Written evidence submitted by The Investment Association (IA) to The Employment Rights Public Bill Committee (ERB32).

About the Investment Association

The Investment Association (IA) champions UK investment management, a world-leading industry which helps millions of households save for the future while supporting businesses and economic growth in the UK and abroad. Our 250 members range from smaller, specialist UK firms to European and global investment managers with a UK base. Collectively, they manage £9.1 trillion for savers and institutions, such as pension schemes and insurance companies, in the UK and beyond. 49% of this is for overseas clients. The UK asset management industry is the largest in Europe and the second largest globally.

Introduction

The IA and its members are largely supportive of the broader objectives of the Employment Rights Bill, recognising the government's commitment to strengthening worker protections, improving job security and promoting a fairer and more equitable workplace that benefits both employees and employers. However, while we support these overarching goals, we urge caution against excessive legislation that could have unintended consequencess. Striking the right balance between robust worker protections and the operational needs of businesses is vital to the successs of firms. We believe that an overly prescriptive legislatory apporach may hinder innovation, reduce competitiveness and create administrative costs that could be counter to the Bill's intened outcomes.

A collaborative approach, involving insight from both employers and employees, can offer more effective solutions than additional legislation. By ensuring that the legislation is both fair and practical, we can foster a dynamic and resilient labour market that supports economic growth and enhances employee well-being.

1. Flexible working

The Bill states in relevant part:

Right to request flexible working

30Part 8A of the Employment Rights Act 1996 (flexible working) is amended as follows. (2) Section 80G (employer's duties in relation to application for change to working hours, etc) is amended in accordance with subsections (3) to (5). (3)

In subsection (1), for paragraph (b) substitute—

"(b) may refuse the application only if—

(i) the employer considers that the application should be refused on a ground or grounds listed in subsection (1ZA), and

(ii) it is reasonable for the employer to refuse the application on that ground or those grounds.

The right to request flexible working supports employee well-being and greater work-life balance. Research shows that flexible working is also an important tool in supporting the career advancement of women in the workplace by supporting them in balancing work and caring responsibilities[1].

[1] https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace-2023

The existing legislation on flexible working is fit for purpose, providing a balanced approach that meets both employees' need for flexibility and employers' operational requirements. The current legislation allows for nuanced and constructive conversations between employers and employees when considering the viability of flexible working arrangements.

The proposed new requirement that an employer may only refuse a request on specific, reasonable grounds and that they consult with employees before rejecting requests, introduces an additional layer of process, which could unintentionally burden HR departments. The HR teams would need to robustly demonstrate the reasonableness of their decisions should a claim be made to a tribunal. Furthermore, adding more process could negatively impact company culture by making access to flexible working more prescriptive and process heavy. This could lead to more complex discussions between employers and employees on what constitutes "reasonableness". As the existing legislation allows for pragmatic, solution focussed conversations between employers and employees, introducing more rigid requirements could stifle these discussions and lead to less supportive and adaptable work environments.

There is also concern that these proposals may inadvertently push companies to mandate a return to five days in the office (if they do not already), as they may struggle to manage an increase in flexible working requests. This could disproportionately impact women in the workplace, affecting perceptions of their availability and limiting their career progression.

The additional process and administration burdens will result in increased costs for businesses at a time when the industry is already under cost pressure, offering little additional benefit to employees.

We recommend maintaining the current flexible working legislation without introducing additional processes, such as requiring employers to consult with employees before making a decision on requests. Specifically, we do not believe there should be a legal obligation for employers to justify their decisions, as the current system provides for both employees and employers.

2. Protection from harassment

The Bill states in relevant part:

Employers to take all reasonable steps to prevent sexual harassment

In section 40A of the Equality Act 2010 (employer duty to prevent sexual harassment of employees), in subsection (1), before "reasonable steps" insert "all".

Harassment by third parties

In section 40 of the Equality Act 2010 (employees and applicants: harassment), after subsection (1) insert—

"(1A) An employer (A) must not permit a third party to harass a person (B) who is an employee of A.
(1B) For the purposes of subsection (1A), A permits a third party to harass B only if—

(a) the third party harasses B in the course of B's employment by A, and

(b) A failed to take all reasonable steps to prevent the third party from doing so.

