Response to

The Business and Trade Committee's Inquiry "Make Work Pay: Employment Rights Bill"

6th December 2024

Introduction

The emergence and rapid growth of the well-functioning umbrella market has been a positive contributor to UK growth, productivity and wealth. Compliant bona fide umbrellas provide certainty and security to the workers engaged by them, ensuring that they receive the full protections required by employment law, that their tax affairs are simplified, and all required taxes are remitted to HMRC.

The Freelancer & Contractor Services Association (FCSA) is the UK's leading professional membership body dedicated to raising standards and promoting supply chain compliance for the temporary labour market. Our members provide umbrella employment, self-employed services, accountancy, and business support solutions to the contingent workforce.

At time of writing, FCSA has more than 70 Accredited Members who collectively represent circa 210,000 workers engaged as employees; making them, collectively, one of the largest employers in the UK. 31.8% of the workforce represented by the FCSA are women. FCSA members alone collect c. £6 billion in taxes and NICs which are timeously remitted to HMRC.

FCSA has worked extensively with government and other stakeholders to promote the highest possible standards in the industry, most recently providing labour market intelligence and umbrella regulation advice to directorates in the Department for Business and Trade (DBT), such as Labour Market Enforcement and Employment Agency Standards, and working with HMRC across a number of areas including the off-Payroll Working Forum.

It has also assisted Parliament, giving evidence to the All-Party 'Parliamentary Loan Charge and Taxpayer Fairness Group' and the House of Lords Finance Sub-Committee, as well as being an expert advisor to the DBT-supported JobsAware initiative, the Better Hiring Institute.

This submission outlines our position and recommendations, emphasising the need to balance worker protections with the operational realities of the temporary labour market. We have included Annexes 1 to 4 for reference – as they summarise the FCSA position in relation to the 4 related Consultations issued by Government and provide practical examples that will aid the Committee in better understanding the impact of the measures as currently proposed.

FCSA continues to promote compliance within the sector for the benefit of individual workers, HM Government, and the supply chain. As a representative of a unique subsection of the labour market, it welcomes the opportunity to provide evidence to the Business and Trade Committee's inquiry into the Employment Rights Bill.

Executive Summary

The FCSA welcomes the Government's significant step forward to overhaul workers' rights through the introduction of the Employment Rights Bill. However, we are concerned that the 'one-size-fits-all' approach currently being applied in the draft legislation fails to address

more complex pockets of work, particularly the temporary labour market. As of September 2024, there were around 1.5 million temporary workers across the UK, which accounts for a substantial portion of the labour market. Please see Appendix 5 for an illustrative view of the supply chain's complexity.

Temporary work provides valuable flexibility for workers who may have varying personal and professional commitments. These workers often prioritize flexibility over guaranteed hours. In most cases the contract of employment for these workers is with an Umbrella Company – not the agency or end hirer. This makes it hard to understand where the funds would come from to cover the various proposed changes – especially as compliant Umbrella Companies already operate at very fine margins.

As set out below, changes to areas such as unfair dismissal and day one rights, while welcome in principle, have introduced potential loopholes and weaknesses that may be exploited and must be addressed. It is also expected that increased costs will preside over all these changes which, in a time of economic strain, is a key point to consider - particularly for small and medium-sized businesses - if this government is committed to growth.

The FCSA's primary concern relates to the feasibility of applying the measures proposed in the Employment Rights Bill to those working in agencies with umbrella company involvement. In order to adequately protect those covered by umbrella companies, the FCSA strongly recommends that the Government defines 'inherently temporary' in statute, as it is currently unclear whether umbrella companies, and the workers that operate through them, are in scope. The current provision of the Bill only covers 'employees', meaning that those who fall outside of this scope will be met with less rights in real terms.

FCSA agrees with the Regulatory Policy Committee (RPC) in that the provisions as currently drafted will have a number of unintended consequences and that these need to be more thoroughly assessed and understood before proceeding.

FCSA believes that compliant Umbrella companies can be part of the solution to the problems Government are trying to solve, and we actively want to play our part. However, many of the options presented in the Government's various Consultations seem to overlook the fact that workers will often be employed by an umbrella company (not an agency or end hirer) and this needs to be addressed.

Existing Protections

Temporary workers are already very broadly protected by several legal frameworks:

Agency Workers Regulations (AWR) 2010: Ensures day one rights, equal treatment after 12 weeks in pay, annual leave, and other conditions.

