth through delivering productivity gains and creating higher-skilled, better paid jobs. A recent report published by strategic delivery consultancy Newton concluded that there is an untapped growth opportunity of up to £14bn within the UK's food and drink manufacturing industry through investment in automation, digital and AI².
4. Great partnership between food and drink manufacturers, trade unions and employees is critical to securing these long-term growth opportunities through decarbonisation and digitalisation but also tackling challenges around food security and creating a more sustainable and resilient food system. These will drive changes in food and drink production and processing with greater adoption of automation and digital technologies. Implementing these newer technologies into food and drink manufacturing requires a mix of new skills, higher skills and some staff redeployment, as lower skilled roles are phased out. Such changes will require collaborative working with the trade unions, union officials and employees (both unionised and non-unionised) to ensure areas around upskilling, reskilling and redeployment are as frictionless as possible. We already have fantastic examples of working constructively together – for example during the Covid-19 pandemic – where food and drink manufacturers and trade unions worked closely to support our workforce and keep them safe as they worked hard to keep products on supermarket shelves and continued to feed the nation through a difficult period.
5. There is also a real opportunity to address sustained labour and skills shortages in our sector which are holding back growth and investment. Last year, output lost in the sector due to labour shortages is estimated to be £1bn³. Latest industry figures show

¹ [National Skills Academy for Food and Drink, Skills Insights and Labour Market Focus, Nov 2022](#)

² [Future Factory: Supercharging Digital Innovation in Food and Drink Manufacturing, November 2024](#)

³ [FDF State of Industry report Q4 2023](#)

vacancy rates in the food and drink manufacturing are consistently higher than the wider manufacturing sector and national average. Employers are therefore working hard to attract and retain workers by:

- Offering higher wages (average pay rose by 6.0% over the year to March 2024)⁴ and increased benefits including extensive workplace health initiatives;
 - Delivering pre-employment training programmes such as the Food and Drink Careers Passport®;
 - Introducing more flexible shift patterns (e.g. shorter, four-hour shift pilots) to attract parents and carers; and
 - Partnering with local education providers to promote careers in manufacturing.
6. Our members are keen to focus on the opportunities posed by the new government's ambitions on employment rights. But we must ensure the UK plc continues to have access to a flexible labour market which is the hallmark of a thriving economy and will be key to the government's aim of growth. We would urge the government to consult fully on measures in line with standard best practice through full 12-week consultations. Further, we would urge the government to consider the cumulative impact that such a significant package of measures will have on businesses, particularly the financial cost of implementation for small businesses. We note in particular the recent findings of the Regulatory Policy Committee.

Impact on businesses

Collective Redundancies

7. Measures included in the Bill will mandate employee consultation when more than 20 redundancies are being made anywhere in the business – rather than the current law of this only applying to individual sites or establishments.
8. For our large members with multiple sites, this has raised concern – particularly due to the nature of our businesses. Our large members have sites across the country, often with no direct relation to each other, for example one site could be producing bakery products while another factory across the country could be producing drinks – operating in very different sub-sectors of the food and drink manufacturing sector. Their sites cover different brands, producing different products. Each brand often operates their own sites with their own separate HR functions.
9. Multiple sites making few redundancies below the 20 redundancy threshold would trigger a company-wide consultation. In addition, one site making 20 or more redundancies would trigger employee consultations across other workplaces with no connection to the business decision at the original site – creating not just administrative burden but unnecessary employee distress and confusion.
10. Overall, this policy is creating concern that they would be required to undertake perpetual collective consultation. We would recommend further work undertaken with external stakeholders before implementing this policy.

⁴ Food and drink manufacturers pay competitive wages around and above the national average. According to national statistics, median annual pay in the UK in 2023 was £29,669 across all sectors. This compares to the median annual pay in the sector of £27,886 in food manufacturing and £37,459 in drink manufacturing.

