



The Taylor Review of Modern Working Practices

Consultation on Increasing transparency in the labour market
Department for Business, Energy & Industrial Strategy
February 2018

May 2018

GOOD WORK: THE TAYLOR REVIEW OF MODERN WORKING PRACTICES

Consultation on measures to increase transparency in the UK labour market

CONSULTATION QUESTIONS

Personal (P) Information

P1 *Birmingham Law Society Employment Law Committee (the “Committee”)*

P2 **Your E-mail address [To be inserted]**

P3 **Are you:**

- An individual
- An employer
- Representing employers’ or employees’/workers’ interests
- Legal profession - ***Birmingham Law Society Employment Law Committee is made up of employment law practitioners within the Birmingham area***
- Other (please specify)

P4 **If you are responding as an individual which best describes your employment status?:**

- Employed
- Self-employed
- Unemployed - Looking for work
- Unemployed – Not looking for work
- Retired
- Not looking for work - other

P5 **If you are an employer, how would you classify your organisation?**

- Private sector organisation
- Public sector
- Charity/voluntary sector
- Other (please specify below)

P6 **If you are an employee or worker, what type of organisation do you work for?**

- Private sector organisation
- Public sector
- Charity/voluntary sector
- Other (please specify below)

P7 **If you are an employer, how many employees work for your organisation?**

- Micro-business (0-9 employees)
- Small business (10-49 employees)
- Medium-sized business (50-249 employees)
- Large-sized business (250+ employees)

P8 If you are employed, how many people work for your organisation?

- Micro-business (0-9 employees)
 - Small business (10-49 employees)
 - Medium-sized business (50-249 employees)
 - Large-sized business (250+ employees)
-

P9 If you represent employers or employees/workers, which best describes you

- A trade union
 - An industry or employer association
 - An agency worker interest group
 - Other (please specify below)
-

P10 If you are an employer, what proportion of individuals undertaking paid work at your workplace are:

a) Permanent employees

100%/ 80-90%/ 60 – 79%/ 40 – 59%/ 20 – 39%/ 1 – 19%/ 0%

b) Non-permanent staff

[To include non-permanent agency workers, non-permanent casual and seasonal workers, those working under a contract for a fixed period of fixed task, or other types of non-permanent staff]

100%/ 80-90%/ 60 – 79%/ 40 – 59%/ 20 – 39%/ 1 – 19%/ 0%

Section A: Written Statements – Questions for employers

Q1 Question 1 - Have you provided a written statement of employment in the last 12 months to:

a) Your permanent employees

In the experience of the BLS Employment Law Committee (the “Committee”), a large majority of employers will (and do) provide a written statement of employment to new starter permanent employees.

b) Your non-permanent staff

The Committee does not know the extent to which there is a difference as regards non-permanent staff but in the Committee’s experience, typically the shorter the appointment the more likely it is that the employer is less likely to provide a written statement of employment.

Q2 In general, when do individuals starting paid work at your organisation receive:

a) A written statement

N/A

b) An employment contract or other employment particulars

N/A

Q3 How long, on average, would it take a member of staff to produce a written statement for a new starter?

N/A

Q4 How often do you seek legal advice when producing a written statement?

In respect of standard written statements, most employers tend to seek legal advice to prepare a template but will then relatively infrequently seek legal advice thereafter unless a dispute of some kind of problem arises where legal advice is needed.

Q5 Are there other business costs associated with producing a written statement, in addition to personnel and legal costs that we should be aware of?

We are not in a position to comment upon this question.

Section A: Written Statements – Questions for individuals

Q6 If you are employed, have you received any of the following from your employer:

a) A written statement?

N/A

b) An employment contract or other employment particulars?

N/A

Q7 If yes, when did you receive the following in relation to starting paid work with your employer:

a) A written statement

N/A

b) An employment contract or other employment particulars

N/A

Q8 If yes, was the information presented in a way that was easy to understand?

N/A

Section A: Written Statements – Questions for all

Q9 To what extent do you agree that the right to a written statement should be extended to cover permanent employees with less than one month's service and non-permanent staff?

Agree slightly.

