Consultation on implementing employee owner status - response form

A copy of the Consultation on implementing employee owner status: can be found at:
http://www.bis.gov.uk/Consultations/consultation-on-implementing-employee-owner-status?cat=open

You can complete your response online through SurveyMonkey:
(https://www.surveymonkey.com/s/5QJQ935)

Alternatively, you can email, post or fax this completed response form to:

Email:
implementing.employee@bis.gsi.gov.uk

Postal address:
Paula Lovitt MBE
Department for Business, Innovation and Skills (BIS)
3 Floor Abbey 1
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: 8 November 2012
Your details

Name: Patrick Burns

Organisation (if applicable): Prospects Services

Address: 

Telephone: 

Fax: 

Please tick the boxes below that best describe you as a respondent to this:

☐ Business representative organisation/trade body

☐ Central government

☐ Charity or social enterprise

☐ Individual

☒ Large business (over 250 staff)

☐ Legal representative

☐ Local government

☐ Medium business (50 to 250 staff)

☐ Micro business (up to 9 staff)

☐ Small business (10 to 49 staff)

☐ Trade union or staff association

☐ Other (please describe)
Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment statuses?

Comments:

Prospects has chosen to comment on the consultation in the form of a single statement addressed to the overall employee owner proposal, rather than reply to individual questions.

In general terms we support the views on this proposal expressed by the Employee Ownership Association, of which Prospects is a member organization.

Prospects is strongly positioned to comment on this consultation as we are an employee owned company that has only recently moved to employee ownership after a decade and a half as a company limited by guarantee. This transition was initiated by the founder/Chair and the board. Prospects is also highly relevant to wider Government mutuals policy because it is a former public sector spin-out, having originated as the careers services of four south London boroughs.

Prospects is not convinced that there is demand or need for the employee owner proposal as framed, and would not opt for it if it is enacted. Probably more to the point in terms of this consultation, Prospects would not have opted for this route to employee ownership had it been available prior to 2011 when we were not employee owned but considering a change of ownership structure.

We are concerned that the proposal would damage the currently high standing of employee ownership as a business model by associating it with an erosion of employment standards and a misunderstanding of the conditions in which employee ownership is appropriate and likely to flourish.

The so-called employee ownership 'advantage' has more to do with high employment standards rather than the opposite. We are not aware of evidence suggesting that a reduction of employment standards and rights – voluntary or otherwise – would lift the performance of the sector. And given the high trust, high engagement employment relations that characterize employee owned business, it seems more likely that worse employment conditions - whether opted for or not - would inflict collateral reputational damage on a sector the proposal claims to support.

It also seems likely, and slightly paradoxical, that the new proposal could inflict a significant administrative burden on business opting for this approach. Framing the exact terms on which employee owner status can be claimed and excluded will be highly complex, and where it's activated within companies the process is unlikely to be swift and simple. Where reform is demonstrably required it is reasonable to pay an administrative price for change; in this case the rationale seems unproven.

A factor that undermines the credibility of this proposal's nominal support for employee ownership is that its primary, possibly overriding concern appears to be the reduction of employment regulation. The proposal certainly has the potential to remove employment rights from employees, if enough employees and employers wish this to happen. But it does not appear to address any of the barriers to
employee ownership that the sector has articulated to Government. In other words, giving individuals an ownership ‘sweetener’ seems to be the principal reason for involving this ownership model, rather than an active desire to address actual barriers to adopting employee ownership.

Those barriers were impressively addressed by the recent Nuttall Review into employee ownership, to which Prospects submitted evidence ['Knowingly Undersold – how Government can spread the John Lewis effect'] and Prospects welcomes the Government’s broad support for its recommendations. We note that the vital issue of tax barriers, identified by Nuttall, is currently under review by HM Treasury and we hope that the outcome will enable further growth of the sector.

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

Comments:

Question 4: When an employer buys back forfeit shares, should this be at full market value or some other level (eg. a fraction of market value) should some other level be allowed in certain circumstances?

Comments:

Question 5: How should a company go about carrying out a valuation of the shares? What would the administrative and cost impact be for a company if an independent valuation was required?

Comments:

Question 6: The Government would welcome views on the level of advice and guidance that individuals and businesses might need to be fully aware of the implications of taking on employee owner status.
Question 7: What impact will allowing individuals limited unfair dismissal protection and equity shares have on employers' appetite for recruiting?

Comments:

Question 8: What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?

Comments:

Question 9: Do you think these benefits will be greater for larger, smaller or start-up businesses?

Comments:

Question 10: What impact, if any, do you think the employee owner status will have on employment tribunal claims, e.g. for discrimination?

Comments:

Question 11: What impact do you think introducing the employee owner status with no statutory redundancy pay will have for businesses, in particular, smaller businesses and start up businesses? What negative impacts do you anticipate and how might these be mitigated?

Comments:

Question 12: What impact will this change to maternity notice period have on employers?

Comments:
Question 13: What, in your view, would employers do if employees wish to return early without giving 16 weeks’ notice?

Comments:

Question 14: How will these changes impact on a company’s payroll provisions?

Comments:

Question 15: What effect will a compulsory 16 weeks’ early return notice period have on the length of maternity leave that mothers take or adoption leave that parents take?

Comments:

Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

Yes ☐ No ☐

Comments:

Question 17: What impact do you think this proposal would have on the ability of employee owners to access support for training?

Comments:

Question 18: Do you have any comments on the Government’s intention not to amend Company Law to implement the employee owner proposal?
Question 19: The Government welcomes views on particular safeguards that would need to be applied, in order to minimise opportunities for abuse.

Comments:

Question 20: The Government welcomes views on whether the existing tax rules which apply to share-for-share exchanges (such as might happen when a company is taken over) and schemes of reconstruction should apply where shares issued in return for taking up the new status are involved.

Comments:

Question 21: What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?

Comments:

Question 22: Would you be likely to take up the new status? What would the impact of the status be on your business?

Comments:

Question 23: What are your views on the take-up of this policy by:
   a) companies?
   b) individuals?

Comments:

Question 24: What are your views on the equality impact assessment? Are there other equality and wider considerations that need to be considered?

Comments:
Question 25: Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

☑ Please acknowledge this reply

Question 26: At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes ☑ No ☐
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☐ Local government
☐ Medium business (50 to 250 staff)
☐ Micro business (up to 9 staff)
☐ Small business (10 to 49 staff)
☐ Trade union or staff association
☐ Other (please describe)
Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment statuses?

Comments:

Our organisation has a commitment to social justice and gender equality and this informs our employment policies. We would not use contracts which involve a loss of fundamental employment rights, as proposed for the Employee-Owner contracts, as this will have a negative impact on both social justice and gender equality. In particular, we are concerned about the negative impact on gender equality of introducing additional barriers to labour force participation for new mothers, through increasing the notice period for early return from maternity leave and restricting the right to request flexible working. We are concerned that the removal of unfair dismissal rights, rights to training, and rights to statutory redundancy pay will impact harshly on the most vulnerable workers who are in the weakest negotiating position in the employment market. We would be better able to make use of the flexibility of different forms of employment status if all basic employment rights were preserved in the Owner-Employee contracts. This would remove the ethical barriers to using this contract. We note that charities and social enterprises have a variety of corporate forms, including forms which would support the issue of shares to employees.

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:

We would not consider using a contract which involved the loss of fundamental employment rights, as proposed for the Employee-Owner contracts. A contract of this kind will have a negative impact on both social justice and gender equality and conflicts with our organisational commitment to social justice and gender equality.

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

Comments:

No answer

Question 4: When an employer buys back forfeit shares, should this be at full market value or some other level (eg. a fraction of market value) should some other level be allowed in certain circumstances?

Comments:
Question 5: How should a company go about carrying out a valuation of the shares? What would the administrative and cost impact be for a company if an independent valuation was required?

Comments:

No answer

Question 6: The Government would welcome views on the level of advice and guidance that individuals and businesses might need to be fully aware of the implications of taking on employee owner status.

Comments:

As the Employee-Owner contracts involve a substantial loss of employment rights, we consider it essential that individuals receive good advice on the implications of entering into this form of employment contract. This should consist of written information, telephone advice and face-to-face advice, including advice and information in community languages. We are conscious that the capacity of voluntary sector organisations to provide advice of this kind has been significantly reduced as a result of widespread cuts. We recommend additional funding for information and advice agencies to assist in meeting the increased need flowing from the new form of contract.

Question 7: What impact will allowing individuals limited unfair dismissal protection and equity shares have on employers' appetite for recruiting?

Comments:

We do not anticipate that the introduction of the Employee-Owner contract will have any positive impact on recruitment by ethical employers. The loss of fundamental employment rights, as proposed for the Employee-Owner contracts, contravenes social justice and gender equality principles. This will prevent ethical employers from taking up this form of employment contract.

Question 8: What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?

Comments:

We would not consider using a contract which removes unfair dismissal rights. These are fundamental employment rights. This would be inconsistent with our commitment to social justice and gender equality.
Question 9: Do you think these benefits will be greater for larger, smaller or start-up businesses?

Comments:

We do not think that the Employee-Owner contract will be attractive to any ethical employer, irrespective of their size.

Question 10: What impact, if any, do you think the employee owner status will have on employment tribunal claims, e.g. for discrimination?

Comments:

By removing the right to pursue a claim for unfair dismissal, individuals on Employee-Owner contracts will be prevented from exercising their basic employment rights. We anticipate that more vulnerable workers will experience unfair treatment as a result. We expect that fewer vulnerable workers will be able to take their cases to the employment tribunal. Individuals on Employee-Owner contracts will retain the right to take a discrimination claim to the employment tribunal. We are conscious that discrimination claims are time consuming and difficult to pursue. Evidence from the 2005 Equal Opportunities Commission inquiry into pregnancy discrimination found that 30 000 women lost their jobs each year as a result of pregnancy discrimination. Only 3% of these women took their claim to the employment tribunal. We expect to see a further drop in the proportion of discrimination claims which go to the employment tribunal following the Government's planned introduction of substantial fees to pursue employment tribunal claims in 2013. As employers with a commitment to social justice and gender equality, we are concerned at any measures which reduce employees' access to the employment tribunal.

Question 11: What impact do you think introducing the employee owner status with no statutory redundancy pay will have for businesses, in particular, smaller businesses and start up businesses? What negative impacts do you anticipate and how might these be mitigated?

Comments:

We would not consider using a contract which removes statutory redundancy pay entitlements. These are fundamental employment rights. This would be inconsistent with our commitment to social justice and gender equality.

Question 12: What impact will this change to maternity notice period have on employers?

Comments:

We would not consider using a contract which increased the notice period for early
return from maternity leave. This is restricting a fundamental employment right and would be inconsistent with our commitment to social justice and gender equality. Increasing the notice period for early return from maternity leave will increase the pressure on women at a time when they should be able to focus on their new baby and on their own recovery from the birth. Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave. This will reduce women's labour market participation and increase the gender pay gap.

Question 13: What, in your view, would employers do if employees wish to return early without giving 16 weeks' notice?

Comments:

No answer

Question 14: How will these changes impact on a company's payroll provisions?

Comments:

No answer

Question 15: What effect will a compulsory 16 weeks' early return notice period have on the length of maternity leave that mothers take or adoption leave that parents take?

Comments:

Increasing the notice period for early return from maternity leave will increase the pressure on women at a time when they should be able to focus on their new baby and on their own recovery from the birth. Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave.

Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

Yes □ No ☒

Comments:
We would not consider using a contract which reduced or restricted the current right to request flexible working. This is a fundamental employment right. This would be inconsistent with our commitment to social justice and gender equality.

Question 17: What impact do you think this proposal would have on the ability of employee owners to access support for training?

Comments:
No answer

Question 18: Do you have any comments on the Government's intention not to amend Company Law to implement the employee owner proposal?

Comments:
No answer

Question 19: The Government welcomes views on particular safeguards that would need to be applied, in order to minimise opportunities for abuse.

Comments:
No answer

Question 20: The Government welcomes views on whether the existing tax rules which apply to share-for-share exchanges (such as might happen when a company is taken over) and schemes of reconstruction should apply where shares issued in return for taking up the new status are involved

Comments:
No answer

Question 21: What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?

Comments:
We do not anticipate take-up of the Employee-Owner contract by ethical employers because it contravenes social justice and gender equality principles. As a result, we do not anticipate that the introduction of the Employee-Owner contract will have any positive impact on labour market flexibility amongst ethical employers. We anticipate that the Employee-Owner contract will have negative impacts on labour market flexibility for women. The Employee-Owner contracts substantially
reduce fundamental employment rights, including increasing notice periods for notifying early return from maternity leave and restricting the right to request flexible working. These are rights of particular importance to new mothers. We anticipate that use of the Employee-Owner contract will result in an increased proportion of women exiting the labour market during pregnancy and maternity leave.

Question 22: Would you be likely to take up the new status? What would the impact of the status be on your business?

Comments:

Our organisation has a commitment to social justice and gender equality and this informs our employment policies. We would not use Employee-Owner contracts of the kind described in the consultation as they involve a loss of fundamental employment rights and will have a negative impact on both social justice and gender equality.

Question 23: What are your views on the take-up of this policy by:
   a) companies?
   b) individuals?

Comments:

We do not anticipate take-up of the Employee-Owner contract by ethical employers because it will have a negative effect on social justice and gender equality.

Question 24: What are your views on the equality impact assessment? Are there other equality and wider considerations that need to be considered?

Comments:

Pregnancy and maternity: The equality impact assessment notes that the doubling of the notice period for early return from maternity leave will impact on pregnant women and new mothers. It states that this is a procedural change and concludes that there is no disproportionate equality impact on this group. We do not agree. By doubling the notice period for notice of early return from maternity leave, women face significant barriers to returning from maternity leave. 84% of women taking maternity leave return before 52 weeks and will be required to give notice of early return (DWP 2011). Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave.

Gender: The equality impact assessment stated that broadly similar numbers of men and women access flexible working. This is incomplete data. A significantly greater proportion of women than men request flexible working (28% compared to 17% - BIS 2012) so restricting the right to request flexible working will impact disproportionately on women.
Question 25: Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

☐ Please acknowledge this reply

Question 26: At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes ☒ No ☐
Dear Sir/Madam

Please find attached the RCM's response to the Department for Business, Innovation and Skills consultation on implementing employee owner status.

