

Employment Rights Bill Submission

Written evidence submitted by the Worker Support Centre (ERB16)

Background to WSC

1. This submission is from the [Worker Support Centre](https://www.workersupportcentre.org.uk) (WSC), a Scotland based charity that promotes decent work and prevents exploitation. We support marginalised and isolated workers in labour sectors where there is a high risk of abuse and exploitation. We work in partnership with workers to build power to secure and advance workplace rights.
2. In 2023 and 2024 WSC activities were targeted at workers in seasonal agriculture on the UK Seasonal Worker visa (SWV). During this time we provided advice, support and information to over 1000 people in relation to the SWV. To learn more about work, visit www.workersupportcentre.org.uk

UK Seasonal Worker visa

3. Workers on the SWV are sponsored by a licensed Scheme Operator and employed by a farm, with their visa valid for six months in horticulture and 2.5 months in poultry. Workers on the SWV have no recourse to public funds and very low unionisation rates, meaning there is limited worker representation.
4. Seasonal agriculture is one of two UK labour sectors characterised by a high risk of modern slavery and labour exploitation by the Director of Labour Market Enforcement.¹
5. WSC casework for workers on the SWV of relevance to the Employment Rights Bill includes the following issues:

¹ DLME 2024 UK Labour Market Enforcement Strategy 2023-24

- **Dismissals**, including in response to performance, complaints raised by workers or absence of work available.
 - **Lack of independent worker representation**, including trade union representation, and workplace processes for independent worker support.
 - **Wage theft**: non-payment for hours worked.
 - **Misuse of holiday pay** to cover required hours or lack of work.
 - **Occupational safety and health hazards**, including poor equipment or infrastructure, and unaddressed injuries.
 - **Poor treatment and discrimination**, including threats and aggression.
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Executive Summary

6. The Employment Rights Bill introduced on 10 October 2024 initiates a series of employment law and enforcement reforms that could have a significant impact on workers at risk of exploitation with whom WSC works.
7. WSC carries out extensive work to support workers at risk of exploitation on the UK Seasonal Worker visa (SWV) delivering support to over 500 people in relation to the SWV during 2024.²
8. WSC also conducts work to build worker power, supporting workers to collectively articulate workplace risks and identify best practice to seek improvements across seasonal agricultural workplaces.
9. WSC submission considers the Employment Rights Bill from the position of preventing exploitation for those workers we support.
10. WSC's submission is focussed on three core areas of the Employment Rights Bill:
 - **Dismissal rights**
 - **Labour market enforcement**
 - **Trade unions**
11. WSC makes recommendations relating to
 - 8.1 Clause 19 and Schedule 2 on dismissal rights. WSC calls for workers on the SWV, and all those on temporary migration programmes to be protected by dismissal rights recognising

² See WSC Mid-Year Report 2024 available at www.workersupportcentre.org.uk

that many of these workers may return annually for many years to the same job with enforced breaks.

- 8.2 Clauses 72-112 and Schedules 4-7 related to a new Fair Work Agency (FWA). WSC recommends the FWA acts to prevent severe exploitation, by operating a forced labour indicator led approach. This should include pro-active inspection, strong engagement with independent worker support organisations as well as trade unions, safe and anonymous reporting routes and resourcing to meet International Labour Organization (ILO) standards.
- 8.3 Clauses 45-47 on trade unions. WSC supports measures to enable trade unions to enter workplaces to represent workers at risk of exploitation and for a written statement on a workers' right to join a trade union. However, WSC underlines the significant barriers to temporary migrant workers achieving trade union representation.
- 8.4 WSC recommends an addition to the Bill to incorporate employer registries for employers of temporary migrant workers.

Key issues and findings from WSC's work

Dismissal rights

11. WSC [case data](#) shows workers on the SWV are extremely fearful of being dismissed, particularly believing they may not be invited to return to the UK, or not being able to repay the significant debts incurred to come here.³ Given the SWV is only valid for six months, workers will never qualify for most dismissal rights that currently apply after two years of service.
12. WSC sees large numbers of cases related to dismissal of workers, rising annually: Between January and July 2024, 55 workers contacted the WSC in relation to dismissal-related issues, with 51 cases and 4 enquiries.⁴ Many workers report being threatened with dismissal for not meeting productivity targets, or after raising complaints.⁵ Other workers fear dismissal due to active workplace threats of dismissal where complaints are raised or productivity is not considered sufficient.
13. Workers supported by WSC have not been represented in dismissal processes, and a significant number of workers have raised issues related to the dismissal process itself, including the lack of a clear process, the lack of worker representation, and the use of first or second dismissal warning letters as a threat to increase worker productivity with limited training or measures taken to support the worker.

Comments on the Bill

14. Clause 19 and Schedule 2 of the Employment Rights Bill remove the two-year qualifying period to claim unfair dismissal. Given the above overview of the impact of dismissals on workers on the SWV, review of the two-year qualifying period is welcome.
15. However, the Bill introduces the concept of an “initial period of employment” or “probationary period” for which the Government has stated a preference for nine months, subject to consultation.⁶ During this time the Government has suggested a procedure could be followed in which the employer meets with the employee to discuss concerns about performance, accompanied by a trade union representative or colleague.

