

British Chambers of Commerce submission to the Employment Rights Bill Committee

16th December 2024

About the BCC

Across the UK, the 52 Accredited Chambers that make up our network are trusted champions of businesses, places, and global trade. Together, we represent tens of thousands of businesses of all shapes and sizes, which employ almost six million people across the UK. Our growing Global Business Network also connects exporters with over 75 markets around the world.

Working together, we help firms of all sizes to achieve more. We believe it's our relationships with others that lead us to achieve goals beyond those we could ever achieve alone. We're the only organisation that helps British businesses to build relationships on every level, in every region and nation of the UK. Our network exists to support and connect companies, bringing together firms to build new relationships, share best practice, foster new opportunities and provide practical support to help member businesses trade locally, nationally and globally.

We welcome the opportunity to respond to the Committee's inquiry and support the Committee's objective to ensure this Bill supports a good economy. The views and evidence given in this response focuses primarily on the impact of the legislation on business and the economy. Our evidence arises from the outcome of quantitative and qualitative research. We have engaged businesses of all sizes and sectors via regional focus groups held by the Accredited Chamber network; consultation with the BCC's Expert Employment Panel and one-to-one interviews with employers.

Introduction

We welcome the aims of the Bill – on ensuring job security, fair reward, and non-discriminatory workplaces. It reinforces what most good businesses are doing already. They know a happy and engaged workforce is more productive.

We have welcomed the volume of engagement on the Bill by the Department and the Minister to date. Our members have given cautious support to several aspects of the Bill, depending on the detail - for example, the creation of a Fair Work Agency and boosting workplace equity for underrepresented groups.

But the cumulative impact of the Bill - on business cost, complexity and workforce flexibility - will be significant. Our members are questioning the proportionality of these changes in relation to the problem that government feels it needs to address. There is a danger that in trying to prevent bad behaviour by a tiny minority of businesses, there will be a disproportionately damaging impact on the majority who are good businesses – especially SMEs who often don't have access to internal HR and legal support.

Our members are also concerned about the pace at which these changes are being introduced which has meant that, despite the efforts of the Department for Business and

Trade, they still feel that there has not been sufficient opportunity for detailed consultation on these major reforms.

It would be helpful to have a clear roadmap and timetable for consultation and implementation to ensure businesses are properly consulted and for them to be able to plan for these significant changes. The lack of clear information about what will be the practical effects on businesses of some of these proposals is causing significant concern among our members. Therefore, the sooner the Government can set out on an operational level what the impacts of these proposals will be, the better.

1. Economic growth and wealth creation

We welcome the Government's aim that the Bill should be good for the economy. The priority must be to ensure that the legislation is both pro-worker and pro-business. Businesses are concerned that, in attempting to address a what it perceives to be an imbalance of power in the workplace, the Government will create a further imbalance that could impact on the viability of businesses and the employment opportunities they provide.

We expect the proposals will have, at least in the short to medium term, little to no positive impact on economic growth, as was also reflected in the government's impact assessment. We expect the proposals may even lead to a short-term decline of productivity in the workforce.

In recent months, we have been building an evidence base directly from the thousands of businesses we represent. Our evidence indicates the increased cost, complexity and administrative burdens arising from the legislation are likely to deter businesses from investing in the workforce.

Moreover, aspects of the Bill are likely to lead to a significant reduction in the flexibility firms will have in future to introduce change, innovation and efficiency in response to internal and external pressures. This is likely to have a dampening effect on growth. It could impact on the perception of the UK as a place to invest.

The survey evidence that we have gathered directly from businesses suggests that the Bill will increase the cost of doing business, compounded by the measures outlined in the recent Autumn Budget, specifically the NICs increase. Leading up to the Autumn Budget, our Quarterly Economic Survey showed that business confidence had begun to wane. This is driven by a spike in anxiety about tax and employment policy and now tax is considered the top concern for UK businesses.

In an October survey, we sought to understand the initial impacts that businesses believed the Employments Rights Bill might have on their business. We found that a clear majority of businesses were concerned about the impacts of day one rights, how this might impact the likelihood of them employing people and their ability to manage labour costs going forward.