Best Wishes

Amy

Amy Leversidge
Employment Relations Advisor

Royal College of Midwives
15 Mansfield Street
London
W1G 9NH

Email: www.rcm.org.uk

To all RCM accredited Workplace Representatives we invite you to the RCMs annual FREE TO ATTEND 'Workplace Representatives Conference' on Wednesday 14 November at the Brighton Centre, Brighton. Click here for further details and to book your place. You are also entitled to a reduced price entry to attend the main RCM annual conference on Tuesday 13 November, details of this and the conference party can also be found here.
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18/01/2013
Response to Department for Business Innovation and Skills consultation on Implementing Employee Owner Status

November 2012
The Royal College of Midwives
15 Mansfield Street, London, W1G 9NH

The Royal College of Midwives’ response to Department for Business Innovation and Skills consultation on Implementing Employee Owner Status.

The Royal College of Midwives (RCM) is the trade union and professional organisation that represents the vast majority of practising midwives in the UK. It is the only such organisation run by midwives for midwives. The RCM is the voice of midwifery, providing excellence in representation, professional leadership, education and influence for and on behalf of midwives. We actively support and campaign for improvements to maternity services and provide professional leadership for one of the most established clinical disciplines.

The RCM welcomes the opportunity to respond to this consultation and our answers to the consultation topics are set out below.

The Royal College of Midwives
November 2012
General Comments

The Royal College of Midwives (RCM) welcomes the opportunity to respond to the consultation on implementing employee owner status.

However, we would like to register that it is entirely unacceptable to run a consultation over just three weeks. It is hard to see how respondents are going to be able to fully engage with the process over such a short timeframe and provide meaningful answers to the questions set out. Unfortunately, we can only assume that the short time frame reflects that this consultation is not genuine and the Government are planning to implement the policy regardless of the responses they receive. Indeed the consultation document states:

"This consultation seeks views on how the Government will implement the employee owner status in practical terms."^1

The RCM notes that the consultation is not on whether the Government should implement the employee owner status but merely how.

The RCM does not believe that the Government's proposals should be implemented at all. We do not believe there is a benefit to either the employee or most employers. It would seem that the only employers this would benefit are unscrupulous employers.

The RCM does not believe that the Government should implement their proposals. The proposals have nothing to do with increasing the number of people in work or helping the economy to grow. Rather it will have the opposite effect of allowing employers to 'fire at will' and is open to abuse. Employment rights are not a commodity that can be bought or sold they there to provide protection for employees.

The RCM reiterates our comments that we have made on previous responses to the various Government consultations on removing employment rights that we do not agree that employment rights place an undue burden on business. The Government's rhetoric is that removing employment rights will increase flexibility, this is an illogical argument and the

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^1 Department for Business, Innovation and Skills Consultation on Implementing Employee Owner Status October 2012
Government has presented no evidence that explains why having minimal rights in the workplace provides more flexibility than having some rights in the workplace.

Moreover, the Government continues to use the excuse that the poor economic growth of the past two years is because employment rights place an undue burden on business, rather than their poor performance in creating economic growth.

The Government states in their consultation document that:

"The UK has one of the most lightly regulated labour markets in the developed world, and is performing well. The Government is mindful, however, that businesses – particularly smaller businesses – need flexibility and freedom to allow them to grow and take on staff. In particular, the Government wants to remove the perceived barriers around the fear of being taken to employment tribunal which are deterring businesses from hiring."  

Firstly, we are glad that the Government acknowledges that the UK has one of the most lightly regulated labour markets in the world, it is curious then, that they want to remove the few rights that UK employees have. Secondly, as above, there is no evidence presented to show that businesses need more flexibility and freedom to grow. Thirdly, as the Government acknowledges that the employment rights are only 'perceived barriers' by business and not actual barriers it is hard to understand how they can justify removing the rights. Finally, and most importantly, good employers have nothing to fear about hiring staff, if they are a fair employer they will not be taken to an employment tribunal, however, if they are unfair to staff and break the law they should be taken to a tribunal. It is incomprehensible that the Government is not only protecting unscrupulous employers but rewarding them.

The proposals put forward in the employee owner status consultation are remarkably similar to the proposals made by Adrian Beecroft, particularly in terms of unfair dismissal.

Moreover, in some cases, the Government’s proposals appear to be quite complicated, for example, the Government’s consultation document states:

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2 Department for Business, Innovation and Skills Consultation on Implementing Employee Owner Status October 2012
"Where the unfair dismissal right relates to an automatically unfair reason for dismissal, this right will be unaffected by the employee owner proposal. Under our proposal, it would not, however, be automatically unfair for an employer to dismiss an employee owner who requests flexible working, unless they are exercising the right to request flexible working when returning from parental leave."³

It is easy to imagine that an employer would be extremely confused by these proposals and would probably consider that there is more ‘red tape’ and less flexibility in the employer owner proposals than there is now.

The Government’s Equality Impact Assessment acknowledges that the Government have no knowledge of how many companies would actually take up this proposal. Given that the CBI have described it as a ‘niche’ idea we suspect it is very few companies would actually take this up.

Given that this is the case, the RCM questions whether it is justified spending taxpayers money implementing this proposal, which would include not only a change in the law but would require a large amount of guidance to be produced when very few companies would actually want to take this up. The impact assessment has given no estimate of the cost of implementing these proposals nor has it given any estimate of the cost to the taxpayer in allowing for the shares to be exempt from Capital Gains Tax.

The RCM also notes that the Equality Impact Assessment acknowledges that due to the maternity leave aspect of the proposals there will be a disproportionate affect on female employees.

The RCM is extremely concerned by the Government’s comments in the consultation document that state:

*The Government believes clear information will be important to help those individuals who may not fully understand either the meaning of shares in a company or how an employee owner status might affect the current or future choices. The Government believes, however,

³ Department for Business, Innovation and Skills Consultation on Implementing Employee Owner Status October 2012
that there needs to be a balance between certainty for all parties and cost and burden on business and individuals."}

This is concerning because employment rights and financial arrangements can be very difficult to understand (by both employers and employees) and this leaves vulnerable individuals open to abuse because they may not understand the arrangement they are entering in to. There appears to be no form of protection for employees if they are misinformed by employers about what this means. There is also no mention in the Government’s proposals about employees obtaining independent financial advice.

Ultimately, the employee faces massive risk. The tax free gains on share value would only truly offset the waived employment rights if the shares actually increase in value. However, if the business were to fail the shares would be worthless and the employee would have sold their right to redundancy pay.

Additionally, though, the employer also faces massive risk as they are selling equity in their company which the employee can cash in exchange for employment rights that the employer may never have spent any money on e.g. unfair dismissal, redundancy pay etc.

In conclusion, it is the RCM’s view that these proposals are ill thought out as they do not provide any benefit to the employee and only benefit unscrupulous employers. Moreover, there are very few employees and employers that would actually want to take this up, therefore it is a waste of time and money to implement these ‘reforms’.

The RCM does not believe that the Government should implement their proposals. The proposals have nothing to do with increasing the number of people in work or helping the economy to grow. Rather it will have the opposite effect of allowing employers to ‘fire at will’ and is open to abuse. Employment rights are not a commodity that can be bought or sold they there to provide protection for employees.

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4 Department for Business, Innovation and Skills Consultation on Implementing Employee Owner Status October 2012
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Your details

Name: Kenneth Parsons
Organisation (if applicable): Rural Shops Alliance
Address:
Telephone:
Fax:

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☐ Other (please describe)
Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment statuses?

Comments:
Keep it as simple as possible, particularly with respect to right, responsibilities and tax law

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:
Small businesses without specialist HR depts. do not necessarily understand the differences. Potential employees certainly do not

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

Comments:
We are not experts, but surely there is a massive tax advantage for an owner to also become an employee of his company in order to benefit from the tax concession?

Question 4: When an employer buys back forfeit shares, should this be at full market value or some other level (eg. a fraction of market value) should some other level be allowed in certain circumstances?

Comments:
For new and small companies, valuing shares will be a nightmare. Given the failure rate of startup companies, in many cases the shares will be worthless, much to the annoyance of the holder

Question 5: How should a company go about carrying out a valuation of the shares? What would the administrative and cost impact be for a company if an independent valuation was required?

Comments:
Very high hassle factor and very subjective. Often the value of a company is basically in the people, owners and employees, with few tangible assets. There must be a clearcut formula to avoid litigation - say x times last declared profit.
Question 6: The Government would welcome views on the level of advice and guidance that individuals and businesses might need to be fully aware of the implications of taking on employee owner status.

Comments:

d/k

Question 7: What impact will allowing individuals limited unfair dismissal protection and equity shares have on employers' appetite for recruiting?

Comments:

For risky startups it is clearly an advantage to be able to restructure staffing without cost penalties

Question 8: What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?

Comments:

flexibility

Question 9: Do you think these benefits will be greater for larger, smaller or start-up businesses?

Comments:

Smaller start-ups

Question 10: What impact, if any, do you think the employee owner status will have on employment tribunal claims, e.g. for discrimination?

Comments:

d/k

Question 11: What impact do you think introducing the employee owner status with no statutory redundancy pay will have for businesses, in particular, smaller businesses and start up businesses? What negative impacts do you anticipate and how might these be mitigated?

Comments:

few potential employees will accept the status
Question 12: What impact will this change to maternity notice period have on employers?

Comments:

d/k

Question 13: What, in your view, would employers do if employees wish to return early without giving 16 weeks' notice?

Comments:

Employers will often have made cover arrangements for the maternity - in many cases they will have to respect the agreements made to do this

Question 14: How will these changes impact on a company's payroll provisions?

Comments:

d/k

Question 15: What effect will a compulsory 16 weeks' early return notice period have on the length of maternity leave that mothers take or adoption leave that parents take?

Comments:

little change

Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

Yes ☒ No ☐

Comments:

Our presumption would be that this new status is of most interest to startups - flexible working is not good for these companies

Question 17: What impact do you think this proposal would have on the ability of employee owners to access support for training?

Comments:
little change

Question 18: Do you have any comments on the Government's intention not to amend Company Law to implement the employee owner proposal?
Comments:
not expert enough to know

Question 19: The Government welcomes views on particular safeguards that would need to be applied, in order to minimise opportunities for abuse.
Comments:
Safeguards needed to cover situations
Sacking employees before the Wir shares become valuable
Owners joinng the sheme themselves to avoid tax

Question 20: The Government welcomes views on whether the existing tax rules which apply to share-for-share exchanges (such as might happen when a company is taken over) and schemes of reconstruction should apply where shares issued in return for taking up the new status are involved
Comments:
d/k

Question 21: What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?
Comments:
removal of safeguards will increase staff churn

Question 22: Would you be likely to take up the new status? What would the impact of the status be on your business?
Comments:
no

Question 23: What are your views on the take-up of this policy by:
a) companies?
b) individuals?

Comments:

Takeup most attractive to high risk potentially high return startups. Takeup will be low outside of this specific type of company

Individuals will perceive the risk of being sacked before their shares are worth much and be loath to go down this route

Question 24: What are your views on the equality impact assessment? Are there other equality and wider considerations that need to be considered?

Comments:

d/k

Question 25: Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

☒ Please acknowledge this reply

Question 26: At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes ☒ No ☐
Consultation on implementing employee owner status - response form

A copy of the Consultation on implementing employee owner status: can be found at:

http://www.bis.gov.uk/Consultations/consultation-on-implementing-employee-owner-status?cat=open

You can complete your response online through SurveyMonkey:
(https://www.surveymonkey.com/s/5QJQ935)

Alternatively, you can email, post or fax this completed response form to:

Email:

implementing.employee@bis.gsi.gov.uk

Postal address:

Paula Lovitt MBE
Department for Business, Innovation and Skills (BIS)
3 Floor Abbey 1
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: 8 November 2012
Your details

Name: Penny Prempeh

Organisation (if applicable): Mozaic Womens Wellbeing Project

Address:

Telephone

Please tick the boxes below that best describe you as a respondent to this:

☐ Business representative organisation/trade body
☐ Central government
☒ Charity or social enterprise
☐ Individual
☐ Large business (over 250 staff)
☐ Legal representative
☐ Local government
☐ Medium business (50 to 250 staff)
☒ Micro business (up to 9 staff)
☐ Small business (10 to 49 staff)
☐ Trade union or staff association
☐ Other (please describe)
Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment statuses?

Comments:

Our organisation has a commitment to social justice and gender equality and this informs our employment policies. We would not use contracts which involve a loss of fundamental employment rights, as proposed for the Employee-Owner contracts, as this will have a negative impact on both social justice and gender equality. In particular, we are concerned about the negative impact on gender equality of introducing additional barriers to labour force participation for new mothers, through increasing the notice period for early return from maternity leave and restricting the right to request flexible working. We are concerned that the removal of unfair dismissal rights, rights to training, and rights to statutory redundancy pay will impact harshly on the most vulnerable workers who are in the weakest negotiating position in the employment market. We would be better able to make use of the flexibility of different forms of employment status if all basic employment rights were preserved in the Owner-Employee contracts. This would remove the ethical barriers to using this contract. We note that charities and social enterprises have a variety of corporate forms, including forms which would support the issue of shares to employees.

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:

We would not consider using a contract which involved the loss of fundamental employment rights, as proposed for the Employee-Owner contracts. A contract of this kind will have a negative impact on both social justice and gender equality and conflicts with our organisational commitment to social justice and gender equality.

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

Comments:

No answer

Question 4: When an employer buys back forfeit shares, should this be at full market value or some other level (eg. a fraction of market value) should some other level be allowed in certain circumstances?

Comments:
No answer

Question 5: How should a company go about carrying out a valuation of the shares? What would the administrative and cost impact be for a company if an independent valuation was required?

Comments:

No answer

Question 6: The Government would welcome views on the level of advice and guidance that individuals and businesses might need to be fully aware of the implications of taking on employee owner status.

Comments:

As the Employee-Owner contracts involve a substantial loss of employment rights, we consider it essential that individuals receive good advice on the implications of entering into this form of employment contract. This should consist of written information, telephone advice and face-to-face advice, including advice and information in community languages.
We are conscious that the capacity of voluntary sector organisations to provide advice of this kind has been significantly reduced as a result of widespread cuts.
We recommend additional funding for information and advice agencies to assist in meeting the increased need flowing from the new form of contract.

Question 7: What impact will allowing individuals limited unfair dismissal protection and equity shares have on employers' appetite for recruiting?

Comments:

We do not anticipate that the introduction of the Employee-Owner contract will have any positive impact on recruitment by ethical employers. The loss of fundamental employment rights, as proposed for the Employee-Owner contracts, contravenes social justice and gender equality principles. This will prevent ethical employers from taking up this form of employment contract.

Question 8: What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?

