



Institute of Directors

116 Pall Mall

London

SW1Y 5ED

11/12/2024

House of Commons Public Bill Committee

House of Commons

London

SW1A 0AA

IoD response to the Employment Rights Bill: call for evidence

About the IoD

The IoD is an independent, non-party political organisation representing approximately 20,000 company directors, senior business leaders, and entrepreneurs. It is the UK's longest-running organisation for professional leaders, having been founded in 1903 and incorporated by Royal Charter in 1906. Its aim is to promote good governance and ensure high levels of skills and integrity among directors of organisations. It campaigns on issues of importance to its members and to the wider business community with the aim of fostering a climate favourable to entrepreneurial activity in the UK.

The IoD welcomes the opportunity to respond to this call for evidence on the Employment Rights Bill. The provisions of the Bill will have significant implications for employers of all sizes and we are therefore pleased to present our views to the Committee.

In the first section, we provide a summary of our key perspectives on the Bill. We then offer more detailed views in respect of specific areas of interest to the Committee.

Summary of the IoD view

Feedback from IoD members on the various components of the *Plan to Make Work Pay* strongly suggests that it will have negative impacts on hiring intentions and practices, business confidence, growth, and investment. These negative impacts are in no small part the result of the fact that the development of the policies and drafting of the Bill have been rushed; complex and new legal measures are being rolled out hastily and without sufficient engagement with business and consideration of potential negative economic consequences.

Specific feedback

1. What impact will the Bill have on businesses?

Ultimately, the Bill's measures will make employing staff more expensive and riskier for businesses. As a result, they will hire fewer people and where they do hire, hiring decisions will be made more conservatively.

The direct costs related to employment will increase as a result of, for instance, more frequent SSP payments. Business costs will also increase as a result of the resources needed to meet the increased compliance burden for measures such as offering every worker on a zero hours contract guaranteed hours every 12 weeks, conducting collective redundancy consultation exercises more frequently, and attempting to evidence that they have taken 'all reasonable steps' to prevent sexual harassment in the workplace. Businesses will also need to allocate additional resources to minimise the risks resulting from the legislation; many employers will, for instance, add more stages and thoroughness to their recruitment processes in order to reduce the risk of struggling to dismiss an ineffective new hire.

The government's own impact assessment acknowledges that the impacts and costs of the Bill will be disproportionately borne by SMEs. SMEs are both less likely to have the in-house HR capacity necessary to be able to absorb additional compliance burdens and to have the financial resources to absorb increased costs related to employment in several areas.

"Dumping 28 potential changes on SMEs who do not have in house HR is a tough ask to make, many of which will have real financial implications such as SSP from Day One." – Microbusiness, Professional, scientific and technical activities, East of England

"Covering the cost of enhanced sickness, maternity, paternity, parental bereavement when one person represents such a large percentage of payroll is challenging. [Financial support from government] would massively help small businesses provide provision for employees and even the playing field when compared to large organisations" – Small employer, Other services, Yorkshire and the Humber

"This penalises smaller businesses who are less likely to be able to afford these additional costs and remain competitive."- Medium-sized employer, Construction, South West England

2. Which measures, if any, in the Bill do you think small businesses should be exempt from?

The exemption of small businesses from requirements related to equality action plans is appropriate. The case for exempting small businesses from other provisions in the Bill is unclear; the changes to the Bill we consider appropriate would benefit businesses of all sizes. Given the disproportionate effect that most measures in the Bill would have on SMEs, however, steps to reduce the impacts of the Bill on all businesses would particularly benefit SMEs.

Government should, however, provide financial support in recognition of the disproportionate burden that the Bill will place on SMEs. A key mechanism for achieving this aim should be the reintroduction of the SSP rebate for SMEs.

3. What impact will the measures in the Bill have on levels of recruitment?

An IoD survey of 715 business leaders in August 2024 found that 57% would be less likely to hire in response to the implementation of the Employment Rights Bill (Appendix: Figure 1). The expansion of day one employment rights, particularly in relation to protection against unfair dismissal and the consequent increased threat of tribunals, was the most commonly cited single factor for the increased disinclination to hire. However, respondents also emphasised the impact of the package as a whole, with an underlying sense that the measures in the Bill reflect a want of understanding of both the realities of running a business and proper consultation with employers.

“The overwhelming risk and cost will increase the cost and potential cost of hiring... and make the options of hiring junior staff less appealing. It would really help UK businesses if legislation was amended to make hiring staff *more* attractive.” Medium-sized employer, Professional, scientific and technical activities, North West England

“Hiring (and firing) will become materially more onerous, more risky and, consequently, less likely.” – Microbusiness, Professional, scientific and technical activities, Scotland

“At best this will increase the cost of, and slow down, the recruitment process due to more checking and referencing, and at worst it will cause companies (especially early-stage companies and SMEs) to delay or reduce recruitment due to the increased risk of costly employment disputes.” – Small employer, Manufacturing, Scotland

“Two key deterrents for us would be flexibility; we operate in fast-changing industry where being able to adapt is key, furthermore we are a smaller business with limited resources and any additional burden / administrative tasks are likely to deter us from hiring.” – Small employer, Wholesale and retail trade, South East England

There is growing evidence that these reforms are already tangibly damaging hiring intentions. IoD research in November 2024 found that business leaders’ headcount expectations had reached their lowest point (-33) since May 2020 (Appendix: Figure 2). While much of the decline compared to October 2024 (-4) is owed to the increase in employers’ NICs, headcount expectations have been declining steadily in the past few months, with October being the first negative reading – meaning that more employers plan to decrease headcount in the coming year than increase it – since late 2020. This decline is due in no small part to the increased costs and risks associated with employing staff resulting from the Employment Rights Bill.

