

The Employment Rights Bill – consultation

HR Solutions is a multi-award winning HR, Health & Safety and Payroll provider. We're experts in the field, having delivered pragmatic support and advice to our clients for more than 20 years. We support clients across a wide range of sectors and sizes, from small care agencies to multi-national technology firms. Our team of expert consultants, advisors and administrators have extensive experience in the HR profession.

We would like to contribute into this crucially important consultation, to share our experiences and insights through our experience within the HR profession, and with working with a wide range of clients.

Protecting workers

Does the Employment Rights Bill adequately safeguard the workers it seeks to protect?

The Bill is comprehensive and appears, in theory, to safeguard all workers across society, and addresses the disparities commonly experienced by young, low paid and low skilled workers.

There are risks though for how it will operate in practice. If the aim is to improve job security, then there are concerns over how SMEs can afford many of the reforms and given 99.8% of all businesses fall in this category ([Business statistics research briefing November 2024](#)), the Bill as it stands, could have unintended consequences in the form of business closures, or redundancies.

In terms of the introducing the Fair Work Agency as an enforcement body; in principal this could work, and may be a more effective way of addressing the inequalities than some of the reforms, particularly where existing legislation appears to be sufficient (flexible working for instance).

If the Fair Work Agency was to operate in a similar way to the HSE, or the Equality and Human Rights Commission with suitable powers, it could help prevent businesses exploiting workers.

It would give workers the ability to raise concerns to an external body, and for there to be a public body that would investigate complaints, or would investigate employers who have multiple, or repeat tribunal claims, or who regularly make redundancies, these are all appropriate triggers for an agency to investigate further and take necessary steps in line with any statutory powers it would be given.

Introducing this agency however, does also raise the question about the role of Acas, and should there be a public inquiry into the role of Acas so that both employers and workers are getting the right support and that the support that is provided prevents exploitation.

Overall, the Bill appears more geared to protecting workers than employers.

Impact on businesses

Overall, the impact on business will be significant. It will be the most significant development in decades, and at a time when businesses and employers are struggling with employee attraction, retention and trying to avoid redundancies and business closures.

The extent of the impact will depend on the size of the business, and so the smaller the business, the bigger the impact. Of the 98% private SME businesses, 95% are 'micro' with 31% of them employing up to 9 employees, and generating 20% turnover.

Our observations are that redundancies are prevalent now and businesses are going into administration because of the current economic climate. With the reforms, and the increase in national insurance contributions for employers, these practices will only increase. For those SMEs that do not employ people (69%), the Bill risks stifling entrepreneurialism and the creation of new business that may lead to employment in the future.

Larger businesses will have more capacity to offer more flexible options and still maintain their service delivery, but for SMEs, they are more likely to struggle because of the limited flexibility they would have within their business operations in resourcing the business. It costs more to employ two people in a job share for instance, or there may be little opportunity to alter work patterns with a smaller workforce, and balancing the needs of everyone with those of the business.

There are also greater challenges for SMEs with more flexible arrangements because of the smaller workforce and limited resources. There is likely to be a greater impact on the consistency of delivering a service if lots of people in the workforce have variations on the core operating hours.

The Bill must also be considered in the context of other increasing costs, such as those to the National Minimum Wage, and employers National Insurance Contributions. These alone, are significant to trigger recruitment and redundancy decisions.

In terms of the reforms, there are several that would cause greater impact on businesses, for instance:

Reforms to statutory sick pay

The proposed reforms to statutory sick pay will have significant financial implications for all businesses, but more so, for SMEs and I think it would have an opposite effect to what the Government wish to achieve by reducing illness from spreading.

Workers often see sick pay (statutory or occupational) as an entitlement. Paying SSP from the first day actually risks higher short term and intermittent absenteeism, which is more disruptive to a business than long term absences, given it is harder to manage, cover and plan for. The time management for dealing with short term and intermittent absences will inevitably lead to a greater administrative burden for the employer.

For those employers that will operate their absence policies as they should; it actually risks more employees being taken through formal procedures, ultimately risking greater unemployment.

Financially too, the reforms will be significant, particularly for SMEs, where there is less scope for budgets to be flexed, because of operating to tight margins. With an increased burden on management time, resource and costs, the reforms risk employers taking a commercial approach by taking steps to managing the individual out of the business.

With the greater costs, businesses are likely to pass these on to customers. We work with many in the care sector; if they had to pass the additional costs onto their customers, it is only going to be impacting on the elderly, and their relatives. It will also bring significant costs to the public sector, which is a sector already severely struggling.

Reforms to the current parental bereavement leave

The reforms that would change the current laws to apply to all employees will also significantly impact employers and their ability to afford the increased costs. Whilst many employers generally offer some form of compassionate leave policy, typically ranging over a few days, it is quite different to make it a statutory entitlement of what would be a considerable length of time, compared to what may be on offer already.

The impact will be far greater on SMEs, if a two week period of paid compassionate leave was to be introduced. Furthermore, there would be an administrative burden also in finding cover for the longer period of absence, for which employers may be currently use to.

Reforms to flexible working

The current Flexible Working Regulations strike a reasonable balance between employee and employer rights. Employers already consider various factors, including costs and business operations, when evaluating flexible working requests. Further strengthening employee rights could tip the balance too far, limiting employers' ability to make commercial decisions.

To improve the process, reintroducing the requirement for employees to specify the potential impact of their request on the business would be beneficial. This would encourage employees to consider the practical implications of their proposal and could lead to more constructive discussions between employees and employers. By understanding the business context, employees may be more likely to propose realistic and achievable arrangements.

This change would not impose additional administrative burdens on businesses but could streamline the process, leading to fairer and more reasonable decisions, including potential compromises.

Trade Union Reforms

A delicate balance must be struck between protecting workers' rights and allowing employers the flexibility to manage their businesses effectively. While trade unions play a vital role in the workplace, removing the requirement for majority support before recognition could negatively impact businesses and potentially undermine the interests of workers.

Recognizing a union without demonstrating majority support could strain relationships between the union, workers, and employers. A fairer approach would be to require a majority to ensure that the union truly represents the wishes of the workforce.

Additionally, this reform could undermine employee choice. Some employees may prefer informal methods of information and consultation, allowing them more direct input. Imposing a union without majority support could lead to less acceptance of decisions made by the union.

Ultimately, this reform may not foster the positive working relationships that are essential for a productive and harmonious workplace.

Unfair dismissal right from day 1

Introducing the right to claim unfair dismissal from day one would significantly curtail employers' ability to make timely commercial decisions. While it's crucial to treat employees fairly and respectfully, employers should have the flexibility to make necessary business decisions, even if it means terminating employment before the two-year service threshold.

It's important to consider how Acas could support employers in navigating this area whilst also addressing commercial needs.

A suggestion could be to return to the previous approach of requiring employees to have one year service in order to claim unfair dismissal.

Economic growth and wealth creation

A critical consideration is the potential impact of these reforms on economic growth and wealth creation. Increased costs associated with employment, such as higher National Insurance contributions and Statutory Sick Pay, could hinder small businesses' ability to recruit and retain staff. Reduced flexibility in workforce management may further limit businesses' competitiveness.

A balanced approach is essential to ensure the bill does not overly burden employers. Greater flexibility is needed to allow businesses to operate commercially, especially in challenging economic times. The proposed changes, particularly when implemented during a period of economic strain and high living costs, could force businesses to relocate overseas, especially those reliant on technology that enables remote work.