Comments:

We would not consider using a contract which removes unfair dismissal rights. These are fundamental employment rights. This would be inconsistent with our commitment to social justice and gender equality.
Question 9: Do you think these benefits will be greater for larger, smaller or start-up businesses?

Comments:

We do not think that the Employee-Owner contract will be attractive to any ethical employer, irrespective of their size.

Question 10: What impact, if any, do you think the employee owner status will have on employment tribunal claims, e.g. for discrimination?

Comments:

By removing the right to pursue a claim for unfair dismissal, individuals on Employee-Owner contracts will be prevented from exercising their basic employment rights. We anticipate that more vulnerable workers will experience unfair treatment as a result. We expect that fewer vulnerable workers will be able to take their cases to the employment tribunal. Individuals on Employee-Owner contracts will retain the right to take a discrimination claim to the employment tribunal. We are conscious that discrimination claims are time consuming and difficult to pursue. Evidence from the 2005 Equal Opportunities Commission inquiry into pregnancy discrimination found that 30 000 women lost their jobs each year as a result of pregnancy discrimination. Only 3% of these women took their claim to the employment tribunal. We expect to see a further drop in the proportion of discrimination claims which go to the employment tribunal following the Government's planned introduction of substantial fees to pursue employment tribunal claims in 2013. As employers with a commitment to social justice and gender equality, we are concerned at any measures which reduce employees' access to the employment tribunal.

Question 11: What impact do you think introducing the employee owner status with no statutory redundancy pay will have for businesses, in particular, smaller businesses and start up businesses? What negative impacts do you anticipate and how might these be mitigated?

Comments:

We would not consider using a contract which removes statutory redundancy pay entitlements. These are fundamental employment rights. This would be inconsistent with our commitment to social justice and gender equality.

Question 12: What impact will this change to maternity notice period have on employers?

Comments:

We would not consider using a contract which increased the notice period for early
return from maternity leave. This is restricting a fundamental employment right and would be inconsistent with our commitment to social justice and gender equality. Increasing the notice period for early return from maternity leave will increase the pressure on women at a time when they should be able to focus on their new baby and on their own recovery from the birth. Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave. This will reduce women's labour market participation and increase the gender pay gap.

Question 13: What, in your view, would employers do if employees wish to return early without giving 16 weeks' notice?

Comments:

No answer

Question 14: How will these changes impact on a company's payroll provisions?

Comments:

No answer

Question 15: What effect will a compulsory 16 weeks' early return notice period have on the length of maternity leave that mothers take or adoption leave that parents take?

Comments:

Increasing the notice period for early return from maternity leave will increase the pressure on women at a time when they should be able to focus on their new baby and on their own recovery from the birth. Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave.

Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

Yes □ No ❌

Comments:
We would not consider using a contract which reduced or restricted the current right to request flexible working. This is a fundamental employment right. This would be inconsistent with our commitment to social justice and gender equality.

Question 17: What impact do you think this proposal would have on the ability of employee owners to access support for training?

Comments:
No answer

Question 18: Do you have any comments on the Government’s intention not to amend Company Law to implement the employee owner proposal?

Comments:
No answer

Question 19: The Government welcomes views on particular safeguards that would need to be applied, in order to minimise opportunities for abuse.

Comments:
No answer

Question 20: The Government welcomes views on whether the existing tax rules which apply to share-for-share exchanges (such as might happen when a company is taken over) and schemes of reconstruction should apply where shares issued in return for taking up the new status are involved.

Comments:
No answer

Question 21: What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?

Comments:
We do not anticipate take-up of the Employee-Owner contract by ethical employers because it contravenes social justice and gender equality principles. As a result, we do not anticipate that the introduction of the Employee-Owner contract will have any positive impact on labour market flexibility amongst ethical employers. We anticipate that the Employee-Owner contract will have negative impacts on labour market flexibility for women. The Employee-Owner contracts substantially
reduce fundamental employment rights, including increasing notice periods for notifying early return from maternity leave and restricting the right to request flexible working. These are rights of particular importance to new mothers. We anticipate that use of the Employee-Owner contract will result in an increased proportion of women exiting the labour market during pregnancy and maternity leave.

Question 22: Would you be likely to take up the new status? What would the impact of the status be on your business?

Comments:

Our organisation has a commitment to social justice and gender equality and this informs our employment policies. We would not use Employee-Owner contracts of the kind described in the consultation as they involve a loss of fundamental employment rights and will have a negative impact on both social justice and gender equality.

Question 23: What are your views on the take-up of this policy by:
   a) companies?
   b) individuals?

Comments:

We do not anticipate take-up of the Employee-Owner contract by ethical employers because it will have a negative effect on social justice and gender equality.

Question 24: What are your views on the equality impact assessment? Are there other equality and wider considerations that need to be considered?

Comments:

Pregnancy and maternity: The equality impact assessment notes that the doubling of the notice period for early return from maternity leave will impact on pregnant women and new mothers. It states that this is a procedural change and concludes that there is no disproportionate equality impact on this group. We do not agree. By doubling the notice period for notice of early return from maternity leave, women face significant barriers to returning from maternity leave. 84% of women taking maternity leave return before 52 weeks and will be required to give notice of early return (DWP 2011). Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave.

Gender: The equality impact assessment stated that broadly similar numbers of men and women access flexible working. This is incomplete data. A significantly greater proportion of women than men request flexible working (28% compared to 17% - BIS 2012) so restricting the right to request flexible working will impact disproportionately on women.
Question 25: Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

☐ Please acknowledge this reply

Question 26: At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes ☐  No ☐
Consultation on implementing employee owner status - response form

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Email:
implementing.employee@bis.gsi.gov.uk

Postal address:

Paula Lovitt MBE
Department for Business, Innovation and Skills (BIS)
3 Floor Abbey 1
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: 8 November 2012
Your details

Name: Colleen Rothwell-Murray

Organisation (if applicable): ChilternHR

Address: 

Telephone: 

Fax: 

Please tick the boxes below that best describe you as a respondent to this:

☐ Business representative organisation/trade body
☐ Central government
☐ Charity or social enterprise
☐ Individual
☐ Large business (over 250 staff)
☒ Legal representative
☐ Local government
☐ Medium business (50 to 250 staff)
☒ Micro business (up to 9 staff)
☐ Small business (10 to 49 staff)
☐ Trade union or staff association
☒ Other (please describe) HR consultant with ChilternHR,
Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment statuses?

Comments:

I have worked in a trade union and professional association for over ten years. In my experience, most employers want to adopt a system where the 'worker' is self employed. This status causes the least administrative burden, and is clearly understood by the various levels of staff in the organisation. The current employment status in NOT fully understood by admin staff.

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:

I do NOT believe that three statuses would be understood. Restrictions would be caused by the inability of the admin staff, as cited above, as well as the comprehension of the 'worker' in question. In very small businesses, there is very little capacity for change of this magnitude. However, what would be seen as VERY advantageous would be legal acquiescence over taking on self employed staff who could work for a reduced taxation in exchange for their employment rights [except H&S matters]. There should be more guidance on taking on partners, and using the John Lewis partnership as a model.

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

Comments:

I do not know enough about different types of shares. But it should be simplified so that the employer does not have to ask the accountant for a written detailed explanation.

Question 4: When an employer buys back forfeit shares, should this be at full market value or some other level (eg. a fraction of market value) should some other level be allowed in certain circumstances?

Comments:

There should be included a clause relating to cause of the termination of the employment contract - ie: dismissal would have an effect on return price. Eg gross misconduct means automatic return of shares for reduced price.

Question 5: How should a company go about carrying out a valuation of the shares? What would the administrative and cost impact be for a company if an independent valuation was required?
Comments:

My experience in advising partnerships where a shared property was often a cause of dispute leads me to advise you that valuation should be as simple and transparent as possible.

Question 6: The Government would welcome views on the level of advice and guidance that individuals and businesses might need to be fully aware of the implications of taking on employee owner status.

Comments:

I agree that there should be strong government guidance, and existing models should be used, such as the John Lewis Partnership. Differing levels of employment protection WILL lead to confusion on a GARGANTUAN scale.

Question 7: What impact will allowing individuals limited unfair dismissal protection and equity shares have on employers' appetite for recruiting?

Comments:

This will depend on the field of industry. New IT start up businesses may have very little recruitment problems, but small catering businesses and other service industries will have difficulties. Manufacturing organisations may adapt better as the concept is better understood eg higher productivity = more pay. Where existing business offer similar rewards, such profit related bonuses, there is a possibility of confusion.

Question 8: What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?

Comments:

Very little - the admin burden is already huge - what small employers want is staff who are paid only for the work that they do. Hence, the idea of keeping self employed people, who are paid on timesheets or invoices is THE MOST ATTRACTIVE.

Question 9: Do you think these benefits will be greater for larger, smaller or start-up businesses?

Comments:

This will depend on the field of industry rather than size: if the work is high level as in IT, it could appear beneficial.
Question 10: What impact, if any, do you think the employee owner status will have on employment tribunal claims, e.g. for discrimination?

Comments:

Not easy to guess this: depends on what the current level of claims are about. In my experience over employment status, tribunals have always sought to 'find' employment status, which means that the employer loses.

Question 11: What impact do you think introducing the employee owner status with no statutory redundancy pay will have for businesses, in particular, smaller businesses and start up businesses? What negative impacts do you anticipate and how might these be mitigated?

Comments:

I think you would need to examine the statistics on the length of life of 'start ups'. Is their usual fate to be bought up by larger rivals / or go bust / or grow slowly? I think TUPE is a much more significant problem.

Question 12: What impact will this change to maternity notice period have on employers?

Comments:

It should be better this way.

Question 13: What, in your view, would employers do if employees wish to return early without giving 16 weeks’ notice?

Comments:

There will be a dispute if they have taken on temporary staff. This is the most hazardous element in running a company.

Question 14: How will these changes impact on a company’s payroll provisions?

Comments:

badly

Question 15: What effect will a compulsory 16 weeks’ early return notice period have on the length of maternity leave that mothers take or adoption leave that
parents take?

Comments:

The company should send out reminders and keep in touch with such staff but in my experience this is quite difficult and done badly.

Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

Yes ☒ No ☐

Comments:

This should be made to work - employees should have considered this at length in advance.

Question 17: What impact do you think this proposal would have on the ability of employee owners to access support for training?

Comments:

Very little initially but as the 'employee-owners' realise that more training might lead to more reward thing might change

Question 18: Do you have any comments on the Government's intention not to amend Company Law to implement the employee owner proposal?

Comments:

The government should make haste in implementing the Nuttall Review recommendations to simplify the burden of share schemes.

Question 19: The Government welcomes views on particular safeguards that would need to be applied, in order to minimise opportunities for abuse.

Comments:

I would have to see this in operation before I make any comments.

Question 20: The Government welcomes views on whether the existing tax rules which apply to share-for-share exchanges (such as might happen when a company is taken over) and schemes of reconstruction should apply where shares issued in return for taking up the new status are involved

Comments:
I would have to see this in operation before I make any comments.

Question 21: What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?

Comments:

This will depend on how profitable the business is before recruiting new staff: if the image of the company is a good one, then recruitment will be easier. If it's a now/start up company, potential employees will need re-assurance about the future of the company.

Question 22: Would you be likely to take up the new status? What would the impact of the status be on your business?

Comments:

My micro-business would not take this up as the admin seems too difficult.

Question 23: What are your views on the take-up of this policy by:
   a) companies?
   b) individuals?

Comments:

a) It is too complex for very small companies.
b) It is more attractive for individuals if they already care about the company.

Question 24: What are your views on the equality impact assessment? Are there other equality and wider considerations that need to be considered?

Comments:

It is likely that more men than women would sign up for this - so all the consequences of different treatment with the genders will ensue. Men who find this advantageous are likely to change their behaviour and regard non employee-owners differently.

Question 25: Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

☒ Please acknowledge this reply
Question 26: At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes ☒ No ☐
Employment law is not working: we need a solution

David Woods, 06 Dec 2011

“Don’t get me started on employment law. It almost appears as if the decision-makers deliberately set out to avoid any input from the HR profession.” This is the view not of HR magazine (where do you start to outline the complexity within employment law?), any journalist, political commentator or union representative. It is the gripe of an HR director – Guy Pink, HRD of drug and alcohol treatment charity Addaction, which has 1,000 staff.

His comment throws a spotlight on the mess that is employment law in the UK today. The people that have to deal with employment law at the coal-face - small business CEOs, HR directors and line managers - do not have a say in the regulations that affect them or their staff.

The phrase 'legal maze' comes to mind when discussing law at work and it is hard to believe, at the close of 2011, there is any way through the ever-blossoming thicket.

Every week seems to usher in another announcement of an impending revelation on law or further changes to legislation. Less than two months ago, for instance, a leaked draft report for the Government appeared to suggest employees should be prevented from raising claims of unfair dismissals.

Adrian Beecroft, author of the report - not an HR expert, but a venture capitalist who has given more than £530,000 to the Tories under David Cameron - argued for such a change to the law on the basis of the combined benefits of economic growth and reduction in red tape. He believes this would make businesses more competitive and therefore more likely to grow.

His justification for this proposal is that it would allow employers a risk-free way of removing under-performing staff and being able to dismiss employees they saw as 'coasting', secure in the knowledge they would be protected by statute from unfair dismissal claims.

The Government is also thought to be considering a £250 up-front fee to lodge a tribunal claim, with a further £1,000 due when the hearing is listed. The proposed change is expected in April 2013.

In another blow, workers will have to be at a firm for two years before they can make a claim to a tribunal, up from one year at present, according to plans unveiled by chancellor George Osborne at the Conservative party conference. These are due to be introduced by April 2012.
However, in May, the Government published a consultation on planned changes to employment law to encourage a culture of 'flexible, family-friendly employment practices'. The outcome is expected in later this month.

According to Shelley Duddy, a solicitor at law firm SNR Denton, proposals include unpaid leave for fathers to attend antenatal appointments, an 18-week period of maternity leave for mothers, followed by a 34-week period of shared parental leave, the right to request flexible working to be extended to all staff with 26 weeks' continuous employment, increased flexibility on rescheduling, carrying over and 'buying' or 'selling' of annual leave.

But, in a seeming volte face, weeks before this statement, business secretary Vince Cable said businesses with fewer than 250 staff could refuse employee requests to work flexibly or part-time, to bolster growth of the economy and reduce regulation of entrepreneurs.

And with the Government set to open yet more consultations in the New Year, on TUPE, the modern workplace and tribunals, one could be forgiven for believing employment law has become nothing more than a carousel of never-ending committee meetings.

But the plethora of announcements has led employment lawyers to question if politicians are just testing the water and no firm decisions have been made. Confused? You should be.