4. How do you see the zero hours contract measures working?

The measures pertaining to zero hours contracts will significantly reduce the ability of employers to offer such contracts, even where employees want them. Employers who offer zero hours contracts because demand fluctuates in their sector are unlikely to be willing to run the risk that after any 12-week reference period a worker may accept the required guaranteed hours offer and become a liability when there is insufficient work. In such scenarios, employers will be more likely to turn down work or to simply ‘make do’ during busy periods instead of exploring flexible employment opportunities.

“We have employees who are on zero hours contracts because their work is project driven and is not guaranteed, and we can therefore not afford to offer them guaranteed hours. The risks of a downturn in work are too high. If we were using agency workers [and had to offer them guaranteed hours], we would likely turn away work that could not be carried out by our

own employees rather than get locked into contractual agreements that could lose us money.” – Microbusiness, Information and communication, East of England

“Guaranteed hours are the complete opposite of the flexibility of a zero hours contract - just making it harder for businesses to be flexible, so there will be more making do through busy times instead of giving some opportunity of work to people.” – Microbusiness, Professional, scientific and technical activities, East of England

“We use zero hours as our staff work across four companies. Without the flexibility of this I could not offer them employment or would have to offer weekly contracts, which would be an administrative nightmare.” SME, Construction, Scotland

The requirement for employers to proactively calculate and offer guaranteed hours contracts to workers every twelve weeks will also represent a very significant administrative burden, particularly for SMEs.

5. What will the provisions in the Bill for improving flexible working mean for your industry?

The flexible working provisions are unlikely to have a significant impact on IoD members’ organisations given the high proportion who already offer various forms of flexible working. An IoD survey of 661 business leaders in September 2024 found that only 16% reported offering no remote working for office-based staff and only 10% offer no form of flexible working (Appendix: Figures 3 and 4), suggesting that a culture of facilitating flexible working is already prevalent in most UK workplaces.

The retention of the eight business reasons for denying a flexible working request is welcome, as it is essential that businesses retain the ability to reject requests which are unworkable or undermine business operations.

6. What impact will the measures contained in the Bill have on the practice of fire and rehire?

The measures in the Bill will likely reduce the (already low) incidence of dismissal and re-engagement. There is in fact significant support within the business community for such an outcome; an IoD survey of over 712 business leaders in April 2024 found that almost two thirds (61%) agreed with the proposal to outlaw fire and rehire practices completely (Appendix: Figure 5). It is likely, however, that for the very small number of employers who engage in the process, the effective removal of the dismissal and re-engagement mechanism as a last result will increase the likelihood of employers undertaking dismissals with no view to re-engagement.

More concerning for business is the fact that making dismissal for failing to agree to contractual changes automatically unfair will encompass not only what is commonly understood by the terms ‘fire and rehire’ and ‘fire and replace’ but also cases where employers need to make completely reasonable adjustments to employees’ terms, such as office location. The measures consequently threaten to undermine employers’ ability to change contractual terms, even where the change is *not detrimental*, and thus potentially their ability to grow and innovate.

7. What are the likely effects of the day one right to claim unfair dismissal on your sector?

As discussed above, the day one right to claim unfair dismissal will make recruitment inherently riskier and discourage employers from hiring staff.

“Recruitment mistakes are not uncommon so our business works hard to make good decisions and to unravel problems in a fair way. These new proposals will make that more risky so we are less likely to recruit staff or create jobs.” – Small employer, Financial services, Wales

Where employers do hire staff, the nature of the hiring process will change. A prevalent and concerning theme in feedback from IoD members is that they will take fewer risks when hiring employees. The ability of employers to correct recent hiring mistakes without the threat of being taken to an employment tribunal is key to their frequent willingness to hire staff who constitute a greater risk, for example where they do not have the exact experience or qualifications required on paper. Such a trend would have worrying implications for the likelihood of individuals on the fringes of the labour market – whose re-entry into the workforce will be essential if the government is to meet its target of an 80% employment rate – to gain employment.

“At our organisation we take a chance with some slightly unusual candidates who on paper may not fit the job spec. This is often very successful - but in around 25% of cases we do have to let them go. This will tighten up our recruiting culture and will lead to marginalised candidates not getting a chance.” – Medium-sized employer, Real Estate, South East England

“Most companies know that hiring is expensive and so try to make it work, but we have all made poor recruitment decisions and it is better for everyone if there is an easy exit from these.” – Large employer, Health and social work, South East England

Feedback from IoD members also suggests that employers will be less likely to directly employ staff on permanent contracts. Reforms to zero hours contracts in particular will, ironically, in many cases increase precarity in employment due to individuals being engaged on fixed-term contracts:

“Employing people is becoming a big risk for small entrepreneurs, we are much more likely to go for contract workers now.” – Microbusiness, Professional, Scientific and technical activities, North East England

The impact of the day one right to claim unfair dismissal on probationary periods will depend on the maximum length of statutory probationary periods and whether the dismissal process is genuinely light touch. Employers are likely to make greater and more formal use of probationary periods than is currently the case, in order to provide themselves with some protection against unfair dismissal claims.

