

**Jobs Foundation Submission to the Employment Rights Bill Committee –  
December 2024**

**Executive Summary**

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- 1. Day One Rights:** Day One employment rights will have a significant impact on the willingness and ability of businesses to hire employees, especially those that have been long-term out of work. This significantly conflicts with the Government’s objective to raise the UK’s employment rate to 80 per cent and get two million more people into employment, as detailed in the recent ‘Get Britain Working’ white paper.
- 2. Probation Periods:** Any new probationary period must give firms the ability to hire new employees without the risk of undue financial burdens due to tribunals or legal challenges.
- 3. Flexible Working:** The right to flexible working from day one must be considered as an additional burden on businesses that will also have an impact on businesses ability and willingness to hire employees that are long-term out of work.
- 4. Zero Hour Contracts:** The Bill must not seek to outlaw or make it impractical to use zero-hour contracts in situations where these are beneficial to employees. Restrictions on Zero Hour contracts must be balanced against any potential impacts on rising self-employment or the ‘labour black market’.
- 5. SMEs:** The legislation will have a disproportionate impact on smaller and medium sized businesses due to their comparatively smaller legal and HR functions and the disproportionate impact that any additional costs will impose.
- 6. The Impact on Investment in the UK**
- 7. Areas of Omission from the Bill**

**1. The Impact of Day One Employment Rights**

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For our research into our foundational report, *Two Million Jobs: How businesses play a crucial role in taking people from poverty into prosperity*, we interviewed over two hundred business leaders, entrepreneurs, and other local stakeholders. We found that most employers are content with the employment rights currently held by British workers, with there being a feeling that a broadly correct balance between the interests of workers’ and the interests of business has been struck. However, there is **significant concern that these rights will become more restrictive as detailed in the Employment Rights Bill which will cause businesses to make fewer hires, and especially fewer “risky” hires, such as those who have been long-term out of work.**

**Probation periods are particularly important for employers to recruit new talent in these situations.** For example, we have heard countless tales from companies about how some of their best hires have been people who performed less well in a traditional interview or lack some of the formal qualifications that would make them stand out for a role, but hiring managers felt that they were worth taking a chance on. Were there to be a lack of adequate probation periods that allowed employers to take these risks, they would simply not hire these employees.

Those groups who have been long term out of work are exactly the kind of people that would most benefit from a job. For example, we know the powerful impact that meaningful employment can have on ex-convicts – and the associated benefits that this has in terms of reducing recidivism and welfare costs. If firms do not feel like they can make these hires, these people will remain in economic inactivity.

This is particularly important in relation to the Government’s ambition to increase the employment rate to 80 per cent, bringing two million more people into the workforce. **We know that 80 per cent of jobs are in the private sector; it thus follows that businesses are going to be most responsible for creating the new jobs that will take people from economic inactivity or unemployment back into the workforce.** A substantial chunk of the UK’s population that are economically inactive come from the sort of “riskier” categories identified above – ex-convicts, those long-term out of work, younger NEETs – and will require the active support of businesses to be brought back into employment.

Businesses are well placed, and indeed already are at the forefront of delivering schemes to bring people into employment. As an example identified in *Two Million Jobs*, the Ascend Programme in Sheffield provides pathways to employment for those most in need, including providing clothing for interviews, training and support, and work placements. 75% of people who have taken up the scheme are now in employment. **We should learn from this and support other businesses across the country to do even more of this great work, rather than introduce new burdens on recruitment.**

## **2. Impact of probation period reforms**

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More broadly, there must be the general expectation that employers hire people with the best of intentions, and that the probationary period must reflect that it is in the interests of firms to want to keep staff on; it can be a significant cost for employers to dismiss someone during their probationary period, so this is only generally ever done in situations where absolutely necessary.

We note that the Bill provides the opportunity for consultation on what a reformed ‘probationary period’ would look like, with indications being that the current ‘two-year qualifying period’ could be replaced with a ‘nine-month period’. Firms are less concerned with the timescales of what this probationary period would have, although

this timescale must be long enough for firms to gain a proper understanding of someone's ability to do the job. Rather, firms are concerned about what these additional protections from day one could include, and thus the risk that getting rid of any employee who proves to not be a good fit would result in onerous legal actions or tribunals that, in effect, make it impossible to let go of any unfit workers.

In the impact assessment published by the Department for Business and Trade, we note that the total estimated impact of these reforms is between £323.9m and £338.7m over a ten-year period, reflecting costs related to early conciliation and tribunal cases, as well as business familiarisation costs. However, **these figures completely fail to capture the economic impact of firms simply choosing not to hire additional employees – with the economic impacts of this likely running into the tens of billions over the same timescale in terms of lost income, lost tax revenue and loss of any multiplier effect.** The impact assessment states that the costs of this are highly dependent on what the eventual new 'probationary period' looks like – which will likely be defined in secondary legislation – however, we would argue that any such changes should be considered fully as part of the primary legislation process as opposed to being implemented through secondary legislation.

During debate on this Bill, the question of day one rights and unfair dismissal must be reframed to emphasise the fact that businesses must have the required protections in order to feel comfortable making those 'risky' hires. These are the hires that have the biggest social impact, and protecting business' ability to make them will ensure that businesses can continue to be the most powerful possible engine of social good at the forefront of bringing two million more people into employment.