Employers are calling for simplification of the law, so they can focus on growth strategy, without worrying about being taken to tribunal because they unwittingly overlooked something - especially prevalent in SMEs.

Pink explains: "We have five experienced HR people supporting 1,000 staff and I would like to think we know what we are doing and advising on. We don't however get any support from the national decision-makers. Instead, their decisions are a hindrance to those of us who want to be able to operate legally and follow not just the letter but the spirit of the law.

"Given a large amount of our employment legislation comes from Brussels, any likely changes are purely Government sound-bites and will do nothing to ease the difficult day-to-day work all HR departments are doing. I don't think this is going to prevent us from doing what we have always wanted. It just makes our lives more difficult - unnecessarily so."

HR magazine put the challenge to the UK politician responsible for employment law, the minister for employment relations, consumer and postal affairs, Lib Dem MP Edward Davey. His Department for Business, Innovation and Skills (BIS), headed by Cable, is behind the 'red tape challenge', where members of the public are invited to put forward parts of legislation they think are unmanageable, in a bid to prompt the Government to discuss and possibly remove them. BIS also launched a policy that for every new bit of employment regulation announced, another has to be removed.
At a press briefing, Davey tells HR magazine: "We are delivering on cutting red tape. We have already made a £600 million reduction. People are impatient to see change - and George Osborne's announcement to extend the qualifying period for unfair dismissal to two years, has been warmly welcomed, giving employers the confidence to take new people on.

"We have an employer's charter (see box, opposite) to change people's perceptions of employment law. The Confederation of British Industry says we live in the least regulated labour market on earth - but we want to carry out the red tape challenge because we have a belief that we can improve the EU, as some other labour markets are not working so well."

He adds: "It takes a bit of time when cutting red tape - but we are pushing this agenda. Don't lose faith in us." Employers have lost faith in the Government when it comes to employment law, by all accounts.

Pink explains: "As a charity, we occasionally get tribunal claims. The way these operate would try the patience of a saint. Where a litigant has no intention of settling, we have no alternative other than to fight, ratcheting up significant legal bills - when this money could be better used on frontline services. The changes in the tribunal process designed to make the system more open seem highly unlikely to succeed.

"The idea of moving the timescale to bring a claim of unfair dismissal back to two years is laudable, but everyone knows that if you want to bring a tribunal claim, add a discrimination angle to ensure the case gets heard. This change on its own won't help.

"We have a lot of services transferring to us, so we are all experts on TUPE. I have yet to read a more ill-conceived piece of employment legislation that seems designed for the lawyers to interpret rather than for commonsense to prevail. The Government has removed some of the codes of practice on workforce matters to protect public sector employees - but in failing to remove elements relating to pensions, it has left us with a headline-grabbing change and no substantial variation below."

The employment lawyers Pink discusses are paid - out of an HR budget - to explain and consult with HR directors on employment law, as well as represent their organisations in litigation cases or tribunals. Even they think the complexity around regulation is damaging.

Kevin McCavish, head of employment at Shoosmiths, explains: "There is too much complexity in the law and any attempt to simplify it is backfiring. The Employer's Charter is meaningless and won't cut it with HR."

Commenting on the Beecroft Report, he adds: "Because of the EU, in the UK unfair dismissal is all we can tinker with and it is the easiest to deal with. Discrimination is harder, especially if it is linked to unfair dismissal. I would question what Beecroft's
qualifications were in employment law - he sidelined discrimination and didn't even recognise it.

"There have been too many departments, consultations and staff changes involved in drafting employment legislation."

Andrew McDonald, head of the employment law team at Berrymans Lace Mawer, adds: "Employment law is an occupational hazard for small businesses - laws used to be announced ad hoc, but now businesses can plan for changes on certain dates. But with regards to proposals to simplify employment law, the Government does have its hands tied. It is a good idea to have discussions if they lead to proposals - but whether or not the red tape challenge will amount to no more than a talking shop, remains to be seen."

But even as HR magazine was going to press, BIS announced yet another consultation - this time into allowing employers to have "frank conversations" about poor performance with employees without fear that they could be used as evidence in a tribunal. Further proposals, announced only weeks ago, also include: a call for evidence on the length of time required for a consultation period on planned redundancies, in a bid to reduce this from 90 days, to 30 days; a requirement for all claims to go to the conciliation service Acas before reaching employment tribunal and the options for a scheme to allow for more simple tribunal cases to be settled within three months.

The news (which was branded the "biggest employment law shake-up for 10 years") prompted Unite's general secretary Len McCluskey to brand the announcement "a charter for bullies and rogue employers", while the CIPD said its "unintended consequences" could add to complexity in business rather than reduce it.

This came only weeks after deputy prime minister Nick Clegg, in a speech to small businesses, urged employers to treat staff like human beings and "not potential litigants".

Surely this conflicts with Beecroft's "draconian measures", charging staff who want to bring a tribunal claim and increasing their length of service to two years before they can take this sort of action?

Dave Allen, MD of IT and internet provider NetApp, employs 500 people. He says: "I don't think legislation should be about making it easier to sack staff - it has to be balanced. Employers should set people up for success.

"Legislation is there to protect employees from poor management and I think [with legal complexity] the Government is missing the point. Legislation should give staff a basis and clear expectations of fairness, equality and good treatment. It is up to leadership to find a way through."

Easier said than done, says Ann Bevitt, head of the employment and labour group at international law firm, Morrison Foerster. She says: "Will the situation be any simpler this time next year? Maybe - but that depends on where the economy is. Some of the
proposals will be implemented, some will not be - but I think we'll be in a similar position as now.

"My advice would be to start with what you know will happen - it is unrealistic to think you could be on top of everything. Keep a look out for Government responses to consultations and you should have a sense of where things are going."

Tom Flanagan, national head of employment at law firm Irwin Mitchell, works closely with BIS. He co-authored its guidance on the Agency Workers Regulations and helped create the Government's current Employment Review when the Conservative party was in opposition. He is working with HR directors to help them compose responses to various employment law consultations.

But he can't shed much light either. "It is a dogs dinner," he almost laughs. "Disconnect is the point here. There are six initiatives going on at the same time in employment law [the employment law review, including TUPE; reform of employment tribunals; the draft Beecroft Report; the 'modern workplace' consultation on diversity; the 'red tape' challenge; and the possible reform of trade union law] - but there is no overview and this is what we need.

"The Government is testing the water. Following the press around the leaked Beecroft report, [David] Cameron said he isn't supporting this - but I have doubts around that.

"And George Osborne made a seemingly decisive announcement on unfair dismissal during conference season - with a consultation on the same issue still going on."

And moving the argument from the legal profession to the HR sector, Misty Reich, HR director at fast food giant KFC, explains: "What seems clear to me is that the approach is to address employment law one topic at a time and in isolation - and, as with most things, decisions in isolation lead to isolated practices - and a system that has no synergies or shared purpose.

"So what I would be passionate to see is an overarching framework for employment law in the UK that clearly articulates the principles and vision that should be the backdrop to all employment laws in place. Is the most critical driver of business growth and employment generation the protection of employment for those working - or different altogether?

"If we establish this principle and the Government bites the bullet to choose one side of a fence or the other, as opposed to flip-flopping, you would have a basis to evaluate all existing legislation and determine the need for future changes."

We could end this analysis of employment law here, challenging HR directors to do their best to get to grips with the consultations, the announcements, the leaks, changes in employment ministers and the committee meetings.
But what if we were to go one step further and call readers to action to do something about it?

Otherwise, the situation will worsen, while the Government opens yet more consultations in the New Year.

The engagement task force headed by David MacLeod in 2010, along with its various guru groups, has made strides in pushing employee engagement up the Government's agenda and has proved means of increasing productivity using engagement tools.

More importantly, it has also shown when HR directors and thinkers are involved in these groups (BT's Clare Chapman, the CIPD's Jackie Orme and Lancaster Business School's Cary Cooper), positive developments can - and will - be made.

When it comes to employment law, as it stands, the Government holds meetings with lawyers, the CBI and legal bodies, while HR directors (like almost everyone else) have been asked to post their suggestions to consultations or outline their responses to consultations.

Employers don't want to find legal loopholes to dismiss employees, they want staff to be engaged and productive at work. But they do not want to live in fear of tribunal claims either. A commonsense approach is needed more than ever.

So HR magazine has launched a campaign to form a new taskforce where HR directors, business groups, unions and Government representatives sit down together and come up with solutions - after all it is HR directors and CEOs in smaller businesses who will be the people dealing with legal issues in work at the coal face.

The details of the call to action are outlined overleaf and we will put the challenge to the Government in the New Year.

Some of the country's most prominent HRDs, academies, CEOs, employment lawyers and trade union representatives have already come forward to call for change.

Will you join us?

The union position

With a membership of 1.5 million people in sectors including health, construction, IT, finance and pharmaceuticals, Unite is one of the biggest trade unions in the UK. Its director of legal services, Howard Beckett, gave HR magazine his take on the proposed changes to employment law.

He explains: "Announcements such as the extension from 12 months' to 24 months' service before making a tribunal claim and the introduction of employees' having to pay fees is failed policy. Employees used to have to work 24 months before making a tribunal
claim, but this was reduced because it was discriminatory to women - and staff having to pay £1,250 in employment tribunal fees is horrendous."

He adds that employment law complexity is a "failure of Government" and the situation is not improving, which is fundamentally detrimental to growth, because staff need to feel secure in their work.

"The complexity around employment law is complete nonsense," he continues. "We want more consultation and the Government has to recognise collective strength and collectivity - and the simple reality is that employment law problems can be solved with collectivity."

But he adds: "We are open to discussions. We don't have an agenda against HR professionals - and we want to have meaningful discussions. The Government was not prepared to have discussions with us over changes to public sector pensions until three million people moved to ballot over strike action against it.

"Ideology can't come from people in Government who have never worked. We need conversations and collectivity to ensure a secure and loyal workforce."

Tribunals: be forewarned

In 2010 and 2011, there were 218,100 employment tribunal claims made, and given the cost and pressure put upon employers and employees going through the system, it is not surprising the Government is investigating changes to the system.

"When it comes to employment tribunals, the Government has given an impression we would end up with a simple structure," explains James Wilders, employment partner at law firm Dickinson Dees. "But this hasn't happened."

This year, the Government's suggested two main changes to legislation around employment tribunals are: extending the qualifying period for staff to two years (up from one) before they can lodge a claim; and introducing fees of £1,250 for employees who are currently working to take their employer to tribunal.

Wilders adds: "Employment tribunals were designed in the 1970s to be cheap and informal, with unions, a judge, employers and lawyers. But the law has become more complex and this is no longer quick and informal. In fact, it is like full-blown court in everything but name - with oaths, evidence and so on."

Dickinson Dees runs mock employment tribunals to show clients how the process works. Delegates receive notes of the proceedings in advance, watch the mock tribunal and have the opportunity to ask questions afterwards.

"Employers often think, 'let's go to tribunal as a point of principle', but when they see how emotional and difficult it can be they often reconsider," adds Wilders. "This puts
them in a much better position to decide whether to fight or settle. Forewarned is forearmed.”

The employers’ charter

According to Business Link, as an employer - provided you act "fairly and reasonably" - you are entitled to:

- Ask an employee to take their annual leave at a time that suits your business
- Contact a woman on maternity leave and ask when she plans to return
- Make an employee redundant if your business takes a downward turn
- Ask an employee to take a pay cut
- Withhold pay from an employee when they are on strike
- Ask an employee whether they would be willing to opt out from the 48-hour limit in the Working Time Regulations
- Reject an employee’s request to work flexibly if you have a legitimate business reason to do so
- Talk to your employees about their performance and how they can improve
- Dismiss an employee for their poor performance
- Stop providing work to an agency worker (as long as they are not employed by you)
- Ask an employee about their future career plans, including retirement.

This is intended to help employers understand what they can do in general. But, as the Department for Business Innovation and Skills points out, individual circumstances may vary and employers should act in accordance with their legal obligations. For more information, visit www.businesslink.gov.uk/employerscharter

What happened in employment law in 2011

With all the discussion around proposed employment legislation, what has in fact happened this year? Shelley Duddy, lawyer at SNR Denton, summarises four main changes that came into effect in 2011.

1. Abolition of the default retirement age

The default retirement age (DRA) was abolished on 1 October, although since April employers have been unable to use the DRA to retire employees. Now, if an employer wishes to have a compulsory retirement age, it must be able to justify it by showing a sound business reason for the age chosen and that there is no less discriminatory way of achieving that outcome. Acceptable reasons may include health and safety and workforce planning. But it will not be easy to prove objective justification and it will be necessary to provide evidence if challenged.

2. Additional Paternity Leave Regulations 2010
The Regulations apply to fathers of babies born on or after 3 April 2011. Eligible employees gain the right to take up to 26 weeks' paternity leave while their baby is between 20 weeks and one year old, provided the mother has returned to work.

This is paid, subject to eligibility criteria, if the mother would have had maternity pay for the same period.

3. The Bribery Act 2010

The Bribery Act 2010 came into force on 1 July 2011, introducing a new 'corporate offence' of failing to prevent bribery. An organisation will be liable if a person 'associated with' it offers a bribe, intending to give the company a business advantage. Employers will have a defence only if they can prove they had in place 'adequate procedures' designed to prevent bribery.

This means businesses will need to have suitable anti-corruption policies and provide training for staff on a regular basis. If a company is guilty of the corporate offence, they could receive an unlimited fine.

4. Agency Worker Regulations 2010

On 1 October, agency workers became entitled to enjoy the same basic working and employment conditions, such as pay and holidays, as those enjoyed by directly hired employees, after they have worked in a role for 12 weeks.

From day one of their assignment, agency workers will also be entitled to the same access to job vacancies and shared facilities (eg canteens, crèches and gyms).

The Regulations are not retrospective, so the counter began on 1 October, leading commentators to speculate as many as 500,000 agency workers could lose their jobs before Christmas this year.

__________________________________________________________

Comments

The Government's solutions are poor

Jonathan 06 Dec 2011

Even with current employment legislation, about fifty-five people (including myself) were taken advantage of, by a former Employer (http://to.ly/becA). Reinforcing the rights of Employers to hire and fire staff willy-nilly, simply encourages rogue Employers to mistreat Employees, as happened to my colleagues and myself.
HR professionals can freely engage with consultation

Lesley Attu 07 Dec 2011

I disagree that input about employment law change is avoided from the HR profession. How can this be the case when all stakeholders can and should respond to Government consultation papers. Those who do not engage with the consultation processes only have themselves to blame if their views are not taken on board.