We agree that it is desirable that an employer should provide its staff with details of their basic terms of employment and that this ought to be extended to cover non-“employees” (i.e. to include “workers”). This is certainly the case for permanent staff who ought to have a contract as soon as reasonably possible (i.e. it is felt that there is no good reason why they should need to wait one month). However, this needs to be weighed against the administrative burden of doing so for non-permanent staff, for example, a business who employs 50 staff to undertake 2 weeks' work for an event where a shorter time period requirement might be unduly prohibitive. A sensible balance needs to be drawn.

Q10 The following items are currently prescribed contents of a principal written statement. Do you think they are helpful in setting out employment particulars?

a) The business's name

Yes

b) The employee's name, job title or a description of work and start date

Yes

- c) **If a previous job counts towards a period of continuous employment, the date that period started**

Yes

- d) **How much, and how often, an employee will get paid**

Yes

- e) **Hours of work (and whether employees will have to work Sundays, nights or overtime)**

Yes

- f) **Holiday entitlement (and if that includes public holidays)**

Yes

- g) **Where an employee will be working and whether they might have to relocate**

Yes

- h) **If an employee works in different places, where these will be and what the employer's address is**

Yes

Q11 Do you agree that the following additional items should be included on a principal written statement:

- a) **How long a temporary job is expected to last, or the end date of a fixed-term contract?**

Agree strongly

- b) **How much notice the employer and the worker are required to give to terminate the agreement?**

Agree strongly

- c) **Sick leave and pay entitlement?**

Agree slightly. If there is a contractual entitlement then this should be set out but some employers run a discretionary scheme and they should not, in our view, be "forced" to have to state this in the statement.

- d) **The duration and conditions of any probationary period?**

Agree strongly

- e) **Training requirements and entitlement?**

Disagree slightly. We think it is appropriate that an employer would need to state training requirements where it is a pre requisite or mandatory requirement of continuation for the role. We think it less appropriate to set out in the statement details of what training they are "entitled" to (which could, perhaps, extend to what training an employer has available) Entitlements will vary and change even from day one and inserting them in the written statement will not assist either party.

- f) **Remuneration beyond pay e.g. vouchers, lunch, uniform allowance?**

Agree slightly. We believe these need only be stated to the extent that they form part of an employee's contractual remuneration

- g) **Other types of paid leave e.g. maternity, paternity and bereavement leave?**

Disagree slightly. These are matters that we consider would be more appropriate for policies and procedures.

If you disagree that any of the above additional items should be included on a principal written statement, please provide reasons.

N/A

Q12 To what extent do you agree that the principal written statement should be provided on (or before) the individual's start date?

Disagree slightly. We expect that would run the risk of making the requirement too burdensome. In our experience many employers take the opportunity to give employees their terms and conditions when they are physically at work rather than trying to send them by post (usually) before the employment has started. Plus, the large majority of workers normally start roles at knowing what the job is and what they will be paid.

The Government should also take into account the risk that employees who are provided with terms and conditions ahead of joining may be able to assert rights against their future employer before they have started their roles (for example as regards rights under the whistleblowing legislation).

Q13 To what extent do you agree that other parts of the written statement should be provided within two months of their start date?

Agree strongly

Section A: Written Statements – Questions for individuals

Q14 Have you ever worked for an organisation that has not provided you with a written statement of employment particulars within 2 months of starting your job?

N/A

Q15 If you answered yes to question 14, did you:

a) Consider lodging a complaint with an employment tribunal (even if you did not end up doing it)?

N/A

b) Pursue compensation?

N/A

Q16 If you answered yes to question 15b, were you successful in securing compensation for failing to receive a written statement within 2 months of starting your job?

N/A

Q17 If we introduced a standalone right for individuals to bring a claim for compensation where an employer has failed to provide a written statement, what impact do you think this would have? Please consider the impact on:

a) Individuals

b) Employers

This is likely to encourage more employers to comply with the requirement but, equally, if an appropriate balance is not struck in terms of scope and timing it runs the risk of becoming too much of a burden on employers and/or too easy for an administrative oversight to lead to a claim. One idea could be that the presumption is that employers will provide the statement on day 1 and if no statement is provided an employee/worker could serve a notice on the employer to provide a statement and only after expiry of a time period (for example, two weeks) would the right to bring a claim then arise. It may be that an employer could defend such a claim if they were able to provide a reasonable explanation for the failure. Such a request mechanism would need to ensure that the worker in question would be protected against any detriment for having made a request.

c) The Tribunal Service

There is a clearly risk that the already overstretched Tribunal Service will receive more claims as a result

Section A: Written Statements – Questions for all

Q18 Which of the following best describes your awareness of the Acas guidance on Written Statements?

