

MAKE WORK PAY: EMPLOYMENT RIGHTS BILL – MAKE UK RESPONSE

About Make UK

Make UK, The Manufacturers' Organisation, is the representative voice of UK manufacturing, with offices in London, every English region and Wales.

Collectively we represent 20,000 companies of all sizes, from start-ups to multinationals, across engineering, manufacturing, technology and the wider industrial sector. Everything we do – from providing essential business support and training to championing manufacturing industry in the UK and internationally – is designed to help British manufacturers compete, innovate and grow.

From HR and employment law, health and safety to environmental and productivity improvement, our advice, expertise and influence enables businesses to remain safe, compliant and future-focused.

About our response

The UK's manufacturers are committed to providing good jobs for all of their workers. Paying 9% above the national average salary and with a focus on skills training, health and wellbeing, employers across the manufacturing sector invest heavily in supporting their workforce.

Make UK welcomes the Government's Employment Rights Bill and wider Plan to Make Work Pay. Our members support the Government's efforts to eradicate exploitative labour market practices where they exist, but it is crucial that this is balanced so that the overwhelming majority of quality manufacturing businesses can operate flexible workforces and recruit the people they need. The legislation begins to constructively set out how this balance might be struck, but getting the detail right is the critical next step of the process.

Our engagement with the Government and trade unions on the new legislation has been wide-ranging and productive. From the outset of those discussions, we have been clear that this process should not be rushed, giving the Government enough time to ensure there are no unintended consequences and businesses enough time to prepare for the changes to come into effect. The Government has provided a clear outline for further consultation as the details are refined, with the promise of no changes before 2026. This is a positive sign that the Government is listening to our concerns – in particular in areas such as the day one right to protection from unfair dismissal, flexible working and right to guaranteed hours. However, there is much more to be done to ensure that these policies work for businesses.

Key points from our response:

1. The design of 'individual rights' policies in further consultation and secondary legislation is crucial to avoid unintended consequences. The new statutory probation period should allow enough flexibility to give employers the confidence to recruit and invest in support for new employees, and not make them too risk-averse in hiring decisions. The right to guaranteed hours should focus squarely on 'exploitative' zero hours contracts and not harm employers' ability to offer flexible employment arrangements which work in the interests of both the business and the worker.
2. As noted by the Government's own impact assessment, the potential financial cost of the Employment Rights Bill to employers is significant. 44% of manufacturers believe there will be a substantial increase in their business costs as a result of the legislation. While we support measures such as increased eligibility for Statutory Sick Pay to improve retention and productivity, the upfront cost to businesses – especially SMEs – is high and the Government should be considering how it can help employers mitigate these costs, for example through a SSP rebate. The impact of the

decisions on tax taken at the Autumn Budget also risks constraining employers' budgets for investment in their workforce and the wider business which could restrict their ability to improve productivity.

3. While we support strong regulatory measures on fire and rehire, some of the measures on 'collective rights' may not help businesses make necessary changes to their workforce. In particular, the proposed changes to collective redundancy rules should be reviewed to ensure that meaningful consultation with the workforce on redundancy can be achieved.

Protecting workers

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

1. There remains a significant level of policy detail still to be determined via further consultation and introduced through either government amendments to the Bill during its passage or secondary legislation at a later point. Given the time constraints under which the Bill has been drawn up in order to meet the Government's commitment to introducing primary legislation to Parliament within its first 100 days in office, this is welcome. It is important to ensure that complex measures which could have a major impact on both employers and workers are subject to proper consultation, and so it is right that there will continue to be opportunities for stakeholders to feed into the development of details on individual measures such as the new statutory probation period and right to guaranteed hours.
2. These details are crucial in avoiding unintended consequences for both the employer and employee. For example, we are concerned that the measures in the Bill giving employees on zero or 'low' hours contracts the right to guaranteed hours – i.e. an employment contract which reflects their 'regular working hours' over a 12-week reference period – could have unintended consequences depending on how the scope of this measure is defined. The Government has not set out how it will define a 'low' hours contract or how an employee's regular working hours should be calculated; the impact of this measure, and the number of employees and types of employment contract to be captured by the measure, will be decided by these definitions.
3. We have heard concerns from manufacturers that arrangements such as annualised hours contracts – where employees are guaranteed a minimum number of working hours per year and are paid accordingly, but the weekly or monthly number of working hours may still vary – could be in scope of this measure, depending on how the rules on the 12-week reference period and definitions of 'low' and 'regular' working hours in regulations. The Plan to Make Work Pay set out the Government's intention to prevent employees from being engaged on 'exploitative' zero hours contracts; should arrangements such as annualised hours fall within the scope of the right to guaranteed hours, the Government will have included contracts which do not exploit workers but combine employer flexibility with financial security for the employee.
4. It is welcome that the Government has stated its preference in the Next Steps to Make Work Pay document that the new statutory probation period to accompany the day one right to protection from unfair dismissal should be nine months in duration. This will enable employers to have the flexibility of a typical six-month contractual probation period plus scope for extension for new employees who may require some additional support or training before making a final decision on permanent employment. This will help to avoid a potential unintended consequence of the legislation, which could otherwise make employers much more risk-averse in their recruitment and more likely to dismiss those new employees rather than continue to provide them with additional support through an extended probation period.