National Minimum Wage Act: Guarantees minimum hourly pay.

Employment Rights Act 1996: Protects workers from unfair treatment and deductions.

Conduct of Employment Agencies and Employment Businesses Regulations 2003: Protects agency workers and end clients with provision of information and targeted rights and benefits.

Employment Agencies Act 1973: Regulates the recruitment industry in conjunction with the above.

FCSA believes that these protections offer a robust safety net for Temporary Workers, without the need for additional regulatory burdens.

In addition to the existing protections listed above, FCSA accredited umbrella companies generally offer a minimum 336-hour overarching contract: This guarantees that an employer will provide an employee with a minimum of 336 hours of work in a 12-month period.

Recommendations

That the impacts on the 'Self Employed', and 'Workers' (as opposed to employees) identified in the Government's Impact Assessment of the Employment Rights Bill are properly addressed. Agency and temporary workers should be excluded from:

Additional zero-hours regulations. If exclusion is not possible, the end-hirer should guarantees the hours to the agency, which in turn should mirror that guarantee to the umbrella for that assignment/worker.

Changes to the 'Waiting Period' and 'Lower Earnings Limit' for Statutory Sick Pay. Legislation should make clear that temporary workers who fall ill whilst not on assignment are not entitled to SSP. Employer cost mitigations also need to be put in place for small businesses and umbrella companies in particular.

Changes to the 'Collective Consultation Obligations' and 'Interim Relief Awards' relating to rules on collective redundancy and 'fire and rehire'.

Responses to Inquiry Questions

Protecting Workers

- ***Are there weaknesses or loopholes in the Bill that could be exploited or have unintended consequences?***

In short, yes. There are a number of areas in the Bill where the FCSA anticipates exploitation or unintended consequences. The overriding concern is that rising costs for businesses will cause margins to narrow, which will, in turn, impact the workers.

There are a number of areas of concern that arise when we examine the proposed introduction of day one rights. For example, the introduction of sick pay as a day one right is open to exploitation in the temporary labour market. For example, if an individual – or contractor – undertakes a two-week contract with a bank, that is handled through an agency and paid for by the bank, but the overarching contract is handled by the umbrella company. If the contractor is then off sick, but this extends over the two-week contracted period with a bank, the question arises as to who pays for the sick pay past that date.

In this case, it is more likely that contractors will end up losing rights, as mitigations will be written into contracts so that when the assignment finishes the obligations will stop. More generally, the pressure to offer more stable, guaranteed-hours positions, could potentially lead to a shift in the types of engagements offered to freelancers and independent contractors. This could lead to a worker securing less work than they would like to.

There are also no proposals to tackle 'overemployment' – a situation when an individual has a full-time position in more than one place. Under the new measures, an employee in this circumstance would be able to claim sick pay on multiple jobs, for example, with no mechanism in place to prevent this from occurring.

These risks could be mitigated by introducing longer trial periods for those contracted for temporary work through an umbrella company. As an employee of an umbrella company, these individuals have the same rights as other employees, but consideration needs to be given to the unique nature of the work in which they are engaging.

- ***Are there areas of employment law not covered by the Bill that weaken workers' protections?***

As set out above, there is a concern that those who fall outside of the 'employee' definition will end up with less rights, introducing the risk that individuals may choose to move to a joint employment model, which the Bill does not cover. Joint employment occurs when an employee has more than one employer, and their employment contract clearly states this. The contract must also name the employers as joint employers. The FCSA anticipates that, as temporary work becomes more complex under new legislation, more employers and employees will move to a joint employment model. The legal stance on joint employment is

not well established, and it hasn't been thoroughly tested in court, which could potentially lead to legal complications in the future.

- ***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?***

The FCSA is supportive of proposals to set up a Single Enforcement Body, or Fair Work Agency, as thorough enforcement is key to ensuring that the proposed legislative changes operate effectively. It is important to be mindful that there is a risk of an over-reliance on our already struggling court system to enforce issues.

Ultimately, the impact of the Fair Work Agency for both employers and employees will depend on its resources and funding. Although it is likely to generate its own revenue to some extent through the imposition of penalties, it will still require additional resources to do its job effectively.