Some very sensible observations here...

Barbara 22 Dec 2011

I am a Human Resources consultant whose clients are small businesses. Keeping up to speed with constantly changing employment legislation is an ongoing challenge for me and a virtually impossible task for small business owners. And, as you rightly say, throw discrimination into the ring, and employers will have a fight on their hands. Yes, there are bad employers and there always will be. But the vast majority of employers are just trying to run a business with staff that do the job that they are paid to do. They just don't need the countless distractions and burden of new employment legislation and shifting goalposts. Every time a Tribunal decision is made (and appealed), it has a knock-on effect for all employers/employees. Employers shouldn't have to jump through hoops to oust poorly performing staff. Nor should they be held responsible for their employees' family and health obligations.

A better way is needed

Colleen Rothwell-Murray 26 Jan 2012

As stated by Barbara, the current situation is intolerable for very small businesses. Its difficult enough for large organisations with an HR Dept. Small employers, who may have a part time bookkeeper as the only non-fee earning staff member have to rely on the MD being in full possession of ALL HR matters, and as this is 'mission impossible', mistakes will happen. We should endorse an exemption from ALL employment law - NOT H&S law - for small firms [with an agreed formula of turnover, staff and profit] with the expectation that the small firms would pay handsomely for this 'buyout' of employment rights. Pay is not usually an issue in the small firms, because getting staff is already difficult. The small firms that I deal with would gladly pay higher wages in exchange for the relief from this burden of employment rights. Further, such an exemption would encourage entrepreneurs, a major necessity in these difficult times.

Col Murray
Dear Sirs,

Please find attached this firm's response to the 'Consultation on Implementing 'Employee-Owner Status'.

For information on this firm, please see our website: www.pettfranklin.com

David Pett is author and joint editor (with David Cohen) of the 2-Vol looseleaf textbook on "Employee Share Schemes" (Sweet&Maxwell) and a member of the Consultative Committee assisting the OTS in its review of unapproved employee share schemes.

We would be pleased to discuss the issues raised in our response.

We are sending a copy of this response to the OTS for its information, and because we are concerned at the way in which the Nuttall proposals appear to be considered in isolation from the work of both the OTS and HM Treasury in seeking ways to simplify the taxation of employee share schemes.

Yours faithfully,

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Helping share growth

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Response to BIS consultation re employee owner status

1. The principal problem with this proposal is the fact that it is not possible to equate the value to the employee, of employment rights foregone, with the value received in exchange in the form of shares in a given company. Given the uncertainties associated with valuing shares in private companies, and the risks associated with start-up companies it will be impossible for an employee to make a meaningful comparison as between different prospective employer companies, of the actual and potential scope for growth in value of different holdings of shares, even if these (supposedly) each have an "unrestricted market value" of say, £2,000. To what degree is it possible to factor in any "hope value" when valuing shares for these purposes? The initial value of shares in a start-up business will be close to their par value.

2. In the case of a small or start-up company, shares with an unrestricted market value of £2,000 may - having regard to the discounts which will still apply under normal principles for the size of holding and lack of influence - represent a surprisingly large and disproportionate tranche of the issued share capital. [Note that "restrictions" in this context means only certain restrictions as defined in s 423 ITEPA 2003. "Unrestricted market value" is not the same as "pro rata" value.] It is quite wrong to equate, say, £2,000 worth of shares in a listed company, with £2,000 worth of shares in a high-risk small or start-up company which is privately owned and closely-held. On one view, a small minority holding of shares in such a company is worth "little to man or beast" unless or until there is the prospect of a sale or floatation of the company. One can easily envisage a pressure to dismiss all those employees holding such shares in advance of an "exit event", simply to allow other shareholders to increase their stake at little cost. The natural uplift in value, from a "minority interest" basis, to a "pro rata" basis, which accrues upon a sale of the whole of the issued share capital would then be lost to those former employee-owners. It is difficult to see how to protect against such 'abuse'.

3. What price is to be ascribed to the surrender of specific types of employment rights? Is there to be a "standard tariff"? An employee of a larger list company might be enticed to forego specific rights for, say, £10,000 worth of shares, but how does this compare with the employee of a smaller unquoted company asked to forego a similar level of employment security, but for shares with an initial value that might, on ordinary valuation principles be of substantially lesser value? Is it right in principle that an employee seeking employment in a high-risk company be required to forego employment rights in exchange for what may well be a highly speculative investment?

Types of shares used

4. There must be some restrictions on the type of shares used, else it is all too easy to provide for the shares of other members to benefit from disproportionate growth in value thereby devaluing the shares of the employee-owners. Unscrupulous companies could then entice employees to forego employment rights in exchange for shares which effectively have little or no hope of sharing in the growth in value to which the employee contributes. Conversely, employees who are directors or connected with the controlling shareholders could benefit from disproportionate growth in value of "growth shares", possibly also with full Entrepreneurs' Relief from CGT if such shares represent more than 5% of the issued share capital.

5. Presumably the shares to be used will need to be "ordinary shares" with rights which are no less favourable than those attaching to any other class of shares. Could the shares used be of a class which has more favourable rights than those attaching to shares held by other non-employees?
6. Would companies be permitted to restrict the transfer of shares so acquired? What happens if the employee owner dies - would the company be obliged to repurchase the shares from his PRs?

Source of the shares

7. The Consultative document refers to shares being acquired pursuant to a contractual arrangement between the employee and the employee owner. Presumably, the shares could be provided out of an employees' trust pursuant to a tripartite agreement between the employer, the trustee and the employee.

Terms of any buy-back of shares

8. The consultation document refers to an employer having to buy-back shares from an employee who leaves "at a reasonable value". Does this mean something other than their "market value" (per Part 8, TCGA 1992)? Would it be acceptable for the articles or a contractual arrangement to provide for a repurchase at a 'pro-rata' value? If so, this would then give rise to a charge to income tax under Chapter 3D or Part 7, ITEPA 2003 on the amount of the excess above "market value" of that holding. Would it be necessary to include in the articles, or contract governing the acquisition of the shares, express provisions for calculating the price at which shares may be so bought back from an employee at any time? If the shares must be bought back for their "market value" then, for the reasons given above, this may well, in the case of a small private company with no prospect of an "exit event", be little or nothing.

9. Is it intended that the articles or contract provide that, if an employee leaves, the company (or an employees trust or other shareholder) MAY buy back the shares, or rather that the company MUST procure a repurchase of shares? If the latter, then this would put an unacceptable drain upon the finical resources of the company which would presumably need to make provision in its accounts by way of the contingent liability to buy-back shares from a leaver. If the firm is in financial trouble, the existence of such a contingent liability could hasten its financial downfall. It may also add a premium to the initial market value of the shares relative to those held by non-employees.

10. In the case of a private company, what happens if, at the time an employee leaves, the company has insufficient liquid funds (or distributable reserves) to fund a buy-back of shares? If a company is to be obliged to fund or procure a buyback of shares held by an "employee owner" who leaves, the effect could be that of a "reverse tontine": employee owners, sensing that the company is "in trouble", would leave early in order to cash in their shares, thereby depleting further the company of funds. Those who stay suffer a further fall in the value of their shares - and so on, until the funds are exhausted and the shares held by the remaining employee owners are worthless!

Taxation of the share acquisition

11. If there is no exemption from income tax on the value of the shares acquired and they cannot be acquired pursuant to an HMRC-approved share scheme or an EMI share option, how will the income tax (and, if they are 'readily convertible assets', the NICs) on the value of the shares acquired be funded? Is it envisaged that the employer will be expected to pay a cash bonus of an amount which, after tax and NICs is sufficient to fund the tax due on the shares? If not, the price payable by the employee for the acquisition of the shares will, in effect, be both the value of the employment rights foregone plus the amount of tax payable out of his own pocket on the value of the shares acquired. If the idea is to allow the employee to immediately sell sufficient of the shares acquired to fund the tax, there seems little point in having the company issue shares, only to have to secure an immediate repurchase of (some of) them.
12. If the shares could be subject to a risk of forfeiture (as mentioned in s 425 ITEPA 2003), this difficulty could at least be postponed until the tie when the risk of forfeiture falls away or, if earlier, the shares are sold.

Part-timers

13. On what basis should an adjustment in the value of shares acquired be made to take account of an employee owner who is part-time? Will the minimum £2,000 level mentioned by pro-rated according to the proportion of standard hours worked, or committed?

Share-for-share exchanges

14. The shares acquired by an employee owner will be ‘employment-related securities’. In practice they are likely to rank as ‘restricted employment-related securities’. The point has been made to both HMRC and the OTS that Chapter 2 Part 7 ITEPA 2003 makes no provision for relief from charges under s426 upon a share-for-share exchange of such restricted employment-related securities. It is to be hoped that the government will remedy this shortcoming in the legislation so as to mirror the relief afforded upon an exchange of employment-related share options in similar circumstances. If this were done, the problem identified would not normally arise. It would be unfair and discriminatory to enact a special relief for shares acquired by employee owners as distinct from restricted employment-related securities acquired by other employees. Further, the existence of such targeted relief might have an undesirable effect upon the initial market value (AMV or UMV) of the shares acquired.

Alternative suggestion

15. Rather than have an employee acquire shares the value of which is fully taxed on acquisition, why not allow employees to agree to forego employment rights in exchange for the opportunity to benefit from (only) the future growth in value of a number of shares equal in value to between £2,000 and £50,000, but on the basis that (a) no taxable value is ascribed to the initial acquisition of this benefit, and (b) when such growth in value is realised, the gain is then taxed as capital gain.

16. The mechanism used to facilitate this could be ‘joint beneficial ownership’ of the shares under the terms of a “Joint Share Ownership Plan” or “JSOP” [see attached summary sheet]. JSOPs were first developed by David Pett and William Franklin in 2002 and fully disclosed to, and discussed with, HMRC. They are now finding favour amongst a broad range of listed, AIM-listed and private companies as reflecting most closely the principle that, for so long as an an employee works for a company, he should benefit from the growth in value to which he contributes.

17. On this basis, the employee would be exempt from income tax and NICs on the “initial unrestricted market value” (or “IUMV”) of his interest as beneficial joint owner subject to the terms of the contract under which the interest is acquired. This would provide, inter alia, that when the shares are sold at any time, the proceeds will be divided between, and paid to, the co-owners (one of whom is an employees’ trust, or another grow company) on the basis that the employee receives the growth in market value since the time of acquisition.

18. This avoids the difficulty mentioned above of addressing the need to fund the tax on an acquisition of ‘whole shares’. As the employee acquires only an interest in future growth in value, not in any initial accrued value, the loss of tax to the Treasury would be relatively small. It would still be necessary to agree with HMRC Shares Valuation the IUMV of the employees’ interest, but that office is now familiar with the methodology used to ascertain such values. The threshold levels of £2,000 and £50,000 could be adjusted downwards to reflect the fact that the employee will acquire an interest in only the future growth in value.
19. From the employers' viewpoint, the fact that they are exchanging future growth in value (rather than historic accrued value) for greater flexibility in applying employment laws, should be of more attraction than is the original proposal.

We would be pleased to discuss this suggestion in more detail.

Pett, Franklin & Coo, LLP                         5th November 2012
JOINT OWNERSHIP PLANS (JSOPs)

Joint ownership was originally developed by David Pett and William Franklin in 2002, and in the last few years - with the increase in income tax rates - it has been increasingly recognised as an attractive alternative to share options or share awards. JSOPs have been widely copied by other advisers.

Under a JSOP, the participant is invited to acquire, jointly with a co-owner (typically an employees' trust), a given number of shares on the terms of a joint ownership agreement (or JOA).

By the terms of the JOA, when the jointly-owned shares are sold, the proceeds of sale are split between the joint owners so that the employees' trust receives the initial market value (plus a small "carrying cost") and the participant receives the balance, i.e. the growth in value less the carrying cost. The initial acquisition by the participant of his interest as a joint beneficial owner of the shares is a taxable event, but as the executive does not pay the initial unrestricted market value ("IJMV") of his interest in the jointly owned shares, he is typically paid a grossed up cash bonus of an amount sufficient to pay the income tax and NICs charged under PAYE on that acquisition.

On the basis that the participant and his employer make the appropriate tax election, any future gain accruing to the executive is chargeable to CGT, not income tax, with no NICs. By contrast with traditional schemes, a JSOP necessarily involves the initial acquisition of shares, not merely the grant of rights to acquire them in the future.

The merits of the JSOP lie in the following features:

- no artificiality in the arrangement: joint ownership of shares on such terms is the most straightforward way of allowing future growth in value to accrue to the employee, whilst ensuring that value accrued to the time of the award remains with the employees' trust;
- tax treatment accepted and acknowledged by HMRC: unlikely to be the subject of any challenge or even any change in the law;
- IJMV: the executive's interest as joint owner is valued, for tax purposes, on a basis which is very different from that used to value share options for the purposes of the "share-based payments" accounting standards. The methodology developed for determining the IJMV generally produces a figure which is commercially acceptable having regard to the risk of the share price failing to achieve anticipated levels of growth;
- straightforward arrangement to establish: in terms of documentation, and to administer. A suitable joint owner is required, but this role is commonly assumed by an existing or newly-formed offshore employees' trust;
- performance conditions: future growth in value of the jointly-owned shares may be performance-linked by means of granting the trust a call option to acquire the executive's interest exercisable, on a 'no gain' basis, if and as performance targets are not met. Likewise, if the employee leaves, his interest can be forfeited or bought back by means of the exercise by the trust of one or more call options;
- takeover or other corporate event: the fact that the participants hold joint ownership of existing shares, rather than contractual rights to acquire shares which may not yet have been issued or have been acquired, can make it a great deal easier to deal with incentive awards in the context of any such corporate transaction;
- institutional shareholders: JSOPs are accepted as an alternative incentive structure and, provided it is properly used to deliver reasonable incentive benefits, align shareholder and management interests, shareholders will usually be supportive of the plan;
- underwater share options: JSOPs can be used to address a problem of underwater options and/or executive expectations unmatched by hard contractual commitments;
- annual bonus awards: can be delivered by JSOPs;
- PSP and L-TIPs: can be adapted to incorporate joint share ownership.

The JSOP is not a panacea: the employer company will not (as is typically the case with a share option or L-TIP award) benefit from CT relief for the amount of the gain realised by the participants. However, it is thought that, if the executive pays for the acquisition of his interest the full amount of its IJMV - albeit possibly on deferred terms as to payment - a CT deduction should be properly claimable for the amount of the share based payments accounting charge associated with the awards. Further, the accounting charges associated with a JSOP should not be any more (and potentially could be less) than for comparable conventional share incentive awards.