³ See FLEX 2024 Bearing fruit: Making recruitment fairer for migrant workers, which found 72% of workers incur debt to come to the UK, of up to £5500.

⁴ WSC 2024 Mid-Year Report January-July 2024

⁵ All workers must be paid the National Minimum Wage (England) or Agricultural Minimum Wage (Scotland). However, workers frequently report to the WSC that they are paid in relation to what they pick, entitled “productivity rates” or “piece rates” by some farms in worker contracts, and are penalised for not having picked enough. Penalisation includes being removed from work, or being issued warning letters, with successive warnings triggering a dismissal.

⁶ Department for Business and Trade 2024 Next Steps to Make Work Pay

16. WSC is concerned that this initial period of employment means workers on short-term, six month or less, visas would be perennially excluded from full dismissal rights and at risk of dismissal due to the short contracts provided, regardless of the number of years they work for the same employer.
17. Additionally, the alternative procedure suggested depends on worker representation, which is made harder by the lack of unionisation of temporary migrant workers (see below), and, where employers are hostile towards independent worker representation which is also present in the agricultural industry.

Recommendations on dismissal rights

18. The Employment Rights Bill should ensure temporary workers are protected by dismissal rights by:
 - 18.1 Ensuring dismissal rights apply to workers on the SWV so that dismissal is not used as a threat to coerce workers into excessive working patterns.
 - 18.2 Ensuring temporary migration programmes with fixed term short contracts must have their own probation periods in line with the length of contract offered.
 - 18.3 Ensuring that proof that independent representation of workers has been sought in dismissal proceedings.
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Labour market enforcement

19. State enforcement in workplaces is an essential component of reducing potential harm in otherwise high-risk workplaces. The current labour market enforcement landscape is patchy and WSC caseworkers are often sent between enforcement agencies. In certain cases, on issues like tied worker accommodation, WSC [has found](#) it is ultimately no one's remit.
20. Workers on the SWV are very fearful of reporting due to implications for current and future work, and because of debts incurred at point of recruitment (see above). The short time that workers are in the UK on the SWV, isolated geographical location of workplaces, lack of familiarity with the system, and lack of English spoken present workers many barriers to proceeding legal claims against employers.
21. During the first half of 2024, WSC supported workers to raise workplace standards related complaints with enforcement authorities from seven separate workplaces. WSC either supported workers to navigate the reporting systems of, or directly reported anonymous data to, the Gangmasters and Labour Abuse Authority (GLAA), Agricultural Wages Enforcement Teams (AWET), the Health and Safety Executive (HSE), HMRC and a Local Authority (LA). WSC also attempted to raise similar issues with the UK Visas and Immigration Compliance Unit but were not provided a safe means of doing so.
22. Labour market enforcement cases raised spanned:
 - 22.1 Non-payment for work;
 - 22.2 Holiday pay used to cover work time;
 - 22.3 Threats and poor treatment of workers by managers;
 - 22.4 Discrimination based on nationality;
 - 22.5 Lack of sanitary facilities at work;
 - 22.6 Dangerous work equipment and infrastructure;
 - 22.7 Unsafe tied accommodation; and
 - 22.8 Unaddressed injuries at work.
23. WSC was able to work with authorities to provide further information and detail in a safe and confidential way so that they could either pursue complaint inspections or ensure that future workplace visits are informed by such information.

WSC concerns about labour market enforcement

24. WSC has a range of concerns about barriers to effective labour market enforcement for workers at risk of exploitation based on the cases we have seen including: translation of materials; provision for anonymous reporting and worker safety; understanding of inspectors of worker experience and workplace power imbalance; evidentiary

requirements; time taken to attend workplaces; navigating devolved and reserved legislation; and resourcing.

Comments on the Bill

25. Clauses 72-112 and Schedules 4-7 of the Employment Rights Bill establish a new labour market enforcement system under the supervision of the Secretary of State in the Department for Business and Trade, the Fair Work Agency (FWA).⁷ The Secretary of State is required (in Clause 75) to establish an Advisory Board comprised of at least three representatives each of trade unions; employers; and independents.
26. The Bill abolishes the GLAA and the role of Director of Labour Market Enforcement, which was established to coordinate GLAA, HMRC and EAS in the Immigration Act 2016. The new FWA would likely replace GLAA, EAS and National Minimum Wage enforcement team and statutory payments enforcement teams of HMRC.⁸ The FWA will bring together existing enforcement functions spanning minimum wage and modern slavery.⁹
27. WSC is concerned about the lack of information from the UK government currently on how the proposed FWA will interact with devolved competences, including the Agricultural Wages Enforcement Teams in Scotland.