Zero hours contracts

11. While there are some roles in our sector that operate on zero hours contracts, the majority of roles within our sector are paid as annual salaries, rather than hourly – so proposals on zero-hour contracts affect our members less than other parts of the food supply chain.
12. Industry welcomes the government's aim to end exploitative zero-hour contracts. We are interested to work through the detail with government on how this will work in practice, including the definition of 'low hours' contracts and how annualised hours contracts will fit into these definitions. Without due consideration of the nuance behind the current scope of contracts employers use, there is a risk that these changes could have the unintended consequence of taking away flexible options that currently work well for both businesses and their employees.
13. Food and drink manufacturers are already working with their local communities to support local residents by offering good job opportunities and more flexible shift patterns to support people who due to a variety of personal reasons (i.e. childcare and caring responsibilities, or health issues) need a more flexible schedule and variable hours. This will become even more important as we look to retain more older workers with an ageing population and increasing retirement age. Maintaining flexibility for colleagues (who want it) is vital if we are to keep that knowledge and experience within our businesses to help train the next generation of talent.
14. Therefore, we would recommend government consider making the right to guarantees hours a 'right to be offered' instead of a 'right to claim' and to add a provision that for an employer to offer a contract with a regular working pattern there should be evidence of that pattern over the reference period. By making this measure a 'right to claim' businesses can then support their employees better by offering them the type of contract that will suit them best while streamlining the administration requirements that will be more burdensome, especially to SMEs who often don't have a dedicated HR function.
15. Additionally, we would suggest government consider a longer reference period of 26 weeks. As with other sectors, many of our businesses will increase their workforce during key seasonal periods which can vary in length to more than 12 weeks. Creating a 12-week reference period could create significant complications for businesses who recruit workers on a temporary basis to cover seasonal spikes. Having a 26-week reference period would allow businesses to better estimate the available workload for a given employee and offering fair employment terms across the year.
16. These reforms as proposed create the administrative cost to businesses via the onus being put on companies to monitor when the right is triggered and to make offers. While larger businesses have more capacity to manage this, it will require significantly more resource, especially when put in the round with the other measures brought forward in the Employment Rights Bill.

Flexible working

17. Most food and drink manufacturers now offer some form of flexible working. The benefits are clear including through increased productivity, better mental health, and higher job satisfaction.
18. It is important however that employers retain the flexibility in circumstances where it is not possible for an employer to accommodate a flexible working request. We are broadly supportive therefore of the government's plan to maintain the existing eight business reasons for refusing a flexible working request. This creates clear expectations for both the employer and employee in this area.
19. However, as it stands, the provisions will create increased burden for businesses – particularly SMEs where the HR function can often be limited or covered by other roles within the company. This is because the sole burden for proving the grounds for refusal for flexible working will land on the employer – the metrics on the burden of proof required by which there are grounds for refusal are often hard to measure or prove.
20. Businesses are keen to engage with government to ensure that flexible working requests are still able to be declined where the business cannot accommodate it.

Fire and rehire

21. We welcome efforts to strengthen and clarify the current code of practice for employers on dismissal and re-engagement. This should provide a robust regulatory framework for any employer taking this approach when they have exhausted all other possible options.
22. It is important that the government strikes a balanced approach to ensure that the legitimate re-engagement of a dismissed employee for business performance reasons is not unintentionally prevented.
23. The Bill sets a high bar for employers on reasons for unfair dismissals, which could complicate business decisions to restructure, for example through an office move. The Bill treats dismissal for failing to agree to a variation of contract as automatically unfair unless the employer can demonstrate specific and sufficient evidence of poor business performance – which could frustrate legitimate attempts to change terms for business reasons.

Unfair dismissals and probation periods

24. The Government has rightly recognised that there needs to be a lighter touch process for fair dismissal during a probation period. This will ease some manufacturers' fears that they would not be able to dismiss an underperforming, unsuitable or temporary employee fairly during this time.
25. 85% of respondents from FDF's latest State of Industry Survey said that they use either a 3 or 6-month probation period. However, businesses will need the flexibility of longer probation periods in cases where some staff may need more time to train and learn new skills before a decision can be taken. This can be more challenging in early careers and for those individuals who may be further away from the labour market and need more time to reach a certain level of competence.

26. It is welcome that there will be a detailed consultation on how the lighter touch process would work in with a statutory 9-month probation period. There are concerns that the statutory 9-month probation period could have an impact on young people or others entering or re-entering the workforce – if the flexibility for the employer in ending that employment relationship is overly weakened and may make it riskier for the employer.
27. We would therefore suggest that the government introduces a statutory 12-month probation period, as opposed to 9-months in order to strike that balance between delivering on the objective of the policy while maintaining a level of flexibility for employers to ensure that they aren't disincentivised from making riskier recruitment decisions. We would also ask the government considers giving businesses two full years after Royal Assent to these measures for businesses before they become active. This will give businesses time to adjust and ensure that regulations won't change during the early months of employment which could lead to confusion for employers and employees.
28. It is important that government considers how the policy will impact on the employment tribunal system that is already stretched. The latest meeting of the Courts and Tribunals National Users outlined that there are 6-month delays for shorter hearings, 9-month delays for medium-length hearings and over a year for the longer length hearings. In parts of England the delays are almost 2 years, so unless the delays within the tribunal system are address this policy will be unworkable.