We would also argue that other bodies should be added to this single body in order to strengthen its work. At this stage, for example, there is no reference to a cybersecurity function, for which GCHQ might be well-placed to input and would be welcome. Information sharing will be key - organisations involved in enforcement should have formal routes to share intelligence, provide advice, and make referrals.

Impact on Businesses

- ***What impact will these measures have on staff retention, hiring practices, probationary periods and wages?***

The changes to unfair dismissal is a significant departure from the current legal position and is one of the most substantial changes for the umbrella sector. Currently, an employee must have two years' continuous service to be afforded protection from unfair dismissal. This means that an employer can terminate an individual's employment within two years with little or no risk.

At the moment, the risk to umbrella companies of unfair dismissal claims is minimal, as the majority of employees are on the books for less than two years. It remains to be seen how a day one right to claim unfair dismissal will be implemented in a sector which exists to provide short-term, flexible labour. In principle, if an assignment ends and the employee's employment is terminated because they don't have another assignment (i.e. there is no work for them), that would amount to a redundancy situation. Currently, an individual must have two years' service to be eligible for a redundancy payment, but that might change under the new law. It is presumably not the Government's intention that an agency worker will be entitled to a redundancy payment each time that an assignment ends.

The Government has indicated that probationary periods will be important in allowing employers to take a view on an employee's performance in the early stage of the relationship and we are likely to see probationary periods taking on greater significance (whereas currently they are rarely used for umbrella employees). The Government has also confirmed that fixed term employment contracts can still be used. As a result, many umbrellas may increasingly turn to fixed term contracts (which would align with the anticipated length of the assignment) in place of 336-hour overarching contracts of employment.

The Bill also includes provisions that require employers to compensate workers when shifts are cancelled, moved, or curtailed at short notice. While, in theory, this is a welcome move to promote job security, the reality is that it is likely to have an adverse impact on organisations such as the NHS who rely on 'bank staff' to tackle resourcing challenges. The NHS and other publicly funded organisations, such as councils and schools, would incur unnecessary costs from these new measures if they are consistently paying out compensatory charges. Needless to say, the mutuality of obligation (MOO) here is absolutely fair and necessary to uphold. However, an expectation of what compensation will entail must be enshrined in the legislation and answer questions around how this might impact taxation, holiday accrual and whether this payment would be classed as a wage or compensation.

- ***How will other areas set out in the Plan to Make Work Pay impact businesses?***

One area that will certainly impact the umbrella company sector is the Government's plans to abolish worker status and adopt a two-tiered model of employees and genuinely self-employed individuals. Such a fundamental shift will require careful consideration and engagement with stakeholders from across the labour market.

It is vital that the Government acknowledges that employment status reform will have significant interaction with the many other issues associated with atypical work and the measures proposed to address them. There is a likelihood that the Employment Rights Bill may dilute the need to review worker status in any case, by bringing the rights of employees and workers closer together. This is an area where the FCSA would both welcome and recommend further consultation.

- ***What impact will strengthened protections, such as day one rights, have on the hiring practices of businesses, UK employment rates and UK investment rates?***

The Employment Rights Bill, with its strengthened protections like day one rights, is likely to have several impacts on hiring practices, employment rates, and investment rates in the UK. For example, as outlined above, businesses are expecting to face increased compliance costs as they work to meet the new regulations, which could lead to more cautious hiring practices and impact wage growth. This will adversely impact the operations of small and medium-sized businesses in the UK most significantly.

In terms of employment rates, there will likely be a short-term adjustment to hiring as businesses adapt to the new regulations, therefore creating fewer opportunities for those looking for work. There is a similar risk applied to investment rates, with the expectation that investors will initially be cautious due to the anticipated increase in operational costs and regulatory burden. However, the FCSA recognises that improved job security is expected to have positive implications in the longer-term.

Therefore, it is vital that the Government create a legislative and regulatory environment within which these longer-term benefits can flourish, by providing clear guidelines and support to businesses of all sizes to help them understand and comply with the new regulations.

Conclusion

While we support the government's intention to provide better financial security for workers, we believe the proposals require significant refinement to avoid unintended consequences for employers, umbrella companies, and workers. We would welcome further dialogue to ensure the reforms achieve their intended goals without disproportionately impacting key contributors to the UK economy.

Addressing the Tripartite Relationship

The employment model for agency or temporary workers involves three parties: the agency(ies), the end hirer, and, in many cases, the umbrella company. This complexity raises critical questions about where any new responsibilities should lie. Clear guidelines are necessary to ensure fair apportionment of liability.