To find out if joint ownership might be suitable for your company, please contact the originators of the JSOP:

David Pett:
Tel: 
E: 

William Franklin:

Pett, Franklin & Co. LLP
Victoria House 116 Colmore Row Birmingham B3 3BQ

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Consultation on implementing employee owner status - response form

A copy of the Consultation on implementing employee owner status: can be found at:
http://www.bis.gov.uk/Consultations/consultation-on-implementing-employee-owner-status?cat=open

You can complete your response online through SurveyMonkey:
(https://www.surveymonkey.com/s/5QJQ935)

Alternatively, you can email, post or fax this completed response form to:

Email:
implementing.employee@bis.gsi.gov.uk

Postal address:
Paula Lovitt MBE
Department for Business, Innovation and Skills (BIS)
3 Floor Abbey 1
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: 8 November 2012
Your details

Name: Natasha Landers

Organisation (if applicable): Eaves Housing for Women

Address: Unit 2.03 Canterbury Court, 1-3 Brixton Road, London SW9 6DE

Telephone: 

Fax: 

Please tick the boxes below that best describe you as a respondent to this:

☐ Business representative organisation/trade body

☐ Central government

☒ Charity or social enterprise

☐ Individual

☐ Large business (over 250 staff)

☐ Legal representative

☐ Local government

☐ Medium business (50 to 250 staff)

☐ Micro business (up to 9 staff)

☐ Small business (10 to 49 staff)

☐ Trade union or staff association

☐ Other (please describe)
Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment statuses?

Comments:

I am concerned about the introduction of the Employee Owner contracts. Fundamental employment rights should not be reduced in any employment contract. I am particularly concerned about the reduction in rights for parents through increasing the notice requirement for early return from maternity leave, and restricting the right to request flexible working. I am also concerned about the loss of important unfair dismissal rights, statutory redundancy pay and training rights. The Employee Ownership Organisation, which represents employee owned businesses, commented 'there is no need to dilute the rights of workers in order to grow employee ownership and no data to suggest that doing so would significantly boost the number of employee owners.' (New Statesman 30.10.2012)

Justin King, CEO of Sainsbury's, also criticised the scheme, 'I would not wish to trade good employment practice for greater share ownership...This is not something for our business...The population at large don't trust business. What do you think the population at large will think of businesses that want to trade employment rights for money?' (Guardian 09.10.2012)

It seems unlikely that ethical employers will use a scheme which undermines fundamental employment rights. If the Government wished to promote greater use of Employee Owner arrangements, they should retain all fundamental employment rights in the proposed Employee Owner contracts.

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:

No answer

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

Comments:

Not applicable to our organisation

Question 4: When an employer buys back forfeit shares, should this be at full market value or some other level (eg. a fraction of market value) should some other level be allowed in certain circumstances?

Comments:

Not applicable to our organisation
Question 5: How should a company go about carrying out a valuation of the shares? What would the administrative and cost impact be for a company if an independent valuation was required?

Comments:

Not applicable to our organisation

Question 6: The Government would welcome views on the level of advice and guidance that individuals and businesses might need to be fully aware of the implications of taking on employee owner status.

Comments:

It is essential that all employees or potential employees are informed about the loss of employment rights under the Employee Owner contracts. It is particularly important that pregnant women and new mothers are informed about the reduction of rights in relation to notice for early return from maternity leave and requesting flexible working. This information should be available online, by telephone and in community languages.

Many pregnant women and new mothers are not aware of their rights at work. The 2005 Equal Opportunities Commission inquiry found that half of all women in the workplace experienced some form of pregnancy discrimination and 30 000 women each year lost their jobs as a result of pregnancy discrimination. 45% of women who took no action, did so because they were unaware of their rights.

Question 7: What impact will allowing individuals limited unfair dismissal protection and equity shares have on employers' appetite for recruiting?

Comments:

Unfair dismissal protections are a fundamental employment right. These should not be reduced in any employment contract. It seems unlikely that the new contracts will be used by ethical employers.

Question 8: What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?

Comments:

It seems unlikely that the new contracts will be used by ethical employers.

Question 9: Do you think these benefits will be greater for larger, smaller or start-up businesses?
Comments:

It seems unlikely that the new contracts will be used by ethical employers, irrespective of their size.

Question 10: What impact, if any, do you think the employee owner status will have on employment tribunal claims, e.g. for discrimination?

Comments:

The Employee Owner contracts prevent employees taking action for unfair dismissal. These rights should not be reduced in any employment contract. Individuals on Employee-Owner contracts will retain the right to take a discrimination claim to the employment tribunal. These claims are time consuming and difficult to pursue and are not a satisfactory alternative to an unfair dismissal claim. The Government is planning to introduce substantial fees to take a pregnancy discrimination case to the employment tribunal.

Individuals on Employee Owner contracts will have substantially reduced access to the employment tribunal to remedy unfair treatment from their employer.

Question 11: What impact do you think introducing the employee owner status with no statutory redundancy pay will have for businesses, in particular, smaller businesses and start up businesses? What negative impacts do you anticipate and how might these be mitigated?

Comments:

Statutory Redundancy Pay is a fundamental employment right. This should not be reduced in any employment contract. It seems unlikely that the new contracts will be used by ethical employers.

Question 12: What impact will this change to maternity notice period have on employers?

Comments:

Doubling the notice period for early return from maternity leave is reducing a fundamental employment right. This should not be reduced in any employment contract. It seems unlikely that the new contracts will be used by ethical employers. Increasing the notice period for early return from maternity leave will increase the pressure on women at a time when they should be able to focus on their new baby and on their own recovery from the birth. Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave. This will reduce women's labour market participation and increase the gender pay gap.
Question 13: What, in your view, would employers do if employees wish to return early without giving 16 weeks' notice?

Comments:
No answer

Question 14: How will these changes impact on a company's payroll provisions?

Comments:
No answer

Question 15: What effect will a compulsory 16 weeks' early return notice period have on the length of maternity leave that mothers take or adoption leave that parents take?

Comments:
Increasing the notice period for early return from maternity leave will increase the pressure on women at a time when they should be able to focus on their new baby and on their own recovery from the birth. Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave.

Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

Yes ☐ No ☒

Comments:
Flexible working arrangements are a fundamental employment right. These should not be reduced in any employment contract. It seems unlikely that the new contracts will be used by ethical employers.

Question 17: What impact do you think this proposal would have on the ability of employee owners to access support for training?

Comments:
Access to training is a fundamental employment right. This should not be reduced in any employment contract. It seems unlikely that the new contracts will be used by ethical employers.

Question 18: Do you have any comments on the Government's intention not to amend Company Law to implement the employee owner proposal?

Comments:
No answer

Question 19: The Government welcomes views on particular safeguards that would need to be applied, in order to minimise opportunities for abuse.

Comments:
No answer

Question 20: The Government welcomes views on whether the existing tax rules which apply to share-for-share exchanges (such as might happen when a company is taken over) and schemes of reconstruction should apply where shares issued in return for taking up the new status are involved.

Comments:
No answer

Question 21: What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?

Comments:
The Employee Owner contract will have negative impacts on labour market flexibility for women. The Employee-Owner contracts substantially reduce fundamental employment rights, including increasing notice periods for notifying early return from maternity leave and restricting the right to request flexible working. These are rights of particular importance to new mothers. The Employee Owner contract will result in an increased proportion of women exiting the labour market during pregnancy and maternity leave.

Question 22: Would you be likely to take up the new status? What would the impact of the status be on your business?

Comments:
No answer
Question 23: What are your views on the take-up of this policy by:
   a) companies?
   b) individuals?

Comments:

The Employee Owner contracts involve a loss of fundamental employment rights. These should not be reduced in any employment contract. It seems unlikely that the new contracts will be used by ethical employers. The contracts will seriously disadvantage individual employees and are likely to be taken up only by those who are unable to find an alternative job.

Question 24: What are your views on the equality impact assessment? Are there other equality and wider considerations that need to be considered?

Comments:

Pregnancy and maternity: The equality impact assessment notes that the doubling of the notice period for early return from maternity leave will impact on pregnant women and new mothers. It states that this is a procedural change and concludes that there is no disproportionate equality impact on this group. We do not agree. This may well be indirect discrimination as defined as a rule, policy, practice or procedure that is the same for everyone, but has an unequal or disproportionate effect for a specific group of people. By doubling the notice period for notice of early return from maternity leave, women face significant barriers to returning from maternity leave. 84% of women taking maternity leave return before 52 weeks and will be required to give notice of early return (DWP 2011). Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave.

Gender: The equality impact assessment stated that broadly similar numbers of men and women access flexible working. This is incomplete data. A significantly greater proportion of women than men request flexible working (28% compared to 17% - BIS 2012) so restricting the right to request flexible working will impact disproportionately on women.

Question 25: Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

☐ Please acknowledge this reply

Question 26: At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to
contact you again from time to time either for research or to send through consultation documents?

Yes ☒  No ☐
06 November 2012

Paula Lovitt
Department for Business Innovation and Skills
3 Floor Abbey 1
1 Victoria Street
LONDON
SW1H 0EA

Dear Paula,

Consultation on Implementing Employee Owner Status

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to this consultation.

Having consulted with members, the extent of employee ownership within our membership is not sufficient to make it possible for us to provide significant insight to the specific points raised in the consultation. We can however provide a view on the principle.

ACS represents over 33,500 convenience stores throughout the United Kingdom. Members range from large integrated chains to independent retailers trading as part of a group or under their own name and brand. The convenience sector is a highly entrepreneurial industry 77% of stores are run by small business owners. 70% of shop owners are new to the industry and they are drawn from a range of age groups and ethnic backgrounds.

The sector is also one of significant opportunity. As shopping habits change there is scope to invest and grow in the market. However there are also challenges. One of the most difficult barriers to investment and growth is the cost of employing and retaining staff. Currently 27% of small shop owners employ no one, running the shop on their own or with immediate family members. We fear that many businesses delay expansion and growth for longer because of the concerns they have about the cost and risk associated with taking on employees outside their immediate family.

Costs of employment have increased for retailers. Increases in the national minimum wage, increases in statutory holiday allowances and forthcoming compulsory pension contributions have put inflationary pressure on wage bills. There are also concerns about employment related regulatory burdens and the fear of tribunals.

However, feedback from members has suggested some unease at the removal of some employee rights, and the detail of the regulations needs to strike the balance between a light regulatory touch and allowing unscrupulous businesses to bypass some important legal protections for staff, and in doing so create a skewed playing field with responsible businesses not taking up this option.

In considering our response we felt that, while we do believe that employee ownership may have a role to play in helping businesses to have the confidence to grow and expand, given the relative lack of employee ownership in our industry, it wasn’t really possible for us to take a strong position on the issue. We certainly don’t feel in a position to strongly criticise the proposals.

We believe that once this scheme is in place that there is a need for a clear plan for helping businesses understanding this option, the implications and how to go about implementing it if they choose. We would be willing to play a role in shaping and disseminating that message.
ACS is keen to remain part of on-going development of this policy. For any further specific information that we might be able to help with, please contact

Yours sincerely

James Lowman
Chief Executive
Consultation on implementing employee owner status - response form

A copy of the Consultation on implementing employee owner status: can be found at:

http://www.bis.gov.uk/Consultations/consultation-on-implementing-employee-owner-status?cat=open

You can complete your response online through SurveyMonkey:
(https://www.surveymonkey.com/s/5QJQ935)

Alternatively, you can email, post or fax this completed response form to:

Email:
implementing.employee@bis.gsi.gov.uk

Postal address:

Paula Lovitt MBE
Department for Business, Innovation and Skills (BIS)
3 Floor Abbey 1
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: 8 November 2012
Your details

Name: Andy Davies

Organisation (if applicable): Gripple Limited,

Address: The Old West Gun Works, Savile Street East, Sheffield, S4 7UQ

Telephone: 

Fax: 

Please tick the boxes below that best describe you as a respondent to this:

- [x] Business representative organisation/trade body
- [ ] Central government
- [ ] Charity or social enterprise
- [ ] Individual
- [x] Large business (over 250 staff)
- [ ] Legal representative
- [ ] Local government
- [ ] Medium business (50 to 250 staff)
- [ ] Micro business (up to 9 staff)
- [ ] Small business (10 to 49 staff)
- [ ] Trade union or staff association
- [ ] Other (please describe)
Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment statuses?

Comments:

Do not reduce the rights of the employee

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:

Tax benefits are important. There is no reason to remove rights

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

Comments:

Shares should be bought for the long term - not given away, and that includes directors on Boards. You need to operate transparency and fairness.

Question 4: When an employer buys back forfeit shares, should this be at full market value or some other level (eg. a fraction of market value) should some other level be allowed in certain circumstances?

Comments:

Within 2 years, buy back is at the price the shares were bought at unless the value has dropped in the meantime, in which case the lower value applies. Over 2 years, market value applies, whether up or down.

Question 5: How should a company go about carrying out a valuation of the shares? What would the administrative and cost impact be for a company if an independent valuation was required?

Comments:

Operate a value based on 30 times dividend. This will then apply for the next 12 months. Example: 10p divi values the shares at £3.00 for the next 12 months.

Question 6: The Government would welcome views on the level of advice and guidance that individuals and businesses might need to be fully aware of the implications of taking on employee owner status.

Comments:
Got existing employee owners to pass the message to new potentials

Question 7: What impact will allowing individuals limited unfair dismissal protection and equity shares have on employers’ appetite for recruiting?

Comments:

Employee ownership is a culture and the whole idea is to make employees feel respected and valued. Removing rights is wrong. The law just needs to allow employers to remove easily "the bad apple" when they are identified without being sued for unfair dismissal etc.

Question 8: What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?

Comments:

It will not change a single thing for us because we have established a culture and process that is way in advance of the model being proposed

Question 9: Do you think these benefits will be greater for larger, smaller or start-up businesses?

Comments:

All businesses can become employee owned. The model is the key

Question 10: What impact, if any, do you think the employee owner status will have on employment tribunal claims, e.g. for discrimination?

Comments:

Claims will reduce

Question 11: What impact do you think introducing the employee owner status with no statutory redundancy pay will have for businesses, in particular, smaller businesses and start up businesses? What negative impacts do you anticipate and how might these be mitigated?

Comments:

No need to change the rights

Question 12: What impact will this change to maternity notice period have on employers?
Question 13: What, in your view, would employers do if employees wish to return early without giving 16 weeks' notice?

Comments:

Do not do it - what has happened to a caring relationship between employee and shareholder?!!!