Recommendations for a Fair Work Agency

28. Based on our detailed practical experience of engaging with labour market enforcement authorities over the past three years, WSC believes a new FWA should seek to prevent exploitation before it takes place, by:
 - 28.1 Operating on an understanding of risk that relates to the International Labour Organisation forced labour indicators, guided by experts on the issue of labour exploitation, including representatives of at-risk workers that are non-unionised.
 - 28.2 Adopting a prevention-based approach, seeking to prevent situations of exploitation from occurring through a) a risk targeted and proactive inspection regime and b) close connections to independent worker support and representative organisations.
 - 28.3 Being sufficiently resourced to ensure the UK meets the ILO recommendation of 1 labour inspector to every 10,000 workers.¹⁰
 - 28.4 Ensuring safe reporting routes for workers and their support organisations to report complaints anonymously, with no data sharing with immigration enforcement.

⁷ House of Commons Library, 23 October 2024, Commons Library Research Briefing: Employment Rights Bill 2024-25.

⁸ HoC 18 October 2024 Commons Library Research Briefing: Employment Rights Bill 2024-25

⁹ Department for Business and Trade, 2024 Next Steps to Make Work Pay. Para 42

¹⁰ ILO 2006 Strategies and practice for labour inspection.

- 28.5 Ensuring the burden of proof lies not with the employee but the employer where there is no agreement with an enforcement decision.
 - 28.6 Establishing a licensing regime that applies to workplaces, based on the GLAA model but enabling in person inspection to ensure standards are upheld.
 - 28.7 Ensuring independence from government and industry agendas.
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Trade unions

29. Seasonal agricultural workers with whom WSC engages do not have any workplace representation nor are members of trade unions. Unite the Union, the UK's biggest union representing agricultural workers states that the numbers of seasonal workers unionized is low to none.¹¹ Unite representatives highlight the difficulties that unions face reaching workers in horticultural settings, hostility of employers, and the resource intensity of organising mobile, rural agricultural workers as well as the short-term nature of the SWV.¹²
30. Examples exist of UK trade unions creating alternative models of representation for temporary migrant workers, including Unite the Union's community unionism model of support for overseas domestic workers.¹³ However, where workers are not unionised due to practical and sustained barriers, including seasonal agricultural workers who have remained un-represented in the UK since 1946, little effort has been made by successive governments to recognise a need for engagement to bridge this essential gap towards representation.
31. As an independent worker support organisation, WSC bridges this gap through our work to build worker power and establish worker-led standards and by working with trade unions to try and develop models for worker representation.

Comments on the Bill

32. Clauses 45-47 of the Employment Rights Bill introduce a requirement for employers to share a written statement on a workers' right to join a trade union at the start of their employment. They also introduce workplace "access agreements" involving an "access request" being made by trade unions – based on specified purposes followed by a "response notice" from employers. Clause 47 also makes it easier for trade unions to secure recognition. **These measures are all welcomed by WSC.**

Recommendations on trade unions

33. WSC believes the Bill should ensure temporary migrant workers are included in these trade union related measures by:
 - 33.1 Ensuring the measures include the workplaces of temporary migrant workers.

¹¹ FLEX 2021 Assessment of the Risks of Human Trafficking for Forced Labour on the UK Seasonal Workers Pilot. P.16

¹² Ibid. P.69

¹³ Jiang Z 2016 When the 'unorganizable' organize: The collective mobilization of migrant domestic workers in London.

33.2 Ensuring there are no barriers to this provision presented by workplace situations where workers have multiple dependencies upon employers, including immigration status and housing.

33.3 Ensuring these measures recognise the multiple barriers to temporary migrant worker organising and representation, drawing on global comparative examples.

33.4 Recognising organisations like WSC that serve to bridge the gap between precarious un-unionised workers and trade unions.

Additions to the Bill

Registry of employers on tied visas

34. A range of provinces in Canada have established public registries for both labour recruiters and employers seeking temporary foreign workers.¹⁴ Canadian employer registries, where in place, are added to labour legislation and represent a mandatory requirement for all employers of temporary foreign workers. Where employer applicants are successful then they are issued with a registration certificate proving they are eligible to recruit temporary foreign workers. An application may not be approved if inaccurate or insufficient information is provided, if labour laws or occupational health and safety laws have been broken, or if an employer is not deemed to carry out business “legally, honestly, with integrity or in the interest of the public.”¹⁵
35. Employer registries are reported to have enabled provincial authorities to target workplace inspections and compliance activity on the basis of accurate and up to date information.

Recommendation for an addition to the Bill

36. WSC believes that employer registries should be introduced for employers of temporary migrant workers, in support of a new risk focused labour market enforcement framework, by:
- 36.1 Establishing a registry for all employers of temporary migrant workers, enabling compliance activity and engagement to be more targeted towards this high-risk cohort of workers.

22 November 2024

¹⁴ See for example British Columbia (Government of BC 2023 Active employer registrations. Available at <https://services.labour.gov.bc.ca/TFWRegistrationSearch>) and Nova Scotia (Nova Scotia 2024 Temporary foreign workers – Employer registration fact sheet. Available at https://novascotia.ca/lae/employmentrights/fw/foreignworker_employer_registration_information.asp)

¹⁵ Ibid.