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?

5. The Fair Work Agency will be a critical part of ensuring compliance and enforcement in the labour market is effective and proportionate. We support the aim of establishing the Fair Work Agency and the scope of its work, although it is important to note that some areas within its remit such as holiday pay continue to be complex for employers to understand.
6. In this context, it will be essential for the Fair Work Agency to direct its focus on serious examples of non-compliance and provide the right support to employers who may have made a genuine error in not following the correct rules or procedures. There is concern from manufacturers that a lack of additional resource for enforcement will result in a punitive and disproportionate approach from the new body which could have an adverse effect on employers who have made small mistakes in trying to follow complicated rules.
7. In continuing its work on the Spending Review, the Government should consider how the Fair Work Agency is resourced to avoid punishing firms trying to play by the rules and focus instead on egregious examples of bad practice by unscrupulous employers.

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

8. In its consultation on establishing a modern framework for industrial relations, the Government rightly notes that the goal should be to encourage both employers and trade unions to engage in constructive negotiation, working towards avoiding disputes or resolving disputes as early as possible. Any reforms to industrial relations policy should recognise good employers' determination to be inclusive of employee voice and ensure that it is heard in decision-making, whether this is through a recognised trade union or an alternative form of employee engagement such as a works council or employee forum.
9. Manufacturers have expressed particular concern over the proposals to reduce the notice period for industrial action from 14 days to seven and extend the date for expiry of a mandate for industrial action from six months to 12. Reducing the notice period risks leaving employers with insufficient time to prepare, and combined with extending the length of a mandate could mean that employers have to dedicate significant resource to remaining prepared for potential industrial action to be taken at short notice. The potential for lack of preparation and high cost implications will limit the time and space available to continue constructive dialogue between employers and unions in sensitive situations, and risk having a negative impact on productivity.
10. It is right that the Government will consult further on changes to the threshold for achieving statutory recognition rather than including a proposal directly in the Employment Rights Bill. It is important that any changes to the threshold for recognition avoid the risk of a small portion of trade union members negotiating on behalf of a much larger portion of the workforce without their support or agreement.

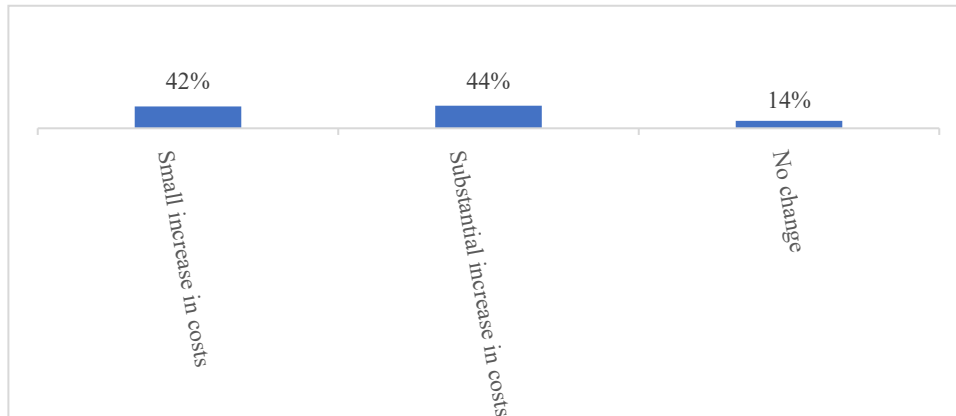
Impact on businesses

What impact will the areas covered by the Employment Rights Bill have on small, medium and large businesses?