Feedback from IoD surveys suggest that most employers operate 3–6-month probationary periods but, in order to allow for extensions to probationary periods where necessary, one year should be the legal maximum. Were that to combined with a very light-touch dismissal process then the negative impacts of day one protection against unfair dismissal would be reduced. That being said, in an IoD survey of 642 business leaders in October 2024, only 51% of respondents reported that a nine-month probationary period with a light-touch dismissal would partially mitigate the negative impacts of the policy, while 32% responded that it would not alleviate their concerns at all (Appendix: Figure 6).

8. If you could make a change to the Bill, what would it be?

The following key changes to the *Plan to Make Work Pay* package would assist in ameliorating the negative impacts of the package on job creation and economic growth:

- Clarifying that changes to provisions around dismissal and re-engagement will only apply where contractual changes are detrimental.
- Introducing additional protections against unfair dismissal after 12 months of employment, rather than day one.
- Retaining existing thresholds for statutory recognition for unions and for industrial action.
- Removing 'all' from the requirement for employers to take 'all reasonable steps' to prevent sexual harassment in the workplace.
- Retaining one waiting day before employees can access SSP, to prevent abuse of the system.
- Amending the reference period for guaranteed hours to 26 weeks and making it a right for employees to request, rather than be proactively offered, a contract reflecting hours regularly worked.

I hope you have found our comments helpful. If you require further information about our views, please do not hesitate to contact us.

With kind regards,



Alex Hall-Chen

Principal Policy Advisor for Employment

Email: Alexandra.Hall-Chen@iod.com

Appendix

Figure 1: IoD Policy Voice results, August 2024 (715 responses)

The government is planning to introduce an Employment Rights Bill within its first 100 days of office. Measures expected in the Bill include: Giving workers the right to a contract reflecting the hours they usually work; Strengthening the statutory code on fire and rehire; 'Day one' employee rights to parental leave and sick pay, and protection against unfair dismissal; Making it unlawful to dismiss a maternity returner for six months after their return to work, except for in specified circumstances; Simplifying the statutory trade union recognition process; Making Statutory Sick Pay available to more workers by removing the lower earnings limit and waiting period.

What impact, if any, would these reforms have on your organisation's hiring intentions?

More likely to hire	2.2%
Less likely to hire	57.2%
No impact	35.5%
N/A	5.0%

Figure 2: IoD Policy Voice results, November 2024 (601 responses)

Comparing the next 12 months with the last 12 months, what do you believe the outlook for your organisation will be in terms of headcount?

Much higher	2.4%
Somewhat higher	19.0%
No change	45.2%
Somewhat lower	14.3%
Much lower	16.7%
N/A	2.4%
Don't know	0.0%

Figure 3: IoD Policy Voice results, September 2024 (661 responses)

Which of the following most closely describes the expected average use of remote working for office-based employees in your organisation?

1 day per week remote working	12.10%
2 days per week remote working	24.81%
3 days per week remote working	10.59%
4 days per week remote working	2.72%
Don't know	0.30%
Fully flexible - staff choice	17.25%
Fully remote working	10.44%

No remote working	16.49%
N/A	5.30%

Figure 4: IoD Policy Voice results, September 2024 (661 responses)

Which, if any, of the following forms of flexible working does your organisation have in place for one or more employees? Please select all that apply.

A four-day week	10.6%
Annualised hours	6.5%
Compressed hours	14.3%
Flexitime	33.2%
Hybrid/remote working	69.0%
Job sharing	8.0%
Part-time working	47.5%
Phased retirement	15.1%
Staggered hours	14.9%
None	10.2%
N/A	5.2%

Figure 5: IoD Policy Voice results: April 2024, 712 responses

Labour has pledged to end the practice of 'fire and rehire', whereby employers dismiss employees and rehire them under new, often less favourable, contractual terms. Do you agree that a future UK government should outlaw the practice of 'fire and rehire'?

Strongly agree	30.2%
Agree	31.0%
Neither agree nor disagree	18.5%
Disagree	11.5%
Strongly disagree	7.4%
Don't know	1.3%

Figure 6: IoD Policy Voice results, October 2024 (642 responses)

Employees will get protection from unfair dismissal from day one of employment, but employers will be able to operate probationary periods during which there will be a lighter-touch process for dismissing an employee who is not right for the job.

To what extent do you think a 9-month probationary period would alleviate any impact on the cost and risk of employment resulting from staff having day one protection against unfair dismissal?

Fully alleviate	8.6%
Partially alleviate	50.9%

Not at all alleviate	31.9%
Don't know	5.6%
N/A	3.0%