

Written evidence submitted by the Work Foundation at Lancaster University to the House of Commons Public Bill Committee for the Employment Rights Bill (ERB49)

Introduction

1. The Work Foundation is a think tank focused on improving working lives across the UK through applied research and innovative ideas. For over a century, we have worked to break down the barriers individuals and communities face in accessing, and remaining in, good work.
2. We believe everyone should have access to secure, rewarding, and high-quality work. By engaging directly with workers, employers, policymakers, and leading academics, we deliver rigorous applied research to tackle structural inequalities in the labour market and improve working lives across the UK. We are part of Lancaster University's Management School, and work with a range of partners and organisations across our research programmes.

Executive Summary

3. The UK labour market faces a range of deep and intertwined challenges, including high rates of in-work poverty, many people in insecure jobs, stagnating wages, staff shortages, and high levels of workers leaving due to long-term sickness. These challenges are impacting working lives and businesses.
4. The Work Foundation at Lancaster University welcomes the Employment Rights Bill. The Bill is a much-needed piece of legislation, and we are pleased that the new Government has made it a priority within the first hundred days of its administration.
5. The Employment Rights Bill is an important vehicle to improve work in the UK. To ensure it works alongside other policy interventions – such as Get Britain Working White Paper and Industrial Strategy Green Paper – the Government and Parliament must take this opportunity to strengthen it in key areas and set-out a detailed roadmap for how it will be enforced, including how enforcement will be funded.
6. Statutory Sick Pay (SSP): The removal of the Lower Earnings Limit which is currently £123 per week and removal of the existing requirements to serve waiting days from four days to day one is welcome. However, the rate of SSP remains too low to provide a meaningful safety net for those experiencing ill health at work.
7. Key improvements must include creating a roadmap to provide 60% of usual wages or the equivalent of the Real Living Wage. An amendment should be brought forward to the Employment Rights Bill give the Secretary of State for Work and Pensions the flexibility to make meaningful change to how SSP is set over the next five years and in future Parliaments.

8. Day one rights: Government must deliver on commitments to provide access day one rights for workers. Where legitimate concerns are raised by employers and other groups, Government should ensure appropriate guidance and support is in place to allow for their effective introduction.
9. Zero-hour contracts: The proposed right to a guaranteed hours contract after 12 weeks does not go far enough to level up the power imbalance between workers and employers. Employers should be required to provide guaranteed contractual hours for all roles from day one. However, a day one right to flexible working should allow employees that want a zero-hour contract – if the work is genuinely casual in nature and it is their own decision – to request them under a flexible working request.
10. Fair Work Agency: The Government should undertake a rapid review ahead of the forthcoming Spending Review to ensure that the Fair Pay Agency has the human resources and wider institutional capability to effectively enforce employment regulations across the country. Without this funding and support, parts of the Bill may not be successful at improving the lives of many working people.

(Insecure) Work in the UK

11. The UK labour market faces a range of deep and intertwined challenges, including high rates of in-work poverty, stagnating wages, staff shortages, and high levels of workers leaving due to long-term sickness.
12. In 2024, Work Foundation research estimated 6.8 million people – or one in five workers (21.4%) – were in severely insecure work. Severely insecure work is where involuntary or multiple forms of work-related insecurity come together.¹ Insecure work is not a new phenomenon and has been a prominent feature of the UK labour market for the last two decades.
13. These jobs are characterised by low pay, poor protections, unpredictable hours, a lack of autonomy and limited career progression. Evidence suggests that those in insecure work are more likely to experience stress and anxiety. Additionally, being in insecure work limits people's routes out of insecurity and impacts their ability to obtain future secure, well-paid work.
14. Severely insecure work is more likely to impact certain groups that already face existing structural inequalities in the labour market. Data from 2023 showed that:²
 - Women are 2.3 times more likely than men to experience severely insecure work
 - Young workers (16-24) are 2.2 times more likely than older workers (50-65) to be in severely insecure work
 - A record 1.45 million disabled workers are now in severely insecure work.
 - Since 2022, the rate of insecure work has grown more strongly among Indian workers and Black African and Black Caribbean workers than White British workers and other ethnic minority groups
15. People in insecure work often experience low and unpredictable levels of pay. On average in 2023, people in severely insecure work earned £63 less per week than those who were in secure work. This pay penalty amounts to £3,276 per year. In addition, many insecure workers face uncertainty around hours and shifts which makes it very difficult for people to plan their lives.³
16. Often insecure work, for example temporary or zero-hours contracts, are seen as a stepping stone to better employment, but our longitudinal research tracking the employment journeys of 10,804 workers, found that four in ten insecure workers (44%) remained in 'long-term insecure work' for at least four years.⁴ The very nature of insecure work makes it more difficult for individuals to transition to secure jobs – juggling unpredictable pay and hours can make it hard to plan, upskill or find new opportunities.
17. Severely insecure work is more common in certain sectors such as hospitality, social care and retail.⁵
18. Where you live and work can have a significant impact on your ability to access secure and well-paid work. Our research of England's Combined Authorities reveals that at least a quarter of workers in areas such as Peterborough, Wolverhampton, Middlesbrough and Barnsley are in severely insecure work.⁶ We found that higher levels of severely