As a result of the data we have collected so far, the BCC's most recent Quarterly Economic Forecast, released on 5 December, expects that the combination of the NICs increase and the Employment Rights Bill will have a marginal negative impact on GDP growth due to the reduced amount of household consumption. It will also have a marginal impact on average earnings, slowing average earnings growth as employers struggle to manage costs. We also expect the unemployment rate to tick up as a result of decreased hiring intentions.

2. The Impact of the Bill and the Plan to Make Work Pay on Business

There are many aspects of the Bill that our members have given a cautious welcome to, depending on the detail. However, overall, the Bill represents a major change to employment legislation that will have a huge impact on businesses.

Many larger organisations tell us they already have policies and procedures in place to achieve much of what the Bill sets out to do. These firms have concerns about specific proposals in the Bill.

Our SME members, on the other hand, are concerned about the cumulative impact of the reforms in terms of additional cost and complexity. They fear they will lose the flexibility to manage their workforce to meet the needs of the business. Many SMEs do not yet realise the implications of what is being proposed and it will be some time before the full impact can be assessed. These businesses will need several years to prepare and adjust and the Government should provide clear and timely guidance.

There is a risk that the changes will lead to more pressure on ACAS and the Employment Tribunal system - which is already experiencing a huge backlog. This would be damaging to employers and individuals, who could potentially have the disruption of a workplace dispute hanging over them for 2 years. More resources will be required to boost capacity – and employers will need additional support and training on early dispute resolution.

Some of the proposals are likely to impact on employers' appetite for risk. The government's impact assessment acknowledges the additional cost of the whole MWP Package to business will be near £5bn per year, with a disproportionate impact on SMEs. This, on top of the increased wage and NICs costs resulting from the Budget, could lead to fewer employment opportunities, especially for younger people, older workers and those in marginalised groups.

It is important that the Bill achieves the right balance of rights for employers and individuals and that the reforms are realistic and affordable for all businesses. There are specific provisions in the Bill that our members believe will increase business costs, complexity and the administrative burden and restrict their ability to innovate and grow. They are concerned that there has been insufficient consultation to date on many of these provisions.

Below we have set out BCC's position on the main provisions in the Bill.

Industrial Relations – Our members ask that there should be no change to union access and ballot thresholds for strike action.

BCC has responded in detail to the Government's consultation on trade union reform and highlighted our members concerns. Feedback from businesses of all sizes is that they do not believe the proposed changes to access and ballot thresholds will ensure that a union is representative of, or accountable to, the wishes of the workforce. They are concerned that the reforms will damage rather than improve their working relationship and communications with the workforce. Moreover, they are worried that the changes will only make it easier and faster for unions to call strike action and to reach an end point that nobody wants. Our members do not believe that the proposed changes to union access and ballot thresholds, as drafted, will be helpful to business or the workforce.

Collective Consultation and Fire and Rehire – Our members ask that there should be no change to the establishment rule and no increase in penalties.

BCC has responded in detail to the Government's recent consultation on collective consultation and fire and rehire. We raised concerns relating to changes to the 'one establishment' rule. In summary, our members tell us that it is just not practical for employers who need to make changes to the workforce to undertake collective consultation across all establishments when these are often at different locations in the country, with different types of activity and different skill levels and job roles. It would create more cost and complexity for employers, more frequent disruption and uncertainty for individuals, and less meaningful local consultation.

We also raised concerns about proposals to increase the penalties for employers. The extension or removal of the cap on the protective award – and the proposed introduction of interim payments - would be financially crippling for SMEs who make an honest mistake in the process.

Businesses need to be able to restructure, and fire and rehire practices should not be banned. The government should strengthen the Code of Practice on fire and rehire, the design of which has had substantial input from business. This is a good model and provides structure on how firms should deal with significant changes in consultation with employees. Trade Unions should also be required to engage positively and have some responsibility on finding solutions that work for both sides.

With all that said, the large-scale, high-profile cases of fire and rehire do not reflect the norm for most businesses. While 'dismissal and reengagement' is very rarely used in our experience, employers must be able to consult with employees and change terms and conditions if business conditions change. Changes are often required, for example to achieve net zero goals, adapt to supply chains, respond to fluctuating demand and to improve efficiency etc. Businesses are trying to do the right thing in a difficult situation and will want to protect the future of the business and as many jobs as possible. Removing this option would lead to more redundancies.