Risk of Displacement to Non-Compliant Models

Increased regulatory requirements could encourage businesses toward operating under less compliant, or informal labour models, such as cash-in-hand working.

Alternatively, workers could be encouraged – or actively choose – to become self-employed to become better able to obtain work by operating on a "Trading As" basis, by setting up their own limited company. For those that are less experienced in managing their own tax affairs – and all other obligations – this could present a wide range of compliance risks.

In any event, this would fundamentally undermine the government's goals of raising standards for workers and encouraging compliant behaviour of the overall sector. Furthermore, this would likely result in HMRC losing out on substantial tax receipts – receipts that could have been collected by compliant payroll businesses to the benefit of all

taxpayers.

Ongoing Monitoring and Evaluation

It is important that a robust mechanism is put in place to monitor the impact of these measures, with periodic reviews to ensure they meet their objectives without disrupting the temporary labour market. This could be done by using the existing Post-Implementation Review (PIR) process, if the timetable for the review was to be brought forwards to 18month to 2 years of the measures taking effect.

Appendix 1: Challenges of Applying Zero-Hours Measures to Temporary Workers

FCSA has concerns that the complexity of operation of the UK flexible labour market is often not fully appreciated – Please see Appendix 5 for an illustrative view of the supply chain's complexity. In many cases there are several intermediaries between the end-hirer and the worker, sometimes many. This gives rise to a particular set of administrative problems which of themselves would make the application of the government's proposals unrealistically cumbersome and perhaps even unworkable.

The Government's Impact Assessment scorecard has recommended that distributional (administrative) impacts should be addressed. The Impact Assessment states that;

"…under the assumption of a competitive market, costs can only go to reduced wage growth, benefits or hours for other employees and/or consumers through price increases."

We share the RPC view that the; unintended consequences, wider impacts, and the impacts on the; employee, worker, and self-employed should all be properly considered and addressed.

Guaranteed Hours

The government proposes two options:

> **Option 1:** Agencies offer guaranteed hours.
>
> **Option 2:** End hirers offer guaranteed hours.

Both options present serious challenges:

> **Agencies (Option 1):** Agencies have limited control over demand, making it difficult to offer guaranteed hours accurately.
>
> **End Hirers (Option 2):** Requiring end hirers to offer guaranteed hours could effectively change the nature of their relationship with agency workers, leading to unintended legal and financial implications

Both options would result in an overall loss of agility and flexibility which in turn damages growth opportunities for the UK economy. Furthermore, neither option considers the role of the umbrella, where an umbrella company employs the worker.

The Consultation proposes that whichever party guarantees the hours, will become the worker's employer, see page 14 of the consultation;
"If the agency worker accepts guaranteed hours directly with the end hirer (under option 2),

they would, for that contract, switch from a contract with the agency to a contract with the end employer.")

This will force workers that want guaranteed hours to switch employer, which will disadvantage them in any number of ways, including (not exhaustive):

1. Workers with multiple agencies/hirers will be forced to have multiple employers, therefore suffering emergency tax codes, loss of employment continuity etc.
2. Less favourable credit/mortgage references due to ever changing employment. Under an Umbrella, workers are in a better position to evidence a stable income and gain wider benefits offered by the continuity of employment.
3. Changing/losing pension benefits. Employed by an Umbrella, workers are auto-enrolled on to a pension, many also have the option to salary sacrifice to maintain a single pension pot and all the benefits that come with that – as opposed to creating an inexhaustive number of separate smaller pensions, undermining their ability to properly plan for retirement.
4. Changing/losing employee benefits offered by most umbrellas.
5. Greater Distributional/Administrative costs, leading to reduced; wage growth, benefits, or hours for employees – and/or consumers through price increases.

The result for the worker, is accepting guaranteed hours will put them at a disadvantage in other areas. We believe a third option is possible.

Alternative Options

1. **Mirrored Guarantees:** The end-hirer guarantees the hours to the agency, which in turn mirrors that guarantee to the umbrella for that assignment/worker.

   If there is no umbrella, then the guarantee is between hirer and agency for that worker. This concept of joint responsibility throughout the chain already exists in the Agency Workers Regulations (AWR) legislation – There is, therefore, no reason it cannot apply here.