(1C) In this section "third party" means a person other than—

(a) A, or
(b) an employee of A."

Employers already have a legal duty to take reasonable steps to prevent sexual harassment in the workplace under the Worker Protection Act, a requirement introduced in October this year to support

healthy workplace cultures and employee well-being. The Bill's proposal to replace the current "reasonable steps" requirement with "*all* reasonable steps" introduces an additional requirement that is likely to be difficult for employers to meet. This higher anticipatory standard makes it challenging to foresee and prevent every potential instance of harassment, which may not be realistic or practical. It also has the potential to lead to varying interpretations in tribunal cases, placing a significant burden on employers to demonstrate compliance.

Furthermore, the inclusion of a requirement to prevent third-party harassment introduces another standard that may be equally unachievable for employers, as it requires them to control external interactions beyond their immediate workplace environment. This is particularly challenging when meeting the "all reasonable steps" requirement, as employers would be expected to take measures to mitigate harassment beyond their direct control, making effective monitoring and mitigation difficult.

Raising the threshold to an unattainable level could have a negative impact on workplace culture. The added requirements may lead to excessive caution, potentially stifling the social interactions that are essential for a healthy and dynamic work environment. Fear of non-compliance could discourage informal yet important social activities, which play a key role in fostering team cohesion and morale. It is within social interactions, both formal and informal, that workplace culture is developed, and organisational values are reinforced.

We recommend maintaining the current standard without 'all' and the third-party harassment requirement, as organisations cannot fully mitigate or control third-party behaviour. The current "reasonable steps" standard is effective in meeting the Bill's objectives and provides a more balanced approach.

3. Dismissal

The Bill states in relevant part:

Right not to be unfairly dismissed: removal of qualifying period, etc

Schedule 2 contains provision—

(a) repealing section 108 of the Employment Rights Act 1996 (unfair dismissal: qualifying period of employment), and
(b) making further amendments of that Act in connection with that repeal.

The Bill's removal of the two-year qualifying period and potential introduction of day-one rights for unfair dismissal may be a positive step toward strengthening workers' rights and job security. However, it is unclear whether these rights will apply from day one or after a nine-month probationary period.

While we support the removal of the lengthy two-year qualifying period, we are concerned about the potential impact on organisational cultures, efforts to widen talent pools and the HR community. This shift could result in several unintended consequences. Organisations may become risk-averse, favouring more experienced hires over younger candidates with less direct experience, thereby undermining efforts to diversify talent pools. This is particularly concerning for entry-level talent, where firms are encouraged to hire based on potential rather than requiring financial services experience or degrees from top-tier universities. Such practices are important for broadening access and fostering a more diversity and inclusive workforce.

Additionally, firms may move toward hiring more experienced - and often more costly - hires, potentially stifling creativity and innovation in recruitment in an effort to play it "safe". This shift could place added pressure on HR teams by prioritising process over people, fostering a risk-averse mindset that views candidates as liabilities rather than assets. It could also slow down the recruitment process, making it less responsive to business needs. Furthermore, these cautious hiring practices could slow overall hiring,

negatively impacting the UK labour market as organisations become more reluctant to hire due to increasingly stringent and formulaic processes.

To mitigate against these concerns, we recommend that the probationary period be set at nine months, rather than implementing day-one rights.

Conclusion

In conclusion, while the Employment Rights Bill seeks to modernise and enhance the legislative framework governing employment rights in the UK, it is imperative to strike the right balance between robust worker protections and operational needs of businesses. Excessively prescriptive legislation could inadvertently inhibit innovation, undermine workplace culture and impose additional layers of administrative costs that significantly counteract the Bill's objectives.

Healthy conversations and collaboration between employers and employees can resolve many of the issues the Bill seeks to address. A collaborative approach, rooted in mutual understanding, offers more effective solutions than additional legislation, contributing to a stronger, more supportive workplace culture. By ensuring the legislation is both equitable and practical, we can foster a resilient labour market that supports economic growth, enhances UK competitiveness, and prioritises employee well-being and psychological safety.

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