insecure work tend to coincide with higher levels of unemployment and economic inactivity across local economies.

Workforce health and insecurity

19. Rising levels of economic inactivity due to long-term sickness are particularly alarming, with a record 2.78 million people now leaving the labour market due to ill health – an increase of nearly 700,000 people compared to the pre-pandemic period. All the while pressure on NHS services remains acute and the state of the public finances remains extremely challenging.⁷ Therefore, it is encouraging that the *Get Britain Working White Paper* seeks to address the rise in economic inactivity by focusing on more localised support and fostering collaboration between government departments, local authorities and NHS providers.
20. Employer action to protect workforce health and provide flexible and inclusive work environments are critical factors in determining whether people can sustain employment. Today's high levels of economic inactivity include a large portion of people leaving work to manage mental and physical health conditions.
21. Our longitudinal research shows that nearly one in ten individuals who reported a health decline will leave employment by the end of the four year study period.⁸ Moreover, insecure workers with health conditions were more likely to leave the labour market than those in secure work.⁹ Insecure work has been a persistent feature of the labour market for a number of decades, shaping people's long-term economic and health outcomes in ways that we are only beginning to understand.
22. This underscores the urgent need for the Government to decisive action to improve the quality of jobs in the labour market. Addressing low-quality work is essential not only to support those with health conditions but also to foster a healthier and more resilient workforce overall.

The Employment Rights Bill is an important vehicle to improve work in the UK, but it needs to go further

23. The Work Foundation at Lancaster University welcomes the Employment Rights Bill. The Bill is a much-needed piece of legislation, and we are pleased that the new Government has made it a priority within the first hundred days of its administration.
24. Over the last 14 years, there has been little new employment legislation presented by the Government. We have seen a range of Private Members Bills in the last Parliament that have made small changes to specific areas of employment law. However, these bills have not made a comprehensive improvement to working lives of those in severely insecure and low paid work.
25. We welcome the comprehensive nature of the Bill, which taken together has the potential to improve the lives of millions of people across the UK and bring the UK in line with other major economies in terms of employment rights and protections. We welcome the specific provisions on Repealing the Strikes (Minimum Service Levels) Act 2023,

Sectoral collective bargaining, Fire and rehire and Protection from harassment.

26. To ensure the Employment Rights Bill is successful, the Government and Parliament must look to strengthen in four key areas:

- a) Statutory Sick Pay
- b) Day one rights
- c) Zero-hour contracts
- d) Fair Work Agency.

This response will now go through these specific challenges.

A. Statutory Sick Pay – removing the three-day waiting period (so employees are eligible from the first day of illness or injury) and the lower earnings limit test for eligibility.