Moreover, the proposals could make it more difficult for firms to make necessary changes in the course of everyday business. Feedback from our members is that it is likely to impact on their ability to innovate and grow, to respond to internal and external pressures or to grasp new opportunities in the interests of the business and the workforce.

Zero Hours Contracts – Our members ask that the reference period should be 26 weeks instead of 12 to better reflect seasonal and fluctuating demands. They also ask that the provisions are not extended to agency workers.

BCC has responded in detail to the Government's recent consultation on zero hours contracts and the application to agency workers. Our members are concerned that the proposed reference period for calculating a guaranteed contract is too short and that it should be 26 weeks, rather than the proposed 12 weeks. This would allow for fluctuations in demand and seasonal work. Holiday periods like Christmas and summer months in tourist spots, are examples of such peaks and why a longer reference period is needed.

Feedback from businesses is that it would be damaging to employers and the agency sector, and reduce flexibility in the labour market, if the provisions were to be extended to agency workers. Agency work is inherently temporary and mutually flexible – so there is no 1-sided flexibility to address. We recommend that government considers changes to the existing agency worker legislation instead.

Feedback from our business focus groups, however, is that workers on low or zero hours contracts, and agency workers, should have a right to reasonable notice of changes to planned shifts, and should receive compensation where these are cancelled or curtailed at short notice.

More generally on zero hours contracts, BCC's surveys highlight that not all businesses use them, but they can be beneficial for certain groups of people, such as students or those seeking very flexible work arrangements and for sectors such as hospitality, leisure and arts that experience variations in demand. Zero hours contracts should therefore not be banned outright. Any restrictions to their use could limit opportunities and negatively impact businesses and individuals.

- *“Impractical in my sector and will lead to problems. Currently the employee on zero hours has and does exercise their rights not to be available.” - Small arts, entertainment, or recreation in the East Midlands*
- *“This will be difficult to manage with seasonality and busy periods. Costing more to the business. An example is December and January. Two hugely different months for hospitality and consumer spending habits” - Small hospitality firm in Surrey*
- *“We have task and finish projects so we can't drum up a job if there isn't one. Those that work for us on zero hours are doing it because they are also working for others and don't want a full -time job” - Small education organisation in Devon*

Harassment at Work: Our members ask that the word 'All' should be removed in relation to the reasonable action duty on employers to prevent 3rd party harassment.

Employers are willing to take responsibility for managing, informing and training their workforce. They will also undertake due diligence and adopt a zero-tolerance approach in relation to customers and suppliers. However, the inclusion of the word 'all' in terms of reasonable actions employers are required to take introduces too high a level of uncertainty and legal risk for employers. They would want to comply, but as drafted in the Bill, they don't know how they would be able to guarantee that they are complying.

Statutory Sick Pay: To prevent an increase in sickness absenteeism, and minimise cost and disruption for employers, our members ask that employers should only be required to pay SSP at the full rate to eligible staff from second day of illness, not the first, and those earning below the lower earnings threshold should receive 60% of average weekly earnings.

BCC has responded in detail to the Government's recent consultation on this issue and raised concerns about the removal of the waiting days. Businesses are asking the government to recognise the impact this will have on business costs and the likelihood that it will lead to higher rates of sickness absenteeism.

While our members agree that people should receive SSP for long periods of illness, employers tell us that it is the single days of illness that create the most disruption. We therefore suggest SSP is paid from the second day of illness.

If the government is to reduce the waiting days for SSP, it would be helpful to employers for there to be a corresponding reduction in the period after which a fit note is required. This requirement should be changed from seven calendar days to four calendar days.

To minimise the cost impact on business of changes to SSP it would be helpful for the SME SSP rebate to be reinstated for this extended liability, to help avoid unintended consequences.

The feedback from our members is that while they support the proposal to remove the lower earnings limit, the government should seek to minimise the cost for business. Members agree with the government that it would be inappropriate for staff to receive more in sick pay than through their normal earnings. For that reason, we recommend a rate of 60% of average weekly earnings, or SSP, whichever is the lower. This would help protect businesses, and enable them to invest, grow and sustain employment.