Statutory sick pay (SSP)

29. We support the removal of the 3-day waiting period for SSP, with the viewpoint that this would help to reduce presenteeism and the risk of longer-term sickness absence.
30. Given the increased liability for employers and the potential during further consultation on this measure to increase the rate at which SSP is paid, government should consider this added cost to small businesses – as was the case where additional financial support for SMEs was offered on this basis when SSP was temporarily extended during the pandemic.

Protecting workers

Can the measures in the Bill be adequately enforced? What are the barriers to setting up a Single Enforcement Body (Fair Work Agency) and how can these challenges be overcome?

31. We are strongly supportive of a single enforcement agency to ensure a joined-up approach to enforcement across all areas including Gangmasters and Labour Abuse Authority and the HMRC National Minimum Wage and National Living Wage teams.
32. It is vital that the Fair Work Agency is strong, well-resourced so that it has the capabilities to properly enforce these policies and to support businesses who are looking for advice to ensure compliance. We welcome the increased clarity on the scope of the agency – particularly on maintaining the independence of the Health and Safety Executive.
33. It is equally important the enforcement is properly managed – to alleviate concerns from employers that this could lead to an over-zealous and punitive approach – particularly for SMEs adjusting to a whole raft of new regulations and policies.

Will the proposed trade union reforms improve working relationships between workers and businesses, and hence, productivity and enable voice at work?

34. It is right that the Government is consulting further on proposals to change the threshold for statutory recognition and other changes that will come with the repeal of the Trade Union Act 2016.
35. There is concern amongst businesses that reforms could weaken employee relations – given little consideration in the current proposals of employees who are not members of a union by choice and could lose their voice in the process.

Conclusions and next steps

36. There is a concern about the cumulative impact of such a large number of significant policy changes to employment practices – particularly on the financial cost of implementation.
37. Industry has had several cost increases over the last few years – including the recent rise in employer National Insurance Contributions – alongside external shocks that have disproportionately affected food and drink manufacturers such as the pandemic, the ongoing war in Ukraine and its impact on supply chains, as red tape, regulation and bureaucracy created by our changing trade relationship with the EU. It is important that the increased costs to business across the whole board are recognised by government in the formulation of future regulation or policy that affects our sector – this will be critical to UK competitiveness and future growth.

The FDF welcomes engagement on these policies, and we look forward to working closely with government and your Committee on the implementation and delivery of these package of reforms.

The UK Food and Drink Manufacturing Industry

The Food and Drink Federation (FDF) represents the UK food and drink manufacturing industry, the largest manufacturing sector in the country. Our industry has a turnover of more than £142 billion, accounting for 23 per cent of total UK manufacturing, and Gross Value Added (GVA) of £39 billion. Food and drink manufacturers directly employ 474,000 people across every region and nation of the UK. Exports of food and drink make an increasingly important contribution to the economy, exceeding £24 billion in 2023, and going to over 220 countries worldwide. The UK's 12,515 food and drink manufacturers sit at the heart of a food and drink supply chain which is worth £153billion to the economy and employs almost 4.5 million people.

The following Associations actively work with the Food and Drink Federation:

| | |
|-------|--|
| ABIM | Association of Bakery Ingredient Manufacturers |
| BCA | British Coffee Association |
| BOBMA | British Oats and Barley Millers Association |
| BSIA | British Starch Industry Association |
| BSNA | British Specialist Nutrition Association |
| CIMA | Cereal Ingredient Manufacturers' Association |
| FOB | Federation of Bakers |
| GFIA | Gluten Free Industry Association |
| PPA | Potato Processors Association |
| SSA | Seasoning and Spice Association |
| UKAPY | UK Association of Producers of Yeast |
| UKTIA | United Kingdom Tea & Infusions Association |

FDF also delivers specialist sector groups for members:

Ice Cream Group
Organic Group
CBD Group