27. In the context of rising economic inactivity due to ill health, access to Statutory Sick Pay if a worker is injured, becomes unwell or develops a long-term health condition is key to supporting individuals to recover while remaining connected to their job.
28. Since its inception 40 years ago the value of SSP has halved relative to earnings, and is currently set at £116.75 per week, paid up to 28 weeks. At this rate, SSP replaces just 17% of average weekly earnings.¹⁰ This presents a risk for many employees of experiencing financial hardship when they fall ill, or not taking time to recover. It can also result in reduced productivity and / or an increased cost to the Exchequer in the form of Universal Credit and other welfare payments should individuals ultimately fall out of the labour market due to ill health.
29. A Work Foundation survey of UK business leaders found that almost half of all UK employers (47%) do not go beyond the statutory minimum level of sick pay provision. Just over a quarter (27%) provide a policy that either moderately or substantially exceeds statutory requirements.¹¹
30. The current system encourages people to work when ill rather than take time off to get better – especially those below the Lower Earnings Limit of £123 per week. The current four day waiting period before qualifying for SSP also means that many people with low and precarious incomes cannot afford to miss the consecutive shifts with no pay in order to qualify. SSP is also inflexible, as it does not allow employees to receive a combination of sickness benefits and normal wages, creating a financial disincentive for employees to consider a phased return to work.
31. Employer responsibility toward their employees is greater in other nations with Germany and Finland providing sick pay rates of 70%, and Norway, Iceland and Luxembourg paying 100% of regular pay. In the Netherlands, employers must provide sick pay of at least 70% of worker's wages for first two years of an absence.¹²
32. The Work Foundation welcomes the proposed removal of the Lower Earnings Limit which is currently £123 per week. Our analysis shows that this will benefit 3.5% of the UK workforce (1.15 million people) who are not currently eligible for Statutory Sick Pay (SSP) as they are below this limit. Ineligibility disproportionately impacts groups already facing structural inequalities in the labour market – nearly two thirds are women (69.2%), a third are disabled workers (33%) and over half are young workers aged 16-24 (52.4%).¹³ Without a rate of SSP that adequately replaces wages, low earning workers with a disability may face a perverse incentive to leave work and claim disability-related benefits in pursuit of a more predictable income. This counts against aims to support more disabled workers to sustain employment, should they wish to.
33. The Work Foundation also welcomes the removal the existing requirements to serve waiting days from four days to day one. This will benefit all employees, but particularly those on low wages and insecure contracts for whom missing just one day of earnings is

not financially viable, and end up working whilst sick as a consequence.

34. While these reforms are welcome, the rate of SSP remains too low to provide a meaningful safety net for those experiencing ill health at work.
35. RECOMMENDATION A: To mitigate the incentive for people to work while ill, or exit the labour market altogether, the Government should create a roadmap for increasing SSP to 60% of usual wages or the equivalent of the Real Living Wage – pro-rated by the usual number of hours worked, whichever is highest.
36. The Secretary of State for Work and Pensions already has the power to increase the flat rate of SSP via secondary legislation, but it would require primary legislation to make large changes such as linking the rate to the National Living Wage or paying a percentage of usual earnings.
37. RECOMMENDATION B: While the economic conditions might not allow for a change right now, current and future Secretary's of State for Work and Pensions should have the ability to make a meaningful change to SSP in the future. The Work Foundation supports the Centre for Progressive Change's call to use the Employment Rights Bills to give the Secretary of State for Work and Pensions the flexibility to make meaningful change to how SSP is set in future years. The Bill should include clauses to amend section 157, subsection 2 of the Social Security Contributions and Benefits Act 1992 and the Office of the Parliamentary Council be commissioned to draft a government amendment to this effect.
38. RECOMMENDATION C: The Government should test the feasibility of extending the duty of care for employers and incentivising vocational rehabilitation. Government should review the kinds of incentives that could support employers to support more structured and phased returns-to-work, allowing people to work part-time while receiving both wages and sick pay until a fuller recovery. This could include extending employer responsibility to pay SSP beyond the current 28-week period in cases where employers have not demonstrated adequate reintegration plans and assessing the affordability of wage subsidy schemes.