Based on member feedback, BCC has concerns about a lack of clarity around self-employed people who mostly provide their services to a single third-party company. There should be no expectation that self-employed staff should be able to claim sick pay from their main contracting partner. We are consulting members on this issue.

In the BCC's 2024 Workforce Survey, 50% of respondents said they would be negatively impacted by a day one right to SSP. Similarly, in a survey by the London Chamber, 38% of

firms predicted that they would have to freeze hiring in response to the SSP changes, with 30% predicting a reduction in profits, and 33% forecasting lower pay increases for staff.

Unfair dismissal: Our members ask for a minimum probation period of 9 months, and ideally 12 months, and a light-touch process for the employer to end the employment contract, based on capability and performance for example, during this period. We ask that government minimises cost, complexity and administrative burdens and that employers will be at no greater risk.

While members have expressed concerns about the removal of the qualifying period for unfair dismissal, they are somewhat reassured by the proposed introduction of a statutory probation period during which employers can dismiss an individual based on performance or ability etc. This will provide more confidence for employers in the recruitment process and is less likely to impact on their attitude to risk. We would need to see more detail of what constitutes unfair dismissal during the statutory probation period.

While most employers operate a probation period of up to 6 months, we strongly recommend a statutory probation period of at least 9 months, and ideally 12 months. Employers will have invested heavily in the recruitment, onboarding and training process and will want time to support individuals to meet the requirements of the role before making a decision as to suitability. For this reason, employers often extend the 6-month probationary period to 9 months.

In some sectors, a probation period of 12 or more months may be required for the employee to undertake essential training and demonstrate competence, skills and knowledge required for a license to practice e.g. aviation. For these specific job roles and sectors, we recommend that the employer should be able to extend the 9-month statutory probation period to 12 months, or longer as required.

If the employer or employee decides that the employment relationship needs to end during the probation period, there must be a light-touch requirement on employers and no greater risk of a claim at an Employment Tribunal.

Any changes would need a period of transition for employers, who should be supported to adopt a structured probation programme without having to put in place heavy performance management processes from day one of employment.

Our research highlighted that removing the 2-year qualifying period for unfair dismissal is a major concern for businesses. In our survey, the commonly cited impacts were:

Reduced Hiring Appetite. Businesses said they would be less likely to hire new employees due to increased risks and difficulties dismissing underperforming staff.

“Will affect every one of our clients, they will be nervous about hiring especially to start off with which will impact the recruitment market” - Micro Recruiter in Dorset

“Employers need to be able to hire and fire. The fit might not be right, the employee may not work for the business. Without this flexibility, we simply will reduce hiring” - Small hospitality firm in Hampshire

“Our business hires high-risk candidates with little previous background but a lot of potential. We would be disincentivised from hiring such candidates if this legislation is introduced” - Small education organisation in Wales

Preference for Contractors and Temporary Staff: To avoid legal complications, businesses said they would opt for hiring contractors or temporary workers instead of permanent employees.

- *“We will not look to take on new staff for the foreseeable future, and look to contractors if needed” - Micro arts, entertainment, or recreation organisation in Bedfordshire*
- *“May have to switch to the use of more subcontractors rather than direct employees”- Micro construction firm in Essex*
- *“May use temporary labour first, with view to ‘temp to perm’ if it’s a good fit” - Small manufacturer in North East England*

Increased Costs and Administrative Burden: Businesses said it would add complexities to the hiring process, leading to higher HR costs and more stringent probationary management.

- *“It will be almost impossible to consider taking on new staff as the risks of unfair dismissal tribunals and the lost time and cost of defending these will be too significant. Even a lighter touch process will involve time and effort that will probably include having to hire an HR expert and add unwanted costs to the business” - Micro finance firm in Black Country*
- *“SMEs struggle with current employment rights and the sea of administration they create. It takes years to train up people. This will deter employers from taking a risk with someone” - Medium sized manufacturer in Dorset*

Flexible Working

The BCC fully supports the government’s aim in the Bill to increase access to flexible working. Most businesses we surveyed already offer some form of flexible working for employees, whether formal or informal. Increasingly, it is becoming a normal part of business operations and can be beneficial to the employer and the workforce.