11. For employers of all sizes, there will be a significant cost impact to the introduction of measures in the Employment Rights Bill. As noted by the Government's own impact assessment accompanying the Bill, this could reach £5 billion per year. Make UK's latest member survey data shows that 44% of manufacturers expect the Bill to lead to a substantial increase in costs.¹ Only 14% believe there will be no impact on them.

¹ Make UK Manufacturing Outlook, Q4 2024

Chart 1: How will the proposals in the Employment Rights Bill impact your business costs?



12. These costs will vary from business to business, but there is likely to be a notable impact on administration – updating policies and procedures to ensure full compliance with new rules – as well as some investment in training for HR leaders and team managers to help them to understand new requirements and expectations.
13. There is also concern about the potential costs which may arise from an increase in unfair dismissal claims or a wider increase claims going to an employment tribunal, particularly if the Government decides to move forward with introducing interim relief for fire and rehire and collective redundancy claims. In considering the overall impact of the Bill on employers, the Government should be conscious of avoiding a significant increase in ET claims given the major backlog and delays already in the system.
14. The direct and indirect costs to employers of the Bill are coupled with the decisions taken at the 2024 Autumn Budget to increase employer national insurance contributions, annual rises in the National Living Wage and National Minimum Wage, and other changes in the overall tax burden on businesses. While the chart above relates only to costs arising specifically from the Bill, for many manufacturers it is the combined impact of these costs and the Budget measures which will have a major impact on their ability to invest in the workforce and the wider business.
15. One of the most substantial additional costs facing businesses will be the extension of eligibility for Statutory Sick Pay – removing the three-day waiting period and the lower earnings limit. Make UK has long supported this policy and we believe it will have a positive impact on reducing presenteeism and the risk of growing long-term sickness absence, but the increase in the upfront cost is significant. We have supported a replacement rate of 60% for those who will become entitled to SSP currently below the lower earnings limit, which the Government’s consultation document costs at around £390 million. During the pandemic, when rules on SSP were temporarily changed to remove the waiting period, there was a rebate scheme which supported SMEs with the financial impact of this. Given the Government has explicitly acknowledged that the cost of this policy as enacted by the Bill will bear disproportionately on SMEs, the rebate for these employers should be reintroduced.
16. For medium and large employers in particular, there is some concern over the impact of changing the rules on consultation on collective redundancy. While we strongly support the underlying principle of the Government’s efforts – that meaningful consultation with the workforce is a vital part of treating employees fairly during a collective redundancy process – we do not believe this will be achieved by making this change.
17. The removal of the words ‘at one establishment’ from the current legislation on the requirement to consult collectively when making 20 or more redundancies in a rolling 90-day period – meaning that employers will be obliged to consult across the workforce when making 20 or more redundancies regardless of whether or not they are confined to a single site – will result in an onerous process for employers to follow in a difficult situation. During the period between 2013 and 2015 when the current law did not apply, the requirement caused confusion among employers and there is little evidence to suggest that it improved the quality of consultation. Instead it is likely to cause additional uncertainty for both employer and employees. We would like the Government to undertake

additional stakeholder engagement on this part of the legislation, beyond the current consultation on remedies, before it is implemented.