Question 14: How will these changes impact on a company's payroll provisions?

Comments:

No comment

Question 15: What effect will a compulsory 16 weeks' early return notice period have on the length of maternity leave that mothers take or adoption leave that parents take?

Comments:

The current arrangement is fine

Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

Yes ☐ No ☐

Comments:

no comment

Question 17: What impact do you think this proposal would have on the ability of employee owners to access support for training?

Comments:

no comment
Question 18: Do you have any comments on the Government's intention not to amend Company Law to implement the employee owner proposal?

Comments:

no comment

Question 19: The Government welcomes views on particular safeguards that would need to be applied, in order to minimise opportunities for abuse.

Comments:

The abuse comes from bad apples playing out the system and incurring unnecessary significant cost to employers

Question 20: The Government welcomes views on whether the existing tax rules which apply to share-for-share exchanges (such as might happen when a company is taken over) and schemes of reconstruction should apply where shares issued in return for taking up the new status are involved

Comments:

Employees who buy shares in their business should automatically qualify for reduced CGT and lower tax on dividends

Question 21: What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?

Comments:

none

Question 22: Would you be likely to take up the new status? What would the impact of the status be on your business?

Comments:

No because we are already theirs with a much better system in place.

Question 23: What are your views on the take-up of this policy by:
   a) companies?
   b) individuals?

Comments:

It is wrong and will not incentivise the employee - it is not meant to be a battle but a long term partnership
Question 24: What are your views on the equality impact assessment? Are there other equality and wider considerations that need to be considered?

Comments:

no comment

Question 25: Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

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Question 26: At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes ☒ No ☐
Consultation on implementing employee owner status
- response form

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1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: 8 November 2012
Your details

Name: David Jenkins

Organisation (if applicable): East Leeds CAB

Address: Austhorpe Road, Leeds LS15 8QR

Telephone:

Fax:

Please tick the boxes below that best describe you as a respondent to this:

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☐ Central government
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☐ Large business (over 250 staff)
☐ Legal representative
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☐ Medium business (50 to 250 staff)
☐ Micro business (up to 9 staff)
☐ Small business (10 to 49 staff)
☐ Trade union or staff association
☐ Other (please describe)
Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment statuses?

Comments:

I am concerned about the introduction of the Employee Owner contracts. Fundamental employment rights should not be reduced in any employment contract. I am particularly concerned about the reduction in rights for parents through increasing the notice requirement for early return from maternity leave, and restricting the right to request flexible working. I am also concerned about the loss of important unfair dismissal rights, statutory redundancy pay and training rights. The Employee Ownership Organisation, which represents employee owned businesses, commented 'there is no need to dilute the rights of workers in order to grow employee ownership and no data to suggest that doing so would significantly boost the number of employee owners.' (New Statesman 30.10.2012)

Justin King, CEO of Sainsbury's, also criticised the scheme, 'I would not wish to trade good employment practice for greater share ownership...This is not something for our business...The population at large don’t trust business. What do you think the population at large will think of businesses that want to trade employment rights for money?' (Guardian 09.10.2012)

It seems unlikely that ethical employers will use a scheme which undermines fundamental employment rights. If the Government wished to promote greater use of Employee Owner arrangements, they should retain all fundamental employment rights in the proposed Employee Owner contracts.

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:

No answer

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

Comments:

No answer

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No answer
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Comments:  
No answer

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Comments:  
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Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

Yes ☐ No ☒

Comments:  
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Comments:
No answer

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Comments:
No answer

Question 20: The Government welcomes views on whether the existing tax rules which apply to share-for-share exchanges (such as might happen when a company is taken over) and schemes of reconstruction should apply where shares issued in return for taking up the new status are involved.

Comments:
No answer

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Comments:
No answer

Question 23: What are your views on the take-up of this policy by:
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Department for Business, Innovation and Skills (BIS)
3 Floor Abbey 1
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: 8 November 2012
Your details

Name: Zoe Wiggan

Organisation (if applicable):

Address:

Telephone:

Fax:

Please tick the boxes below that best describe you as a respondent to this:

☐ Business representative organisation/trade body
☐ Central government
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Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:

No answer

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Comments:

No answer

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Comments:

No answer

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It is essential that all employees or potential employees are informed about the loss of employment rights under the Employee Owner contracts. It is particularly important that pregnant women and new mothers are informed about the reduction of rights in relation to notice for early return from maternity leave and requesting flexible working. This information should be available online, by telephone and in community languages.

Many pregnant women and new mothers are not aware of their rights at work. The 2005 Equal Opportunities Commission inquiry found that half of all women in the workplace experienced some form of pregnancy discrimination and 30 000 women each year lost their jobs as a result of pregnancy discrimination. 45% of women who took no action, did so because they were unaware of their rights.

Question 7: What impact will allowing individuals limited unfair dismissal protection and equity shares have on employers' appetite for recruiting?

Comments:

Unfair dismissal protections are a fundamental employment right. These should not be reduced in any employment contract. It seems unlikely that the new contracts will be used by ethical employers.

Question 8: What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?

Comments:

It seems unlikely that the new contracts will be used by ethical employers.

Question 9: Do you think these benefits will be greater for larger, smaller or start-up businesses?

Comments:
It seems unlikely that the new contracts will be used by ethical employers, irrespective of their size.

Question 10: What impact, if any, do you think the employee owner status will have on employment tribunal claims, e.g. for discrimination?

Comments:

The Employee Owner contracts prevent employees taking action for unfair dismissal. These rights should not be reduced in any employment contract. Individuals on Employee-Owner contracts will retain the right to take a discrimination claim to the employment tribunal. These claims are time consuming and difficult to pursue and are not a satisfactory alternative to an unfair dismissal claim. The Government is planning to introduce substantial fees to take a pregnancy discrimination case to the employment tribunal. Individuals on Employee Owner contracts will have substantially reduced access to the employment tribunal to remedy unfair treatment from their employer.

Question 11: What impact do you think introducing the employee owner status with no statutory redundancy pay will have for businesses, in particular, smaller businesses and start up businesses? What negative impacts do you anticipate and how might these be mitigated?

Comments:

Statutory Redundancy Pay is a fundamental employment right. This should not be reduced in any employment contract. It seems unlikely that the new contracts will be used by ethical employers.

Question 12: What impact will this change to maternity notice period have on employers?

Comments:

Doubling the notice period for early return from maternity leave is reducing a fundamental employment right. This should not be reduced in any employment contract. It seems unlikely that the new contracts will be used by ethical employers. Increasing the notice period for early return from maternity leave will increase the pressure on women at a time when they should be able to focus on their new baby and on their own recovery from the birth. Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave. This will reduce women’s labour market participation and increase the gender pay gap.
Question 13: What, in your view, would employers do if employees wish to return early without giving 16 weeks' notice?

Comments:
No answer

Question 14: How will these changes impact on a company's payroll provisions?

Comments:
No answer

Question 15: What effect will a compulsory 16 weeks' early return notice period have on the length of maternity leave that mothers take or adoption leave that parents take?

Comments:
Increasing the notice period for early return from maternity leave will increase the pressure on women at a time when they should be able to focus on their new baby and on their own recovery from the birth. Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave.

Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

Yes ☐ No ☒

Comments:
Flexible working arrangements are a fundamental employment right. These should not be reduced in any employment contract. It seems unlikely that the new contracts will be used by ethical employers.

Question 17: What impact do you think this proposal would have on the ability of employee owners to access support for training?

Comments:
Access to training is a fundamental employment right. This should not be reduced in any employment contract. It seems unlikely that the new contracts will be used by ethical employers.
Question 18: Do you have any comments on the Government's intention not to amend Company Law to implement the employee owner proposal?

Comments:

No answer

Question 19: The Government welcomes views on particular safeguards that would need to be applied, in order to minimise opportunities for abuse.

Comments:

No answer

Question 20: The Government welcomes views on whether the existing tax rules which apply to share-for-share exchanges (such as might happen when a company is taken over) and schemes of reconstruction should apply where shares issued in return for taking up the new status are involved.

Comments:

No answer

Question 21: What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?

Comments:

The Employee Owner contract will have negative impacts on labour market flexibility for women. The Employee-Owner contracts substantially reduce fundamental employment rights, including increasing notice periods for notifying early return from maternity leave and restricting the right to request flexible working. These are rights of particular importance to new mothers. The Employee Owner contract will result in an increased proportion of women exiting the labour market during pregnancy and maternity leave.

Question 22: Would you be likely to take up the new status? What would the impact of the status be on your business?

Comments:

No answer

Question 23: What are your views on the take-up of this policy by:

a) companies?
b) individuals?

Comments:

The Employee Owner contracts involve a loss of fundamental employment rights. These should not be reduced in any employment contract. It seems unlikely that the new contracts will be used by ethical employers. The contracts will seriously disadvantage individual employees and are likely to be taken up only by those who are unable to find an alternative job.

Question 24: What are your views on the equality impact assessment? Are there other equality and wider considerations that need to be considered?

Comments:

Pregnancy and maternity: The equality impact assessment notes that the doubling of the notice period for early return from maternity leave will impact on pregnant women and new mothers. It states that this is a procedural change and concludes that there is no disproportionate equality impact on this group. We do not agree. By doubling the notice period for notice of early return from maternity leave, women face significant barriers to returning from maternity leave. 84% of women taking maternity leave return before 52 weeks and will be required to give notice of early return (DWP 2011). Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave.

Gender: The equality impact assessment stated that broadly similar numbers of men and women access flexible working. This is incomplete data. A significantly greater proportion of women than men request flexible working (28% compared to 17% - BIS 2012) so restricting the right to request flexible working will impact disproportionately on women.

Question 25: Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

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Yes ☐ No ☒
Consultation on implementing employee owner status - response form

A copy of the Consultation on implementing employee owner status: can be found at:
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You can complete your response online through SurveyMonkey:
(https://www.surveymonkey.com/s/5QJQ935)

Alternatively, you can email, post or fax this completed response form to:

Email:
implementing.employee@bis.gsi.gov.uk

Postal address:
Paula Lovitt MBE
Department for Business, Innovation and Skills (BIS)
3 Floor Abbey 1
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: 8 November 2012
Your details

Name: Elaine Londesborough-Van Rooyen

Organisation (if applicable):

Address:

Telephone.

Fax:

Please tick the boxes below that best describe you as a respondent to this:

☐ Business representative organisation/trade body
☐ Central government
☐ Charity or social enterprise
☒ Individual
☐ Large business (over 250 staff)
☐ Legal representative
☐ Local government
☐ Medium business (50 to 250 staff)
☐ Micro business (up to 9 staff)
☐ Small business (10 to 49 staff)
☐ Trade union or staff association
☐ Other (please describe)
Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment statuses?

Comments:

I am concerned about the introduction of the Employee Owner contracts. Fundamental employment rights should not be reduced in any employment contract. I am particularly concerned about the reduction in rights for parents through increasing the notice requirement for early return from maternity leave, and restricting the right to request flexible working. I am also concerned about the loss of important unfair dismissal rights, statutory redundancy pay and training rights. The Employee Ownership Organisation, which represents employee owned businesses, commented 'there is no need to dilute the rights of workers in order to grow employee ownership and no data to suggest that doing so would significantly boost the number of employee owners.' (New Statesman 30.10.2012)

Justin King, CEO of Sainsbury's, also criticised the scheme, 'I would not wish to trade good employment practice for greater share ownership...This is not something for our business...The population at large don't trust business. What do you think the population at large will think of businesses that want to trade employment rights for money?' (Guardian 09.10.2012)

It seems unlikely that ethical employers will use a scheme which undermines fundamental employment rights. If the Government wished to promote greater use of Employee Owner arrangements, they should retain all fundamental employment rights in the proposed Employee Owner contracts.

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:

No answer

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

Comments:

No answer

Question 4: When an employer buys back forfeit shares, should this be at full market value or some other level (eg. a fraction of market value) should some other level be allowed in certain circumstances?

Comments:

No answer
Question 5: How should a company go about carrying out a valuation of the shares? What would the administrative and cost impact be for a company if an independent valuation was required?

Comments:

No answer

Question 6: The Government would welcome views on the level of advice and guidance that individuals and businesses might need to be fully aware of the implications of taking on employee owner status.

Comments:

It is essential that all employees or potential employees are informed about the loss of employment rights under the Employee Owner contracts. It is particularly important that pregnant women and new mothers are informed about the reduction of rights in relation to notice for early return from maternity leave and requesting flexible working. This information should be available online, by telephone and in community languages. Many pregnant women and new mothers are not aware of their rights at work. The 2005 Equal Opportunities Commission inquiry found that half of all women in the workplace experienced some form of pregnancy discrimination and 30,000 women each year lost their jobs as a result of pregnancy discrimination. 45% of women who took no action, did so because they were unaware of their rights.

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Yes ☐ No ☒

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No answer

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Question 22: Would you be likely to take up the new status? What would the impact of the status be on your business?

Comments:

No answer

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a) companies?
b) individuals?

Comments:

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Question 26: At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes ☑ No ☐
Dear Sir or Madam

Employee-owner who is TUPE transferred to a transferee who does not a share option scheme

One would assume that the transferor would buy back the shares from the TUPE transferred employee. So if the transferee provided a cash equivalent instead of actual shares to the employee-owner – would the employee-owner still be treated as having traded some of their employment rights for shares?

Bearing in mind, reg. 4(4) and (5) of the TUPE 2006 Regulations - could the employee-owner and the transferee lawfully vary the contract so that the employee-owner becomes an employee? Should be regulations be amended to facilitate such a variation? If such a variation is lawful, do the employment rights accrue from the start of employment with the transferor or the date of the variation?

Yours sincerely

Tony Trotman

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Consultation on implementing employee owner status - response form

A copy of the Consultation on implementing employee owner status: can be found at:

http://www.bis.gov.uk/Consultations/consultation-on-implementing-employee-owner-status?cat=open

You can complete your response online through SurveyMonkey :
(https://www.surveymonkey.com/s/5QJQ935)

Alternatively, you can email, post or fax this completed response form to:

Email:
implementing.employee@bis.gsi.gov.uk

Postal address:

Paula Lovitt MBE
Department for Business, Innovation and Skills (BIS)
3 Floor Abbey 1
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: 8 November 2012
Your details

Name: Charlotte Gage

Organisation (if applicable): Women's Resource Centre

Address: Ground Floor East, 33-41 Dallington Street, London EC1V 0BB

Telephone:

Fax:

Please tick the boxes below that best describe you as a respondent to this:

☐ Business representative organisation/trade body

☐ Central government

☒ Charity or social enterprise

☐ Individual

☐ Large business (over 250 staff)

☐ Legal representative

☐ Local government

☐ Medium business (50 to 250 staff)

☐ Micro business (up to 9 staff)

☒ Small business (10 to 49 staff)

☐ Trade union or staff association

☐ Other (please describe)
Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment statuses?