B. Day one rights and flexible working – requiring employers to justify the refusal of flexible working requests.

39. The introduction of day one rights to Protections from Unfair Dismissal, Statutory Bereavement Leave, Paternity and Parental Leave, and Statutory Sick Pay, serve as key measures to expand access to vital employee safeguards and enhance job quality in the UK.
40. Reducing existing qualification times for worker rights, or introducing new rights with short qualification periods, would be welcome. Providing these rights on day one, takes the critical extra step in supporting people to enter the labour market or obtain better quality employment. This will provide reassurance that a worker will not slip through the cracks of worker protections, if they require them during the initial qualification period. This removes a significant barrier to work and shifts the risk of moving into work or into new employment away from the employee.
41. Ending the cliff edge for qualifying for protection from unfair dismissal, removes the incentive for employers to dismiss employees before they qualify for this right, thereby enhancing job security.
42. The introduction of a day one right to protection from unfair dismissal, also serves as a vital safeguard for ensuring workers are able to benefit from other measures included in the Employment Rights Bill.
43. One aspect of the Bill to which this is particularly pertinent, are the measures that enact the Government's manifesto commitment to making flexible working the 'default'.¹⁴ Part 1, Clause 7, of the Bill amends existing procedure covering day one access to flexible working conditions. Requiring employers to show why any decision to refuse a request for flexible working is 'reasonable'.
44. However, without day one access to protections from unfair dismissal, employers who are unable to provide a reasonable justification for rejecting a flexible working request from an employee who has not completed the qualification period, could instead opt to dismiss the employee. In such a case a worker would have no recourse to an unfair dismissal tribunal. This potential scenario may also leave workers fearful of submitting a flexible working arrangement request in the first instance.
45. Consequently, without the safeguards offered by the day one right to protection from unfair dismissal, workers who require flexible working arrangements, such as those with chronic health conditions or caring responsibilities, may be disincentivised from obtaining employment.
46. Ensuring that workers have access to flexible working conditions is critical to getting Britain working. A Work Foundation longitudinal study revealed that a pivotal factor that can enable people to remain in work after a health setback is flexibility and control over key parts of their job. Workers without any flexibility are four times more likely to leave

the workforce.¹⁵

47. *Access to flexible working arrangements is also vital to ensuring that workers can obtain good quality jobs.* Many of those in insecure work find themselves having to trade security for flexibility to balance work around other factors in their lives, such as caring responsibilities or health issues.¹⁶ This leaves them vulnerable to economic shocks, as well as potential negative impacts on their wellbeing and future career prospects.
48. Four in ten (44%) insecure workers earning less than £18,000 per year said they were in their current job due to limitations, such as the availability of jobs in their area, poor transport infrastructure or a lack of available childcare.¹⁷
49. **RECOMMENDATION D:** Government must therefore resist calls to dilute access to day one rights. Where legitimate concerns are raised by employers and other groups, Government should ensure appropriate guidance and support is in place to allow for its effective introduction.
50. **RECOMMENDATION E:** Robust enforcement of day one rights is critical and so Government must ensure the new Fair Work Agency is sufficiently well resourced in the forthcoming Spending Review. In addition, employers must face meaningful penalties for non-compliance. If employers feel that the financial rewards by ignoring day one rights outweigh the financial consequences of breaking the rules, the effectiveness of day one measures will be significantly undermined.

C. Zero hours contracts – introducing a right to reasonable notice of shifts and to be offered a contract with guaranteed hours, reflecting hours regularly worked

