EQUITY

Evidence to the Public Bill Committee for the Employment Rights Bill

December 2024

About

Equity is a trade union of 50,000 performers and creative practitioners, united in the fight for fair terms and conditions across the performing arts and entertainment industry. Our members are actors, circus performers, singers, dancers, designers, directors, models, stage managers, stunt performers, puppeteers, comedians, voice artists, and variety performers.

Summary

- Equity supports the significant measures in the Employment Rights Bill to begin to implement the New Deal for Working People. Measures to clamp down on zero-hours contracts, the extension of sick pay to low-earners and the strengthening of maternity protections are welcome.
- However, in the realm of collective rights, the Bill makes only modest steps towards repealing anti-union legislation. The repeal of much of the Trade Union Act 2016 is a welcome step but the Bill leaves intact complex informational and notice requirements, which have long placed the UK in breach of its international obligations. We eagerly await the introduction of electronic balloting.
- Equity would like to see provision inserted into the Bill to end the special exemption, in the Conduct of Employment Agencies Regulations 2003, under which casting directories can charge upfront fees to performers, when such fees were banned in all other industries decades ago.
- We also would like to see provision to amend the Working Time Regulations 1998 so that workers who are contracted for a six-day week receive the time off that reflects their actual working hours and not a five-day week.

Industrial relations

Equity supports the measures in the Bill to repeal some of the worst excesses of anti-union legislation, principally the turnout thresholds and restrictive expiry of ballot mandate introduced by the Trade Union Act 2016. However, the Bill does not tackle the mesh of anti-union legislation introduced in the 1980s and 1990s.

Balloting

In particular, we welcome the repeal of the turnout thresholds for industrial action ballots introduced by the Trade Union Act 2016 and the removal of some requirements in relation to information to be provided to an employer about a ballot.

However, the measures in the Bill do not go far enough. The Bill will leave intact detailed information requirements as to categories of worker affected, total number of workers and affected workplaces. Equity members typically work on short-term contracts and are a highly itinerant workforce, which makes balloting a slow process, particularly in view of the requirement to send ballots to members' home addresses. This combination of factors means that it is both practically very difficult and administratively burdensome for the union to ascertain the information required to be given to an employer at the point of balloting and calling industrial

action. In any case, by the time the action actually happens the information is likely to be out of date, as members have moved on to other work.

The proposals to remove of the requirements to identify affected workplaces and the number of affected workers at each workplace would go some way to easing this practical and administrative challenge in such a non-static industry.

Equity faces the additional challenge that our members are often engaged by special production vehicles (SPVs) set up by producers for a specific production, which employs our members. The existence of a SPV for a particular production is often unclear to the union, which poses a challenge in seeking to identify the employer to whom the duty to give notice is owed.

Some sections of Equity's membership are genuinely self-employed, including audio artists and designers. As these members fall entirely outside of the scope of employment protections, they have little ability to take industrial action despite being largely dependent on a handful of employers in, for example, audiobooks.

Access rights

Equity welcomes measures in the Bill to establish a statutory route for trade unions to access workplaces. Given our density and well-established collective agreements in theatre, film and TV, Equity enjoys relatively strong levels of access across the performing arts, particularly in view of the itinerant nature of the industry.

However, the current regime set out in the Bill is procedurally complex, such that it gives employers scope to delay or frustrate union access. Employers may rely on the fact that unions will have to navigate complex and costly procedures in respect of the CAC to enforce access. Equity, therefore, recommends simplifying the steps in the statutory procedure, reducing the number of steps, so unions do not have to make multiple applications to enforce agreements.

More broadly, our concern is that too great a focus on access via legal routes will be generally unattractive to unions, except as a last resort, on account of its cost and legal complexity. Of course, unions should have recourse to legal routes to enforce access agreements but only as a backstop to a wider strategy by the government to convene social partners, employer groups and unions to facilitate collective bargaining at a sectoral level.

Other concerns

While the Bill makes some welcome reforms, it takes only modest steps in repealing the extensive onslaught of anti-union measures enacted primarily during the 1980s and 1990s, which have long placed the UK in breach of its international obligations under the ILO and European Social Charter.

Current proposals leave intact the ban on secondary (or sympathy) action, an extension of the highly narrow requirement that protected industrial action must relate "wholly or mainly" to one of a number of matters which may amount to a "trade dispute", specifically with the worker's employer.

We also await the introduction of electronic and workplace balloting, which was committed to in the Plan to Make Work Pay. Postal balloting remains an arcane practice required of trade unions to impede industrial action. In an industry characterised by short-term contracts and itinerant

workforce, as in the performing arts, postal balloting makes it practically impossible to call industrial action in all but the most long-term engagements, such as some West End shows or continuing series. Postal balloting also involves immense cost for unions, particularly in light of the expiry of ballot mandates. We reiterate the call for electronic balloting – bringing trade union democracy in line with, for example, political parties – so it is at all possible to ballot members who work away from home for long periods.

Statutory Sick Pay

Equity welcomes provisions in the Bill to extend Statutory Sick Pay (SSP) to all workers, including those earning below the Lower Earnings Limit (LEL). The LEL unfairly excludes some of the most precarious workers, including those on short and part-time contracts, which are a common feature of our members' work in the performing arts.

Replacement rate

The Bill proposes to pay SSP to all workers according to a replacement rate, up to a maximum of the current rate of SSP, £116.75 per week. This policy is intended to address the issue that those earning below the LEL of £123 per week may earn less than the rate of SSP and would therefore be paid more on sick leave than their normal pay. However, we see no reason why this requires a replacement rate for all workers, instead of only those earning below SSP. The proposal to apply a replacement rate to *all* workers, including those earning above SSP, leaves a significant group of workers worse off under the new regime, particularly those earning between the LEL and SSP.