In the Committee's experience, we expect many employers and employees will not have not heard of this particular Acas guidance.

Q19 If you have some knowledge of the Acas guidance on written statements, how helpful did you find it?

N/A

Section B: Continuous Service

Q20 What do you think are the implications for business of the current rules on continuous service?

The current rules can be double edged for businesses where its staff are not in permanent roles. On the one hand, it allows businesses to engage staff on a more 'flexible basis', whereby staff may not attain continuous service due to them working 'on and off' for the business. On the other hand, however, the current rules can give rise to an element of uncertainty for businesses.

Q21 If you are employed, or represent employees what are the implications for you or those your represent of the current rules on continuous service?

N/A

Q22 Do you have examples of instances where breaks in service have prevented employees from obtaining their rights that require a qualifying period?

Yes

In particular, the Committee has seen instances of individuals who work on temporary assignments and then assume a permanent role and where the company argues that the time spent on the temporary assignments do not count towards the continuous service

Q23 Do the current rules on continuous service cause any issues in your sector?

N/A

Q24 We have committed to extending the period counted as a break in continuous service beyond one week. What length do you think the break in continuous service should be?

2 or 3 weeks

We believe it needs to reflect a sensible period whereby an employer, faced with an individual who does not actively work during that period, can still expect to retain continuous service if they 'return' after that time. We think one month would be too long for that period but one week is too short, therefore leaving 2 or 3 weeks as (in our view) a sensible period of time

Q25 Do you believe the existing exemptions to the break in continuous service rules are sufficient?

Yes

Q26 We intend to update the guidance on continuous service, and would like to know what types of information you would find helpful in that guidance? (Select all that apply)

Real examples from case law, signposts to further information and information on what to do if an employee/worker feels his employer has not complied with the legislation

We also believe guidance may benefit from some case studies

Section C: Holiday Pay

Q27 Do you think that the government should take action to change the length of the holiday pay reference period?

Yes

Q28 If you answered yes to Q27, should the government:

a) increase the reference period from the current 12 weeks to the 52 weeks recommended in the review?

No

b) Set a 52 week default position but allow employees and workers to agree a shorter reference period?

Yes

c) Set a different reference period

No

Q29 What is your understanding of atypical workers' arrangements in relation to annual leave and holiday pay?

For example:

a) Are they receiving and taking annual leave?

Don't know.

b) Are they receiving holiday pay but not taking annual leave?

Don't know.

c) Do you know of any other arrangements that are used?

No, other than employers who try to "roll up" holiday pay (albeit the Committee notes of course the Government's view as to the lawfulness of doing so)

Q30 How might atypical workers be offered more choice in how they receive their holiday pay?

Please provide examples including how worker's entitlement to annual leave could be safeguarded so they are not deterred from taking leave.

In the Committee's experience, problems can arise from uncertainties around how much is accrued and how and when it can be taken (especially, for example, for zero hours staff or temporary staff). Measures to ensure that atypical workers have more ready access to information about their accrued entitlement(s) and the ability or right to take annual leave in smaller "increments" than the conventional one day or half day may assist in the safeguarding of these rights

Section D: Right to Request

Q31 Do you agree that we should introduce a Right to Request a more stable contract?

Yes. The Committee supports the proposition that individuals who believe that the role they undertake is one that could / should be placed on a more stable footing should have the opportunity to have a request for this properly considered. The Government would need to consider the impact on agency workers (i.e. would they have the right to make such a request,

presumably against the “end user”? The Committee assumes that such a right would not be conferred on an agency worker/end user arrangement though this would of course need to be made clear in any new legislation).

Q32 Should any group of workers be excluded from this right?

Yes. Workers who are brought in for a specific purpose – a project, event, cover for an absent employee, should not. The right ought really to be targeted at for example, employers that engage agency/zero hours staff in work continues and is “permanent” in its nature

Q33 Do you think this will help resolve the issues the review recommendations sought to address?