2. **Worker Opt-Out:** The worker, when on assignment with an agency or umbrella company, is given the right to opt out of or refuse guaranteed hours where it has been evidenced that the worker has been informed of their rights, and they express a clear preference not to have guaranteed hours. The worker would have the clear right to refuse to opt-out.

   The process would need to be able to demonstrate that the worker has made an informed decision based on their understanding of their rights. This could be a similar

process to opting in/out of the conduct regulations or the Working Time Directive. Consideration will need to be given on how to administer and police this opt out.

These options would achieve what the Government wants to achieve for the worker without the unintended consequences identified. These options maintain the contractual structure many actively choose and all the benefits already enjoyed by the worker.

Practical Challenges

Determining Regular Hours in a Fluid Environment

Temporary workers frequently move between assignments with different end-hirers or engage in concurrent engagements, leading to inconsistent working patterns.

For example, over a 12-week period a Supply Teacher will often work across various schools, often using a number of different agencies to secure the assignments, often under the same end-client for example a local council authority, but have just a single overarching Contract of Employment with one umbrella company. The challenge is that either the agency/agencies, or the end client must offer the Guaranteed Hours. In this instance, local government would then need to pay and offer the hours longer than the need of the initial supply, and potentially into the school holidays, or pay more to the agency to make up the difference – potentially making the Supply Teacher model as it stands unviable.

Calculating "regular hours" based on a 12-week reference period is wholly impractical and in a large number of cases would not accurately reflect their work preferences.

The issue of seasonal working is not adequately addressed by the proposals, and FCSA strongly recommends that if these proposals are to be applied to agency or temporary workers then the reference period must be 52 weeks, and it should allow for fallow weeks where the workers do not work at all.

Guaranteed Hours

The proposal is that an end-hirer should automatically offer guaranteed hours to a zero or low-hour worker with a reference period of 12 weeks. However, end-hirers engage with agency workers in order to fulfil temporary assignments, or specific projects.

For example, a gardener for a local council authority may be brought in ad-hoc to help over the spring (planting season) and summer (mowing and maintenance) period but not be needed as much (if at all) in autumn/winter. Under this proposal, the local Council would need to offer guaranteed hours based on the previous 'busy' 12weeks, when their own permanent staff are not on those hours. Many councils employ permanent gardeners for 45 hours/week in the summer and 29 hours/week in the winter due to the seasonal requirements. Whilst these assignments may rarely be on a zero-hour basis it is the clear intention of both the end-hirer and the worker that these engagements are temporary and sometimes seasonal.

Agencies, umbrellas and end-hirers would each need to monitor work patterns continuously, increasing operational complexity and cost and then make an offer to a worker which would likely be a) unnecessary b) confusing and c) not sought by the worker.

Agencies and umbrella providers receive no payment from end-hirers for hours where a worker does not work (e.g. holidays) and it falls to them, in particular in umbrella engagements, to provide funding for this from cumulative deductions from the assignment rate received, ultimately, from the end-hirer over the period of engagement. It can be seen, therefore, that a 12-week reference period, particularly when the engagement is of a seasonal nature, is wholly inadequate as a useful period to calculate actual hours worked and has the potential to seriously financially disadvantage the agency/umbrella.

The contact offered should be permanent unless the work is inherently temporary. Clarity and guidance on what "inherently temporary" means would also need to be provided The introduction of a right to be offered guaranteed hours therefore works for no party in the agency worker/temporary labour supply chain.

Shift Notifications and Cancellations

The definition of last-minute cancellation (or last minute offering) of shifts is complex. Whereas most businesses will endeavour to provide adequate planning and notice of shifts, many will have to respond to unexpected peaks and troughs in demand, or unplanned absences.

Reasonable notice of shifts:

Consideration should be given to the circumstances of notice and a reasonable interpretation of what constitutes "late".

For example, an HGV driver may call in sick just prior to a scheduled 2am shift, and at that point the logistics firm has no option but to seek an agency driver. That eventuality is undoubtedly short notice but an agency will have a pool of drivers who expect to work this way and therefore this would not constitute unreasonable notice.

Unreasonable notice of shift cancellations:

Agencies would be required to compensate for last-minute cancellations, potentially deterring businesses from engaging temporary workers.

Consideration should be given to the circumstances of notice and a reasonable interpretation of what constitutes unreasonable.