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

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

18. Manufacturers are already taking steps to improve staff retention by investing significantly in employees' skills and health and wellbeing.² The measures in the Bill on SSP are likely to make a positive difference on retention by reducing the risk of long-term sickness absence and people becoming economically inactive as a result of ill health. Manufacturers are also increasingly looking to flexible working as a way of attracting and retaining staff, and we are pleased that the Government has protected employers' ability to decide whether this is appropriate for them by preserving in the Bill the current eight business reasons for which employers can decline a flexible working request. Manufacturers have also expressed strong support for entitlement to parental leave from day one of employment as part of attracting and retaining parents in the workforce.
19. As highlighted above, the finer details of the measures on individual rights in particular are still to be decided and, as such, it is difficult to estimate exactly how these will impact employers. It is positive that the Government has taken on board employers' concerns about many of these measures and has reflected them in the development of the legislation, such as the statutory probation period to accompany the extended right to protection from unfair dismissal and the retention of the existing business reasons for employers refusing an employee's flexible working request.
20. There is more for the Government to do on the statutory probation period to ensure there is no negative impact on recruitment and retention. Manufacturers expect the promised 'lighter touch' process for fair dismissal during the period to enable them to make changes to the workforce as is necessary. The Government's indication that this could consist simply of holding a meeting between the relevant parties is a positive starting point for determining how the process should look, but more consideration has to be given to the support that employers will need around the process, such as Acas guidance on disciplinary and grievance procedures, and the capacity of such services to provide this support.
21. The focus of the Government's 'Get Britain Working' white paper on addressing economic inactivity and providing tailored health and training support to those currently outside or on the fringes of the labour market is a welcome balance to the potential risks associated with the day one right to protection from unfair dismissal. Manufacturers have warned that the new right would make it more difficult to hire a new employee who may require extra support or training for the role if they were subsequently unable to dismiss them during a probation period should they be unsuitable for the job. It is encouraging that the Government has recognised the need to address this, both through the statutory probation period in the Bill and moves towards improved employment support services.
22. The measures on guaranteed hours need to strike the right balance between offering security for workers and flexibility for employers. While the use of zero hours contracts in manufacturing is low – the Office for National Statistics indicates that only 3.3% of production workers in the UK are employed on zero hours contracts – they can form an important part of manufacturers ensuring they can manage their workforce effectively in response to seasonal changes in demand, specific client needs and short-term skills gaps. While manufacturers appreciate that their obligation to make an offer of a guaranteed hours contract would not mean that the employee was obliged to accept – retaining some of the flexibility where it works in the interests of both parties – their preference would be for a right for the employee to request guaranteed hours. These measures – including their extension to agency workers as currently under consideration – must not prevent employers from

² [Wellbeing and work in UK manufacturing report | Make UK](#)

being able to engage skilled workers as they are required. We welcome some of the clarifications from the Government on this, such as employers being able to offer a fixed-term rather than permanent contract, but the rules on agency workers should not result in these workers becoming directly employed by default.

23. Manufacturers typically pay generous premia for different shift patterns, and we support the principle behind measures in the Bill which will give employees the right to reasonable notice of shifts and changes to shifts, and the right to proportionate compensation for shifts cancelled or curtailed at short notice. However, manufacturers will want confidence that the employment tribunal's assessment of 'reasonableness' in the notice given will take into account that sometimes it may be necessary for notice to be short.
24. In relation to the measures in the Bill on collective rights, Make UK has consistently backed a stronger regulatory approach to fire and rehire, including the code of practice introduced by the previous government. However, we are concerned that the Bill – in making dismissal for failing to agree variation of contract an automatic unfair dismissal in most cases – too restrictive on employers with a legitimate need to restructure their business and workforce. The Bill will effectively prevent dismissal and re-engagement of employees except in circumstances where business closure or insolvency is otherwise a likely outcome. While we agree that the employer should be expected to have a legitimate reason for using fire and rehire as a last resort and be able to demonstrate why this is the case, they should also be able to use this approach where it is absolutely necessary to make a change where obtaining universal agreement in the workforce is unlikely and is the most effective way of preventing redundancies. The Government should consider revising the Bill to allow for a wider range of circumstances in which employers may use dismissal and re-engagement as long as they follow the correct and fair process for doing so.
25. Beyond the direct impact of the Employment Rights Bill and Plan to Make Work Pay, manufacturers are worried about the consequences of the Autumn Budget on their scope for increasing levels of investment and employment. The rise in employer NICs and National Living and Minimum Wage – combined with the Government's estimate of a £5 billion cost to employers from the Employment Rights Bill measures and the 44% of manufacturers who believe there will be a 'substantial' increase in employment costs just from the legislation – is likely to lead to a squeeze on the resources available for investment in skills training, health and wellbeing, and new technology to enhance workers' productivity.