Equity is not convinced that any loss to this group of workers is offset by the scrapping of the 3-day waiting period. This is only true for a worker who is off sick for a short period of time: the longer the sick leave, the greater the impact of the lower rate. This quickly becomes an issue if the rate (to be prescribed in regulations) is set as low as 60%. The higher the replacement rate, the longer the worker may be absent without being worse off under the new regime.

We recommend that the Bill be amended so that a replacement rate is introduced only for those earning below SSP.

Inadequate rate of SSP

Equity is also concerned that the biggest problem with SSP remains unaddressed by the Bill: the rate of SSP itself. The committee will be aware that SSP remains one of the least generous sick pay regimes in Europe. Whereas many countries in Europe replace income at 80 or 90 percent during the initial period of absence, the UK's SSP replaces only 20 percent of average earnings.

£116.75 per week is plainly inadequate to meet even basic living costs and, without savings or supplementary income, leaves the worker at risk of poverty and hardship. We encourage the committee to take this opportunity to significantly improve the level of SSP with reference to the cost of living and bearing in mind sharply rising levels of poverty in the UK.

Statutory Sick Pay is ultimately a backstop for workers who do not have more generous sick pay by virtue of their employment contract. Better sick pay is achievable only through robust collective bargaining by trade unions who are enabled by the government to negotiate strongly on behalf of their members. In this regard, we emphasise the importance of the government's industrial relations reforms to the issue of securing better terms and conditions, including better sick pay paid for by employers.

Fair Work Agency

Equity welcomes steps taken in the Bill to create a single enforcement body for employment rights in the form of the Fair Work Agency, bringing together the currently disparate bodies responsible for labour market enforcement. Equity enjoys a good working relationship with the Employment Agencies Standards Inspectorate (EASI) in ensuring that performers' agents adhere to the law (principally the Conduct of Employment Agencies and Employment Businesses Regulations 2003) and treat our members fairly.

With the incorporation of the EASI into the Fair Work Agency, we emphasise that this should be done in a way which preserves and enhances its ability to take action against unscrupulous agents. That depends upon increased funding and strong powers so that it can carry out more investigations and take firm enforcement action to compensate workers, bar individuals and issue fines. The amalgamation of labour market enforcement bodies should not be done in a way which loses the institutional knowledge of the existing agencies or dilutes their funding.

Upfront fees charged by casting directories

Whereas it is illegal for employment agencies in all other industries to charge work-seekers fees (by virtue of the Employment Agencies Act 1973), an exemption specific to the entertainment industries allows casting directories to charge upfront fees, regardless of whether a performer finds work or not. It is generally a prerequisite for finding work in much of the performing arts that a performer be listed in a casting directory, principally Spotlight, which charges performers £216 per annum.

Equity would like to see this special exemption removed and the entertainment industries brought into line with other industries in which the employer, not the worker, bears the cost of recruitment. The Conduct of Employment Agencies and Employment Businesses Regulations 2003, Reg. 26, allows an agency to take a fee from the earnings of an entertainment worker (such as actors, dancers, musicians) or, if the agency runs only a casting directory, to charge an upfront fee, i.e. without having found any work.

It is generally regarded as a prerequisite to work that a performer be listed in a casting directory, for which the performer pays a fee under the above legal exemption. Casting directories now take the form of an online platform, where a performer lists their profile (including training, skills and experience) and casting directors post opportunities, for which performers put themselves forward via the platform.

For many performers, these fees represent an exorbitant barrier to building their career. Work in the performing arts is already characterised by low pay and insecure work, with the average Equity member earning £15,270 from the industry.[1]

We urge Parliament to take the opportunity presented by this wide-ranging Bill to put an end to the persistence of unfair upfront fees in the performing arts and entertainment industry. We propose that this could be done by inserting an amendment that repeals the paragraphs in Regulation 26 of the 2003 Regulations which relate to casting directories, leaving intact those provisions which allow talent agents to charge commission out of their clients' earnings.

[1] Ashton, Heidi, 'Not here to help: Equity members' experiences of UC and the Minimum Income Floor' (2024)

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Holiday rights for a six-day working week

Performers in theatre regularly work a six-day week, up to 48 hours per week, during rehearsals and show weeks. However, their holiday entitlement reflects only a 5-day week: under the Working Time Regulations 1998, full-time workers are entitled to 5.6 weeks of annual leave, equivalent to a maximum of 28 days. They must also use more days of their entitlement to take time off than if they worked a 5-day week, effectively reducing their holiday entitlement in terms of weeks. Equity believes the law unfairly diminishes performers' effective holiday entitlement and recommends the Regulations be amended so that they can accrue holiday reflecting a six-day week.

According to Labour Force Survey data, workers in the creative industries are more likely than those in any other industry to work more than 5 days per week. The performing arts and entertainment industry is well known to place high demands on performers. On West End shows and commercial theatre, performers generally work 6 days per week, amounting to upwards of 42 hours per week, up to 48 hours per week, on up to 8 shows per week on the West End. Many shows are physically demanding and, in the case of touring theatre, requires long periods of travel away from home. Insufficient rest is a danger not only to a performer's health and wellbeing but to the safety of those with whom they work.

Performers not only accrue less holiday per hour of work than those working a five-day week; they also must use more of their holiday entitlement to take a week off work. Their effective leave entitlement is 4.67 weeks per year, not 5.6 weeks.

We encourage the committee to take the opportunity presented by the Bill to rectify this unfairness in the Working Time Regulations 1998. This could be done by an amendment to increase from 28 to 33.5 the maximum number of days a worker can accrue in annual leave under the entitlement to 5.6 weeks' leave.

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