Yes – in part. It will still allow employers to refuse but will give those employees the right to ask and, we presume, not be unreasonably refused. This is an improvement to the current position and should also not be unduly burdensome on employers

Q34 Should employers take account of the individual’s working pattern in considering a request?

Yes. The question of the working pattern may well be relevant to the matter of whether the employer can sustain a more stable working pattern of that nature.

Q35 Should there be a qualifying period of continuous service before individuals are eligible for this right?

Yes. The right ought to be aimed at those individuals whose input is clearly needed on a more established basis and the introduction of a period of continuous service will support and promote that.

Q36 What is an appropriate length of time the employer should be given to respond to the request?

2 months

Q37 Should there be a limit on the number of requests an individual can submit to their employer in a certain period of time?

Yes

To do otherwise would mean employers risk being unduly burdened with repeat requests. There should only be a right to make a further request once there is a realistic prospect of the underlying facts having changed and a limit on the number of requests will aid this. The Committee believes the appropriate limit should be the same as for the right to request flexible working – namely one request in every 12 month period.

Q38 When considering requests, should Small and Medium Enterprises (SMEs) be included?

Yes

If yes, do you think they should have any dispensations applied e.g. longer to respond?

We believe the same period of time should apply to all employers but that, as with the right to request flexible working, the process that at employer should follow ought not to be too prescriptive

Section E: Information and Consultation of Employees Regulations (2004) (ICE)

Q39 Are there formal provisions in your workplace for informing and consulting employees about changes that may affect their work?

Yes – in the Committee’s experience employers, albeit generally larger ones, will tend to have either formal trade union agreements or some form of employee consultation forum in place

If yes, were these provisions:

- requested by employees?
-

-
- initiated voluntarily by the employer/ manager?

The Committee's experience is that this will usually be an employer led provision

Q40 For employees only

Have you ever requested Information and Consultation of Employees (ICE) provisions in your workplace?

Yes/No.

If no, please describe why you have not made a request for ICE provisions. Please select all that apply:

- My workplace has less than 50 employees, and so does not qualify for ICE regulations
- There were not enough employees wanting to make a request to meet the required 10% threshold
- It was too complicated/ difficult to make the request
- I was not aware of the ICE regulations
- I don't believe that the ICE regulations would make a difference to my working conditions
- Other – please explain

If you answered yes, did this lead to positive outcomes for you at work?

Yes/No/Don't know.

Please explain your answer.

Q41 How might the ICE regulations be improved?

By making the initiation of negotiation requirements simpler.

Q42 Should the ICE regulations be extended to include workers in addition to employees?

Yes

The Committee recognises that in today's generally more modern type of workforces, workers ought to be able to require employers to consult with them on important workplace matters if that is something that the workforce wants

Q43 In your opinion, should the threshold for successfully requesting ICE regulations be reduced from 10% of the workforce to 2%?

No

The Committee considers that too low a percentage would mean a vocal significant minority could try and trigger negotiations. Such a minority ought not to be too small (e.g. an employer with 1,000 employees would only need 20 to trigger which is considered too low). The Committee believes the lowest threshold that the Government should consider is 5%.

Q44 Is it necessary for the percentage threshold for implementing ICE to equate to a minimum of 15 employees?

No

Please explain your answer.

The Committee believes that in any event it is right that there is a "de minimis" actual number in addition to the percentage and that does not necessarily need to be the same as the percentage threshold

Q45 **Are there other ways that the government can support businesses on employee engagement?**

We are not in a position to comment upon this question.

Q46 **How might the government build on the expertise of stakeholders such as Investors in People, Acas and Trade Unions to ensure employees and workers engage with information about their work?**

We are not in a position to comment upon this question.

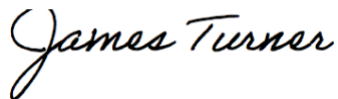
Q47 **What steps could be taken to ensure workers' views are heard by employers and taken into account?**

We are not in a position to comment upon this question.

Q48 **Are there other ways that the government can support businesses on employee/worker engagement?**

We are not in a position to comment upon this question.

22 May 2018



James Turner

President

Birmingham Law Society