### **3. The Impact of Day One Right to Flexible Working**

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The right to flexible working must also be considered from the perspective of a companies' ability to make "riskier" hires, with the Bill going as far as to require "employers to explain the grounds on which they've denied a request". This could end up in a situation whereby a firm could hire somebody that they believe could be a good fit for their business but that requires additional support or training. Flexible working could limit firms' ability to deliver this required training and combined with the problems associated above about probation periods, could mean that firms end up in a situation where they are both unable to give an employee the required support to ensure their continued employment but also unable to let these employees go. Once again, this will simply result in firms making fewer 'riskier' hires.

Throughout consultation on what the new regime for probationary periods look like, specific attention must be given to how the right to flexible working will interact with a company's ability and desire to make "riskier" hires. Whilst we acknowledge that flexible working practices can, in certain circumstances, make it easier for firms to

recruit people from different backgrounds – such as those with long-term illnesses – we would encourage there to be much stricter requirements for flexible working for those on probation periods, and strict conditions to ensure that firms do not end up embroiled in expensive legal cases surrounding an individual's right to flexible working.

#### **4. Unintended Consequences of Zero Hour Contracts Reform**

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We recognise that there are situations whereby employees have been exploited by zero hours contracts and condemn this in any instance. Adequate protections must be put in place to ensure that this is not the case, however, this should be prioritised through better utilising existing methods of enforcement as opposed to imposing new restrictions surrounding the use of such employment contracts.

One area of particular concern is the unintended consequences surrounding restrictions on the utilisation of Zero Hour Contracts. Currently, these are used in the vast majority of instances as a mutually beneficial arrangement whereby workers can benefit from working arrangements that can be flexible to their other commitments.

We have heard from many businesses that they are in fact seen by certain workgroups as an attractive employer because of their provision of Zero Hours Contracts, with this being especially important, for example, with parents who may have to be flexible with childcare arrangements.

A further unintended consequence of this is that it will deter SMEs from employing people due to the higher costs and inflexibility of fixed hour contracts, likely pushing people into self-employment, and potentially the labour black market: with this having significant negative implications exceeding any potential benefits of cracking down on the current exploitation of Zero Hour contracts.

#### **5. Impact on SMEs**

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The measures included in the Bill will have a particular impact on small and medium sized businesses, although not exclusively. Larger businesses will have much more capacity to be able to engage with the specific new requirements of the legislation, whilst complying with the new requirements will be a much larger burden for smaller businesses that lack the HR and legal departments of bigger companies.

#### **6. The Impact on Investment in the UK**

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The Bill will have a significant impact on where firms choose to invest. Throughout our stakeholder engagement on this Bill, we have continually heard that additional

day one protections for workers would make it much harder to hire in the UK. For example, given the additional risk to cashflow that could occur should an employee not be a productive fit but have to remain in employment, it can make more sense to redirect investment elsewhere where possible. This is especially true in industries whereby firms can easily source flexible support from international economies.

## **7. Areas of Omission from the Bill**

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There must be an understanding, that is currently not reflected in the Bill, that employers generally come from a position of wanting to look after their employees. The vast majority of employers see their employees as something to be invested in and go to great lengths to create a working environment that nurtures talent and creates happy workers. Whilst there will always be exceptions to this, ultimately, this is in the interests of firms too; happy workers are more productive workers. Imposing additional regulatory or legal requirements on firms will in many circumstances have the complete opposite effect on raising employee morale and workplace conditions. Instead, businesses should have the right taxation and regulatory framework that allows them to thrive and expand, with this ultimately being the most beneficial thing for employees.

## Appendix

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The Jobs Foundation is a charity set up to champion the role of business as a force for good, supporting the crucial role companies play giving people a step up in life by providing jobs and training opportunities.

We want to have a practical impact on the ground, by helping business leaders do even more for their local communities, by providing them with the tools, knowledge, and best practice on employing and training people from less privileged backgrounds.

In conjunction, we want to have a policy impact by creating a business environment which allows companies to thrive. We hope our advocacy programme will bring about a real change in the way policy makers view business, and the crucial social and economic value businesses contribute to those most in need.

Over the course of 2024, we have built our Business Council - our coalition of business leaders and entrepreneurs from across all types and sizes of business, industries, and parts of the country – to be almost a thousand members strong. Our Business Council members feed into our policy and research streams, helping ensure that we remain a grounded voice of the breadth of the business community across the UK.

We have recently published our foundational research, *Two Million Jobs: How businesses play a crucial role in helping people from welfare into work*. Based on interviews with hundreds of business leaders and other stakeholders from across different parts of the country (Sheffield, a city; Loughborough, a town; Pembrokeshire, a rural area; and Hartlepool, a coastal community), *Two Million Jobs* is the first major recent study into how businesses are operating on the ground to generate employment and training. The report is based on the Government's ambition to raise the employment rate to 80 per cent, bringing two million more people into employment. The report provides a blueprint for how the Government can achieve this.

We thank the committee for the opportunity to give evidence.

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