For example, if a retail premises was to be closed due to a fire overnight and the end-hirer notified the agency that agency staff were to be told not to come to work that day, it would be

unreasonable to expect notice given to be anything other than short given that there is at least one extra step in the notification chain.

Equally an agency nurse called in to cover for a sickness absence may be turned away on arrival at the ward because the regular nurse has, in fact, arrived at work however this is entirely outside of the control of the agency or umbrella.

In that circumstance it should be incumbent on the end-hirer to provide reasonable compensation. There is also the risk that such compensation may extend beyond the agency worker, with recruitment businesses themselves looking to include their lost margin in such compensation.

Consideration should be given to defining that compensation at a level which fairly compensates the agency worker but does not encourage potential abuse (e.g. people acting in collusion to manipulate the system).

The consultation document proposes that these circumstances could be examined at Employment Tribunal. FCSA has serious concerns in this regard:

- ACAS is already substantially overloaded
- the Tribunal system is already substantially overloaded
- the costs of arguing before a Tribunal would far outweigh the pay for a lost or cancelled shift, encouraging "compensation culture"
- query whether agencies are to recover their unpaid margins via the same route, or if separate litigation is to be envisaged

Our recommendation is that if the agency and/or temporary worker sector is included in this measure, then ACAS should be provided with specific guidance relating to the agency and temporary worker sector on whether a claim can proceed to Tribunal. The Employment Agency Standards Inspectorate (and/or other organisations) should be able to assist with developing this guidance.

Tailoring an Approach for Temporary Workers

FCSA's overall position is that agency and temporary workers be excluded from any additional zero-hours regulations.

However, if the government decides to apply zero-hours measures to agency and temporary workers, we propose that a framework is developed to accounts for the unique dynamics of temporary work, including:

- A longer reference period (e.g., 52 weeks) for determining regular hours.
- Exemptions from shift cancellation compensation where reasonable notice is provided.
- Legislative Cost Recovery Mechanisms for all parties in the chain

Introduce provisions allowing agencies to recover costs from end hirers for shift cancellations or curtailments caused by the hirer. This would protect agencies from undue financial burdens and ensure accountability.

Appendix 2: Challenges relating to Statutory Sick Pay changes

Financial Burden on Employers

The consultation proposes removing the Lower Earnings Limit and the waiting period for SSP, ensuring payment from the first day of sickness. While this improves financial security for workers, it shifts significant financial liability onto employers, particularly small and medium-sized enterprises, including; umbrella companies, and Professional Employment Organisations (PEO).

It is worth highlighting that judging a business's size based on turnover creates a false impression in this instance, as the turnover of the businesses involved is made up of wages – the overwhelming majority of which is passed on to the worker. For this reason, umbrella companies are all too often seen as medium – or even large – businesses, but when you look at their number of employees or their profits, you will see they are not.

The proposed changes to how SSP operates would destabilise an already well-understood and widely applied system. It is important that the Government addresses this instability to avoid unintended consequences for both workers and employers.

For umbrella companies in particular

Given the nature of the temporary labour market, it falls on umbrella companies as the employer to provide for SSP just as it does for all employers.

However, umbrella providers (and recruitment agencies who employ temporary workers) are not recompensed by the employment business (in the case of umbrella companies) or end-hirers above them in the chain and thus must pay SSP to workers from their own funds.

As can be readily understood umbrellas therefore have to make provision for SSP payments knowing full well that the burden is not offset by ongoing income i.e. the provision must be made from the already pressurised margin.

For context, the average gross margin an umbrella company receives is around £20 a week per worker. However, within this margin the umbrella is responsible for covering its; staff costs, payroll, insurances, and other fixed costs. Furthermore, agencies can be entitled to a

rebate from the umbrella, and this can be around £5 per week. Given that SSP is £116.75 a week for up to 28 weeks there is a significant disparity that is all too often overlooked.

Employer's National Insurance Contributions (NICs):

In addition to this, umbrellas must also pay the Employer's National Insurance Contributions on SSP (currently 13.8% rising to 15% from April 2025) and again these monies must come from the umbrella company's own funds.

Unlike traditional employers, umbrella companies cannot pass these costs onto clients or offset them against business income, creating a financial pressure which does not exist elsewhere.

Implications for Temporary Workers Not on Assignment

The consultation does not address the unique position of contingent workers employed by umbrella companies who may have periods without assignments. It is unclear:

- Who bears the responsibility for SSP during these gaps in assignments?
- How will this align with current legal definitions of continuous employment for workers engaged via umbrella companies?