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

26. There are a number of areas of the Plan to Make Work Pay outside of the Employment Rights Bill which Make UK supports, including:
 - a. **Right to switch off.** It is positive that the Government has kept to its initial position of introducing a code of practice to give employees the right to switch off rather than including this in the Bill. Many manufacturers already have internal policies and procedures setting out expectations for employees expected to be on call or standby outside of their regular working hours, most notably for maintenance and safety staff. As the development of this policy continues, it is welcome that the Government is seeking to build on existing good practice rather than prevent employers from being able to respond urgently to critical issues.
 - b. **Review of health and safety regulation.** It is welcome that the Bill does not introduce new rights for employees to bring civil claims against employers for health and safety breaches, as initially set out in the Plan to Make Work Pay. If the Government is to proceed with this in the future, there needs to be full consultation and clear rationale given. Manufacturers feel that there is scope for reviewing areas of health and safety regulation to ensure that it is fit for purpose – for example, reflecting changes in working patterns and employees who are working predominantly from home. We look forward to engaging in the Government's promised review of health and safety regulations.

27. The biggest area of concern for future implementation is the proposed single status of 'worker', merging the currently separate employment statuses of 'worker' and 'employee'. It is right for the Government to exclude this proposal from the legislation and commit to detailed consultation. It has recognised from the start that this is one of the most complex changes set out in the initial Plan to Make Work Pay and would have a significant impact on employees, workers and the self-employed. Make UK looks forward to engaging with the Government in developing its proposals.#

To what extent could the Employment Rights Bill cause businesses to offshore employment and continue with weaker workers' protections abroad?

28. While there is some evidence from manufacturers with operations overseas that they are concerned about the growing relative financial cost and administrative burden of employing workers in the UK compared with other jurisdictions, we believe that the Government is providing adequate support for industry in other areas to secure the UK's competitiveness as a place to do business and employ people. The positive steps taken over recent months in developing a modern industrial strategy are critical to achieving this, and manufacturers are optimistic that it will support them to invest in UK operations, including their workforce.

Economic growth and wealth creation

What solutions or actions are required by Government, businesses and workers to effectively support the labour market while boosting productivity and protecting workers' rights?

29. It is essential that the Government provides the right support for employers to recruit, retain and train the skilled workers they need to thrive in order to achieve its mission of securing economic growth and the success of its industrial strategy. With 56,000 vacancies still in unfilled in manufacturing, the Government must work with industry to ensure that employers can bring in and keep the people they need.
30. Make UK supports the Government's efforts to reduce economic inactivity by providing additional support for young people to train and people suffering from ill health to enter or return to work, and its commitment to reforming the apprenticeship levy to better incentivise employer investment in skills training. We look forward to working further with the Government on the 'Get Britain Working' agenda, and the new Growth and Skills Levy and the role of Skills England in shaping training in England. In particular, Make UK's new Industrial Strategy Skills Commission will be making key policy recommendations in 2025 to the Government on reversing the 42% decline in engineering and manufacturing apprenticeship starts over the last eight years and boosting business investment in training across the workforce.
31. In terms of immediate policy measures the Government could introduce alongside its Employment Rights Bill and wider labour market agenda, Make UK has recommended:
 - a. **Prioritising improved funding for education providers to ensure the right training is available.** Manufacturers looking to invest in apprenticeship training – especially for young people at levels 2 and 3 – are struggling to access this training locally as training providers withdraw or scale back provision due to funding constraints, increasing delivery costs and staff shortages. The Government should consider increasing the apprenticeship budget, funded by surplus employer apprenticeship levy contributions, to support training providers with revenue and capital spending to continue to offer high-value training.
 - b. **Employer incentives for investment in training linked to shortage and high-demand occupations.** Restrictions on the skilled worker visa route – particularly the previous government's decision to increase the salary threshold – has made it more difficult for employers to recruit the skills they need. The Government should look to the example of Australia's points-based immigration system, where businesses are supported to meet

short-term labour needs with easements in the visa system but incentivised to invest in training the domestic workforce to fill those vacancies over the longer-term by receiving subsidies for apprenticeships connected to those occupations. By working with the Migration Advisory Committee, Skills England and the Industrial Strategy Council, the UK Government could adopt a similar approach to occupations currently experiencing shortages or where high future demand is forecast.

- c. **Increased tax relief for employer investment in health and wellbeing.** The previous government consulted on an expansion of existing tax reliefs for employer-provided health and wellbeing services. To support the Government's efforts to address health-related inactivity, improve retention and job security and the overall wellbeing of the workforce, it should implement expanded reliefs on occupational health for employers.

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