However, there is no one-size-fits-all solution for businesses, or individuals, and not all flexible working solutions can be accommodated by an employer. It is therefore vital that the 8 business reasons for refusing a flexible working request are retained. Whilst we agree that

employers should be encouraged to consider all options carefully with a view to finding a solution that works for all parties, the bar should not be set so high that it restricts the employer's ability to manage staff resources according to the needs of the business. It should not create undue complexity, administrative burdens or additional costs for employers. We would need to see the detail of the proposed changes to fully understand the likely impact.

In a BCC survey of over 700 businesses which asked about the impacts of the proposals, changes to flexible working were highlighted by businesses as a significant concern. The potential impacts identified include:

Operational Challenges: Businesses said flexible working hours are impractical for those in manufacturing, retail, and hospitality due to the nature of their operations and that staff need to be present during specific hours to meet production schedules, customer demands, and safety requirements.

- *“Due to the nature of our business, and it being a small business, flexible working is not possible. We have operational hours that fit in line with customer requirements. Who wants people working in their home at 10pm at night or delivering goods at midnight?” - Micro manufacturer in Staffordshire*
- *“It really depends how 'flexible' is defined. Our operation is based around machinery operation, this reduces the option for flexible working” - Micro manufacturer on the Isle of Wight*
- *“We have set hours of operation so we don't disrupt local homeowners. We can't be flexible” - Small construction firm in Norfolk*

Increased Burden on Employers: Employers were concerned about the potential increase in administrative tasks, the need to justify refusals, and the overall impact on team dynamics and morale. They said the requirement to accommodate every request could lead to operational inefficiencies and increased costs.

- *“This is an interference in the rights of an employer to determine the best way to deploy resources in their business. Having to prove something to be unreasonable is open to far too much interpretation and it places the burden of proof on the employer” - Micro services firm in Cambridgeshire*
- *“Most employers already accommodate flexible working patterns where this is workable within the business. However, the business needs should always be paramount. This is an anti-growth and anti-business policy, with increasing burdens upon businesses which will inhibit long term growth” - Small manufacturer in Sheffield*

Impact on Team Cohesion and Productivity: Businesses said close collaboration and physical presence are essential for maintaining a strong team culture and ensuring effective

communication. Remote working, while beneficial in some cases, is seen by businesses as potentially detrimental to team spirit, employee mental health, and overall productivity in the long run.

- *“We are a small team with all roles heavily interwoven. Constant face-to-face collaboration is needed to provide our exemplary service. Certain contracts stipulate 5-day cover so condensed hours will leave shortfalls in skills, collaboration and customer service” - Micro manufacturer in North and Western Lancashire*

Single Enforcement Body/Fair Work Agency

We support the proposal to create a single enforcement body and agree that there needs to be better coordination. We understand this is the approach taken in major EU countries.

Growth is the government’s number one Mission and this is crucial to business and the economy. The Fair Work Agency should have the target of promoting economic growth as a key part of its remit and ensure that all its activities contribute to this.

The Fair Work Agency would need to be well resourced to avoid confusion and delay. There should be a redeployment of resources, rather than a rationalisation and cost-cutting exercise. The main focus should be on supporting businesses with compliance.

Clarification is needed on its powers, remit and focus. For example, how will the single enforcement body sit with the HASAW executive, the EHRC and employment tribunals for example - and who brings claims - and how this is done.

Feedback from our members is that inspections are often costly and complex. The focus of the FWA should be on supporting and advising businesses, not just a punitive or target-led approach. It should not create additional, unsustainable burdens on good employers. Any action against business must be proportionate, where it is clear that a genuine mistake has been made. The areas of NMW and holiday pay, for example, are highly complex and therefore a great deal of care needs to be taken in any actions the FWA will take. There should be regular engagement with business representative bodies.

Protections for pregnant women and new mothers returning to work

Having consulted so far, no concerns have been raised in this area. We will keep listening to our members but as of now we are in principle happy to support the bill.

A new right to bereavement leave

Having consulted so far, no concerns have been raised in this area. We will keep listening to our members but as of now we are in principle happy to support the bill.

Tips and Gratuities

This is not an issue that members have proactively raised with us as a concern, but we are still in the process of consulting our network. We will report back on any concerns as the legislation progresses. It is important that any changes are staggered and give businesses time to adjust.

**For more information, please contact Jane Gratton, Deputy Director of Policy,
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