Umbrella companies would face the burden of paying SSP (and associated Employers NICs) despite receiving no assignment fees from agencies or end-hirers during these periods of worker absence through sickness. This could result in reduced availability of umbrella services, impacting the entire contingent workforce.

An unintended consequence of this change, is that we will likely see more contracts for service (workers) rather than contracts of employment, as this consultation does not cover workers.

It is important for the viability of Umbrella companies – and in turn those that they employ – that legislation should make it clear that temporary workers who fall ill whilst not on assignment are not entitled to SSP.

Implications for new Workers

The consultation does not address issue of potential abuse created by removing the waiting period, particularly for lower paid workers. There is a risk that a recently hired worker might take sick leave as a sham knowing that they would receive SSP calculated from day 0 rather than day 4.

This will incentivise and may lead to more intermittent and disingenuous absences – as opposed to longer term leave due to the cap on total absence remaining – which can be as disruptive to business as longer-term absences.

We acknowledge that the impacts of disingenuous absences are hard to assess as it is hard to obtain any meaningful data on this, and the impacts will likely vary considerably among businesses. However, this consideration does not appear to have been explored at all, as it is completely absent from the Government's Impact Assessment.

Impact of Multiple Employers and Overemployment

For workers with multiple employers, calculating SSP entitlements and ensuring fairness will be complex. The proposed percentage-based SSP for low earners risks incentivising overemployment or creating administrative challenges where employers must coordinate SSP entitlements across several jobs. This issue is particularly pertinent in sectors like care, hospitality, and retail, where part-time and multi-job working arrangements are common. It is more complex still if there is not an Umbrella Company with a contract of employment covering the employee's various assignments.

The Consultation does not address the issue of Overemployment or address how it would prevent an employee with two or more concurrent jobs with separate employers from claiming Statutory Sick Pay more than once concurrently.

Again, the Government's Impact Assessment does not address this point. Although the Government's Equality Analysis of the policy does make reference to "multiple low-paid jobs", it does not consider the possibility of a worker making multiple concurrent SSP claims to their various employers. If this issue is not addressed, it could create new fairness and equality implications; as those in full-time work with only one employer will only be entitled to claim SSP once at any given period of time.

Potential Unintended Consequences

Withdrawal of Full-Salary Sick Pay Benefits: Many organisations currently offer enhanced sick pay (e.g., full salary for a defined period) as part of their employment package. If statutory sick pay is strengthened, some employers may have no choice but to withdraw these benefits they voluntarily provide, reducing overall worker security.

This could also lead to increased strain on; Occupational Therapy companies, Employee Assistance Programmes, Doctors, and Mental health lines, as companies may require more 'evidence' that someone has a valid reason for being off and that they have taken steps to improve.

Example: Many local authorities already report high sickness absence rates linked to full-salary sick pay policies. Strengthening SSP may exacerbate this, leading to unsustainable levels of absence and increased financial strain.

Increased Use of 'Capability' Dismissals: Employers may turn to performance-related dismissals, particularly those informed by Bradford Factor scoring systems, as a way to manage higher absence rates. This risks creating a negative cycle of insecurity for workers

and increasing the workload of already overstretched organisations like ACAS and Employment Tribunals.

Broader Considerations for both Employers and Umbrellas

The reforms may inadvertently incentivise employers to reduce reliance on traditional employment models. Increased SSP costs could lead to:

- Greater use of self-employment models such as Contract for Service to avoid SSP obligations.
- Reduced appetite for offering flexible or part-time work arrangements.
- Reduced appetite for offering employees sick pay rates above SSP
- Increased risk of abuse of SSP by workers

We urge the government to consider the broader economic implications of these proposals, particularly for contingent workforce models that underpin significant sectors of the UK economy.

Recommended Mitigations

- **Employer Cost Mitigation:** Introduce mechanisms such as rebates or subsidies for small businesses and umbrella companies to cover additional SSP and NIC costs, particularly during periods without assignments.
- **Clarification on Responsibility:** Define clear rules regarding SSP payments during gaps in assignments and for workers with multiple employers.
- **Impact Assessment:** Conduct a detailed assessment of how these changes will impact different sectors, particularly those reliant on umbrella companies and freelance workers.
- **Support for Employers:** Provide guidance and support to employers on managing absence policies and mitigating the risk of capability dismissals.
- **Protecting Existing Benefits:** Consider mechanisms to protect enhanced sick pay benefits currently offered by employers, ensuring that statutory reforms do not lead to an erosion of worker entitlements.