51. Zero-hour contracts are, for some, the poster child of insecurity. It is vital to rebalance the power between workers and employers, but the proposed right to guaranteed hours contract after 12 weeks does not go far enough in shifting this balance.¹⁸
52. Our research shows that almost three in four (73.5%) of the 1.1 million working age people (aged 16-64) are in severely insecure work – meaning they must contend with multiple forms of insecurity such as contractual insecurity, low wages, unpredictable pay, and lack of access to rights and protections. A further 20.4% are in moderately insecure work and only 6.1% are in secure work, meaning they have a regular income and access to rights. This means that whilst for a minority of people zero-hour contracts might be a sustainable form of flexible work, for the vast majority, they represent precarity.¹⁹
53. Work Foundation analysis shows that groups more likely to face structural inequality in the labour are more likely to be on zero-hour contracts. Women are 1.2 times more likely than men to be on zero-hour contracts. Black workers are 2.7 times more likely than white workers to be on zero-hour contracts; and those from multiple/mixed backgrounds are 2.3 times more likely than white workers. Young workers (16-24-year-olds) are 5.9 times more likely to be on zero-hour contracts than workers across older age groups. Importantly, this is not just students fitting work around studies: young workers who are not students are still 3.6 times more likely than other age groups to be on zero-hour contracts.²⁰
54. Zero-hour contracts are most prevalent in the accommodation and food, arts, admin and health and social sectors. Some employers in these sectors are actively using zero-hour contracts to manage fluctuating workforce requirements. However, there are others, such as Wetherspoons, who have introduced an option for guaranteed hours for its workforce. The company reported that 99% of people opted for the guaranteed hours contract, with only 1% choosing a zero-hours model.²¹
55. Under the proposed legislation, using zero-hour contract will continue to be an active choice for employers and create a potential 10-12 week cliff edge for employers.
56. **RECOMMENDATION F:** Requiring employers to provide guaranteed contractual hours for all roles from day one would redress this balance. It could be presented as hours per week, or for on-call work and other roles with periods of varying demand, as hours per month or on an annualised basis.
57. Zero-hour contracts do work for some workers. A day one right to flexible working should allow employees that want a zero-hour contract – if the work is genuinely casual in nature and it is their own decision – to request them under a flexible working request, with their contracted hours protected and the right to reinstate them once the arrangement ceases.
58. **RECOMMENDATION G:** Alongside bringing in a day one right to guarantee hours, the legislation should also provide:

- A right to amended contract: Anyone working 25% more than their contracted hours should have a right to an amended contract, if they want it, that reflects their actual hours
- A statutory notice period: Employers of people working irregular hours should be required to provide a three-week notice period of their shifts ensuring the right to compensation for a cancelled shift if not followed.

D. Enforcement – bringing together powers of existing labour market enforcement bodies, along with some new powers, under the Secretary of State and enforcement officers

59. The establishment of a new Fair Work Agency is a critical step in ensuring existing and new regulations are adhered to by employers in the future. The extent to which the Employment Rights Bill as a whole is able to increase the security and quality of work in the UK will in part depend upon the enforcement of each of the new regulations that are introduced.
60. In previous years this has been a weakness of the UK labour market. The ONS estimated that 334,000 people were underpaid in April 2022,²² and in 2017, Sir David Metcalf (then Director of Labour Market Enforcement) suggested a UK employer was still likely to be inspected by the organisation only once every 500 years on average.²³
61. The Government should undertake a rapid review ahead of the forthcoming Spending Review to ensure that the Fair Pay Agency has the human resources and wider institutional capability to effectively enforce employment regulations across the country.
62. **RECOMMENDATION H:** Mayoral Combined Authority's and local authorities each have a close and detailed understanding of the local labour market and are well placed to develop close relationships with local employers. The Fair Work Agency must have the mandate to work with local partners to tackle non-compliance or violations of employment rights – including working together to map high risk sectors, at-risk organisations and raise awareness regionally among employers and workers of their rights.²⁴
63. **RECOMMENDATION I:** Insecure work is particularly concentrated in sectors such as social care, retail, and hospitality. To effectively drive-up standards in these sectors, the Fair Work Agency will need to be better equipped with additional data and insights regarding employment practices being used.²⁵
64. **RECOMMENDATION J:** Government should improve the public availability of data through the ONS on levels of insecure work, for example quarterly disclosure of the number of vacancies in the economy that are temporary vs. permanent. It should also provide enforcement officers with access to new datasets such as real time employer working hours data collected by HMRC.
65. **RECOMMENDATION K:** Government should also require large employers (those with a workforce of 250 or more) to conduct equality impact assessments that includes information on employment models and disclosures on the kinds of contracts utilised within the organisation, including by third parties.
66. **RECOMMENDATION L:** Alongside the Fair Work Agency, the Government should also consider establishing time-limited sector taskforces to implement change in problem sectors, working in step with Fair Pay Agreements when they are established, such as in social care.²⁶

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