Appendix 3: Considerations around a Modern Framework for Industrial Relations

The FCSA is broadly in support of the Government's proposals, and we recognise the right for workers to engage in industrial action where it is considered as the last resort, if it is clear

that pay and conditions being awarded are subpar. However, this engagement with industrial action must also work in tandem with employment market flexibility in the temporary work sector, recognising that there is a significant proportion of the economy that enjoys the benefits of flexible work and should not be hampered by industrial action.

Whilst umbrella companies are the legal employer for the purposes of the temporary worker chain, they do not set the pay and conditions. This is the role of the end client who requires the temporary or agency worker being placed for an assignment or contract, in the same way that it will be responsible for setting the pay and conditions for its permanent staff. As such umbrellas do not have direct engagement with union representatives, nor is it appropriate for our members to get involved with employment disputes over pay and conditions. We do not, therefore, have any strong feelings about the mechanisms through which industrial action is called and are broadly content with the principles and processes set out in the consultation.

We do, however, want to make clear that any proposed changes to the industrial relations framework have properly considered the role temporary and agency staff play in wider industrial relations; many of whom are not unionised due to their frequency of role change. Therefore, we still feel it important that these workers are considered when thinking about wider transformations in the industrial relations landscape – for instance those students who prefer the flexibility of a zero hours contract.

Given that pay and conditions are set by the end user, any disputes and negotiations would be dealt with between the end user and the worker. In the event that an improvement in the employment package has been achieved through collaborative and constructive negotiations, then under the Agency Worker Regulations (AWR), umbrella workers who are placed during that time will also be entitled to that same improvement. This is not applicable to contractors who work out of their own licensed company.

The responsibility to communicate this to the worker is on the end user but there is no legal obligation to share this news. Moreover, the chain of communication between the end user, the employment business and the worker – and even the umbrella company – is often fractured. Under the AWR, umbrella companies are obliged to ask about the total employment package on offer after 12 weeks, and then again at 12 months, so that it can be passed on to the employees on their books. Therefore, should there be an improvement that materialises outside of that legal window, and the end user chooses not to communicate that to the worker, there are cases where the worker will be experiencing a very different package of rights.

Appendix 4: Challenges relating to Changes to Collective Consultation Obligations and Interim Relief Awards

FCSA is unclear as to why fire and rehire should be treated differently to any other areas of dismissal law – particularly for the temporary workforce.

We consider the current law to be adequate and that interim relief awards are unwarranted in circumstances where – when operated properly – employees would have their job back as opposed to other dismissal cases where there are job losses and the employees concerned have actually become unemployed.

Fire and rehire is not common practice and we do not consider that the perceived problem is one that exists across most of the labour market and we are concerned that this measure will bring unintended consequences.

The main cited case of P&O was a redundancy case and so wouldn't be caught under the fire and rehire laws, which could force other genuine businesses into financial distress if interim relief was applied.

We have concerns as to how Interim Relief Payments would work where there is a sliding scale of non-compliance. For example, it is not clear how this would apply to inadvertent breaches.

In addition to our detailed responses to the Department for Business and Trade's Consultation, we would ask that the following potential impacts are also considered:

- There could be an increase in job losses as employers may just dismiss an employee by reason of redundancy, or for "some other substantial reason", rather than seeking dismissal and then re-engagement.
- Certain terms and conditions could be grandfathered, when really it might be in the interests of the employee for them to change but the employers may be reluctant to do so. In this instance a new contract would be in the employees best interests.
- There could be an erosion of an employer's fundamental right to dismiss an employee with sound moral grounds. Equally, there could also be a loss of the employees' fundamental right to consent to a change in terms.
- These changes could directly result in a significant increase in Employment Tribunal hearings, preventing of access to justice for employees with other meritorious claims. This would also likely impose new burdens on ACAS.

Given that we already have robust laws in place relating to dismissal, we are not clear of the purpose of an Interim Relief payment Serves in the instance of fire and re-hire, as the re-hired employee would be being paid and would still be able to pursue a Tribunal Claim.

Appendix 5: An illustrative view of the supply chain complexity