Comments:

Our organisation has a commitment to social justice and gender equality and this informs our employment policies. We would not use contracts which involve a loss of fundamental employment rights, as proposed for the Employee-Owner contracts, as this will have a negative impact on both social justice and gender equality. In particular, we are concerned about the negative impact on gender equality of introducing additional barriers to labour force participation for new mothers, through increasing the notice period for early return from maternity leave and restricting the right to request flexible working. We are concerned that the removal of unfair dismissal rights, rights to training, and rights to statutory redundancy pay will impact harshly on the most vulnerable workers who are in the weakest negotiating position in the employment market. We would be better able to make use of the flexibility of different forms of employment status if all basic employment rights were preserved in the Owner-Employee contracts. This would remove the ethical barriers to using this contract. We note that charities and social enterprises have a variety of corporate forms, including forms which would support the issue of shares to employees.

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:

We would not consider using a contract which involved the loss of fundamental employment rights, as proposed for the Employee-Owner contracts. A contract of this kind will have a negative impact on both social justice and gender equality and conflicts with our organisational commitment to social justice and gender equality.

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

Comments:

No answer

Question 4: When an employer buys back forfeit shares, should this be at full market value or some other level (eg, a fraction of market value) should some other level be allowed in certain circumstances?

Comments:

No answer
Question 5: How should a company go about carrying out a valuation of the shares? What would the administrative and cost impact be for a company if an independent valuation was required?

Comments:

No answer

Question 6: The Government would welcome views on the level of advice and guidance that individuals and businesses might need to be fully aware of the implications of taking on employee owner status.

Comments:

As the Employee-Owner contracts involve a substantial loss of employment rights, we consider it essential that individuals receive good advice on the implications of entering into this form of employment contract. This should consist of written information, telephone advice and face-to-face advice, including advice and information in community languages and accessible to people with disabilities. We are conscious that the capacity of voluntary sector organisations to provide advice of this kind has been significantly reduced as a result of widespread cuts. We recommend additional funding for information and advice agencies to assist in meeting the increased need flowing from the new form of contract.

Question 7: What impact will allowing individuals limited unfair dismissal protection and equity shares have on employers’ appetite for recruiting?

Comments:

We do not anticipate that the introduction of the Employee-Owner contract will have any positive impact on recruitment by ethical employers. The loss of fundamental employment rights, as proposed for the Employee-Owner contracts, contravenes social justice and gender equality principles. This will prevent ethical employers from taking up this form of employment contract.

Question 8: What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?

Comments:

We would not consider using a contract which removes unfair dismissal rights. These are fundamental employment rights. This would be inconsistent with our commitment to social justice and gender equality.

Question 9: Do you think these benefits will be greater for larger, smaller or start-up businesses?
Comments:

We do not think that the Employee-Owner contract will be attractive to any ethical employer, irrespective of their size.

Question 10: What impact, if any, do you think the employee owner status will have on employment tribunal claims, e.g. for discrimination?

Comments:

By removing the right to pursue a claim for unfair dismissal, individuals on Employee-Owner contracts will be prevented from exercising their basic employment rights. We anticipate that more vulnerable workers will experience unfair treatment as a result. We expect that fewer vulnerable workers will be able to take their cases to the employment tribunal. Individuals on Employee-Owner contracts will retain the right to take a discrimination claim to the employment tribunal. We are conscious that discrimination claims are time consuming and difficult to pursue. Evidence from the 2005 Equal Opportunities Commission inquiry into pregnancy discrimination found that 30 000 women lost their jobs each year as a result of pregnancy discrimination. Only 3% of these women took their claim to the employment tribunal. We expect to see a further drop in the proportion of discrimination claims which go to the employment tribunal following the Government's planned introduction of substantial fees to pursue employment tribunal claims in 2013. As employers with a commitment to social justice and gender equality, we are concerned at any measures which reduce employees' access to the employment tribunal.

Question 11: What impact do you think introducing the employee owner status with no statutory redundancy pay will have for businesses, in particular, smaller businesses and start up businesses? What negative impacts do you anticipate and how might these be mitigated?

Comments:

We would not consider using a contract which removes statutory redundancy pay entitlements. These are fundamental employment rights. This would be inconsistent with our commitment to social justice and gender equality.

Question 12: What impact will this change to maternity notice period have on employers?

Comments:

We would not consider using a contract which increased the notice period for early return from maternity leave. This is restricting a fundamental employment right and would be inconsistent with our commitment to social justice and gender equality. Increasing the notice period for early return from maternity leave will increase the pressure on women at a time when they should be able to focus on their new baby
and on their own recovery from the birth. Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave. This will reduce women’s labour market participation and increase the gender pay gap.

Question 13: What, in your view, would employers do if employees wish to return early without giving 16 weeks’ notice?

Comments:
No answer

Question 14: How will these changes impact on a company’s payroll provisions?

Comments:
No answer

Question 15: What effect will a compulsory 16 weeks’ early return notice period have on the length of maternity leave that mothers take or adoption leave that parents take?

Comments:
Increasing the notice period for early return from maternity leave will increase the pressure on women at a time when they should be able to focus on their new baby and on their own recovery from the birth. Many women will find it difficult to plan their arrangements for return to work 16 weeks in advance, as they will need to finalise childcare and resolve flexible working arrangements. This unnecessary pressure is likely to result in more women resigning their jobs during maternity leave.

Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

Yes ☐ No ☒

Comments:
We would not consider using a contract which reduced or restricted the current right to request flexible working. This is a fundamental employment right. This would be inconsistent with our commitment to social justice and gender equality.
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Comments:
No answer

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Comments:
No answer

Question 21: What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?

Comments:
We do not anticipate take-up of the Employee-Owner contract by ethical employers because it contravenes social justice and gender equality principles. As a result, we do not anticipate that the introduction of the Employee-Owner contract will have any positive impact on labour market flexibility amongst ethical employers.

We anticipate that the Employee-Owner contract will have negative impacts on labour market flexibility for women. The Employee-Owner contracts substantially reduce fundamental employment rights, including increasing notice periods for notifying early return from maternity leave and restricting the right to request flexible working. These are rights of particular importance to new mothers. We anticipate that use of the Employee-Owner contract will result in an increased
proportion of women exiting the labour market during pregnancy and maternity leave.

Question 22: Would you be likely to take up the new status? What would the impact of the status be on your business?

Comments:

Our organisation has a commitment to social justice and gender equality and this informs our employment policies. We would not use Employee-Owner contracts of the kind described in the consultation as they involve a loss of fundamental employment rights and will have a negative impact on both social justice and gender equality.

Question 23: What are your views on the take-up of this policy by:
   a) companies?
   b) individuals?

Comments:

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Yes ☑ No ☐
Response of the Equality and Human Rights Commission to the Government consultation: Implementing employee owner status

Consultation details

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<thead>
<tr>
<th>Title:</th>
<th>Government consultation: Implementing employee owner status</th>
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<tr>
<td>Source of consultation:</td>
<td>Department for Business, Innovation and Skills</td>
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<tr>
<td>Date:</td>
<td>November 2012</td>
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For more information please contact

<table>
<thead>
<tr>
<th>Name of EHRC contact providing response and their office address:</th>
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<tbody>
<tr>
<td>John Sharman</td>
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<td>EHRC</td>
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Response of the Equality and Human Rights Commission to the Government's Consultation on implementing employee owner status.

November 2012
This paper sets out the response of the Equality and Human Rights Commission to the government's proposals in the consultation paper 'Implementing employee owner status.' October 2012. The submission relates to a number of the Commission's statutory duties.

First, the Commission has a statutory duty under the Equality Act 2006\(^1\) to encourage and support the development of a society in which: people's ability to achieve their potential is not limited by prejudice or discrimination; there is respect for and protection of each individual's human rights; there is respect for the dignity and worth of each individual; each individual has an equal opportunity to participate in society; and there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

Second, the Commission has statutory duties under the Equality Act 2006 to encourage good practice in relation to equality and diversity; promote understanding and awareness of rights under the Equality Act.

\(^1\) Equality Act 2006, section 3.
2010; enforce the Equality Act 2010; and work towards the elimination of unlawful harassment.2

Third, the Commission is responsible for monitoring the effectiveness of the equality and human rights enactments and advising on the effectiveness of enactments, as well as the likely effect of a proposed change of law3.

Implementing employee owner status: Government proposals
The government believes there is merit in creating a new employment contract which will give employers greater choice about the types of contract they can offer to individuals and ensure levels of protection are maintained. Proposals would create a third employment status in addition to employee and worker status and confer share options in return for some contract flexibility.

Government would like to understand the implications for employers, individuals, and the labour market in general. In particular it wishes to ensure there are no unintended consequences.

EHRC Response
In the Commission’s view the increase in employee owners of businesses is to be welcomed and encouraged. Such companies tend to

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2 Equality Act 2006, section 8 sub paragraphs (1)(b), (d), (e) and (g) respectively.
be more successful and more likely to achieve high standards of equality. However, the introduction of a new status of employee owner should not result in a reduction in individuals' rights to protection from unfair dismissal, access to flexible working or the notification of return from parental leave. We believe that employers, if they wish to, may offer share ownership options to employees and at the same time offer the same rights and benefits as all other employees in the UK. This will make them more attractive to skilled and talented recruits who wish to work in a modern flexible workplace with full protection of employment rights.

If the proposals are implemented then careful consideration will need to be given to the legal consequences including the potential to increase the very problems the policy is designed to reduce. Our response assesses each of the proposals to change employee rights.

The benefits of employee ownership and full employee rights
We have not seen evidence to suggest that employers recommend reducing the rights of workers to encourage employee share ownership. Our analysis suggests that employee ownership in the UK is growing and the businesses are thriving, because they enhance the working conditions and entitlements of employee owners which promotes talent retention and productivity. Creating businesses whose employees have significant ownership and involvement, offers a great opportunity to spread business ownership from the few to the many, increasing productivity and innovation and developing the potential of workforces in areas of high deprivation where entrepreneurs are needed.
Studies show that Employee Owned Businesses generally outperform non-employee-owned business where employees do not have a significant stake in ownership or the right to participate in decision-making. The evidence also shows that employees who have a stake in the company they work for are more committed to delivering quality service and more flexible in responding to the needs of the business.4

Some employers, if they wish, may offer share ownership options to employees alongside the same rights and benefits as all other employees in the UK. The John Lewis Partnership is an example of an employee owned business. It offers a range of benefits including the protection from unfair dismissal, right to request flexible working arrangements etc to its employee owners or ‘partners’.5

**Right to claim unfair dismissal is not a barrier to recruitment**
There appears to be an assumption underlying the proposals that the right to claim unfair dismissal is a bar to business hiring. We concur with the responses of TUC and CIPD to the Beecroft report and the Government consultation on no fault dismissal that this assumption is not underpinned by evidence.6

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5 [http://www.employebenefits.co.uk/resource_centre/analysis/employer-profile-john-lewis-partnership/14190_article](http://www.employebenefits.co.uk/resource_centre/analysis/employer-profile-john-lewis-partnership/14190_article)

Right to request flexible working provides positive benefits to employers and employees

The proposal to remove the right to request flexible working (except for those returning from maternity leave) assumes that flexibility is burdensome and a barrier to business efficiency. We believe that this proposal ignores the positive evidence from employers and employees about the benefits of flexibility. Indeed, the proposal seems to run counter to recent Government proposals on improving flexible working as a benefit to business efficiency.

The Commission has welcomed the government’s intention to implement the commitment to extend the right to request flexible working to all employees. The proposals to implement the Coalition Agreement commitment to extend the right to request flexible working to all employees were set out in the Government’s consultation in May 2011 on modern workplaces.\(^7\)

The Commission’s evidence demonstrates that employers’ experience of flexible working legislation in the UK and elsewhere has been positive.\(^8\) It is now widely recognised that the right to request flexible working has been a great success because it is light touch regulation which has

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\(^8\) [http://www.equalityhumanrights.com/uploaded_files/research/16_flexibleworking.pdf](http://www.equalityhumanrights.com/uploaded_files/research/16_flexibleworking.pdf)
helped to facilitate a positive dialogue between employee and employer, often in workplaces where flexible working may not be the norm or has not been considered.

The Commission's work – supported by the findings from many business surveys - demonstrates that businesses value flexibility as a key way to manage people resources. The CIPD Survey Report May 2012 'Flexible working provision and uptake' indicated that 85% of employers had no problems complying with the right to request legislation in the last two years, and just 4% of employers had encountered problems, while 11% do not know.\(^9\) Small employers are less likely to report problems than larger organisations.

The REC's Flexible Work Commission report published in September 2012 reported that flexible work in all its forms is growing in the UK with increased demand both from employers and employees in direct employment, as well as from individuals looking for flexible options outside of a standard contract of employment. Part-time work is on the rise, as is freelancing and temporary agency work, while 96% of all employers now offer some form of flexible working. Flexibility helps retain jobs, attract staff and boost business competitiveness.\(^10\)

We believe that removing the right to request flexible working for those with employee owner status (other than those returning from parental

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leave) would undermine the value and benefits of flexibility that are now widely accepted by employers.

The proposal could also potentially lead to potentially expensive and complicated employment tribunal claims. Employee owners who request flexible working but are refused might use the discrimination provisions in the Equality Act 2010 to challenge the refusal.

**Implications of ‘due regard’ and the public sector equality duty**

The Equality Impact Assessment accompanying the proposals indicates the effects of the proposal may impact on different protected groups in different ways. When an EIA identifies a differential impact on people with protected characteristics, the public sector equality duty requires public authorities to show what consideration they have given to mitigating the effects or considering whether the effects are such as to require re-consideration of the proposals. Failure to do so could lead to the conclusion that there has not been due regard to the aims of the public sector equality duty. We are concerned that the decision to proceed with legislative implementation of the consultation proposals before such consideration has not demonstrated the necessary due regard.

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11 S.149 of the Equality Act 2010

12 as defined in Chapter 1 of the Equality Act 2010. The following characteristics are protected characteristics — age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.
Legal considerations if proposals are implemented

If implemented the proposals would need to address the following legal issues:

1. Compliance with European Employment Directives and Human Rights Law

The proposals will need to be compliant with relevant European Directives and with Human Rights Law. Detailed legal analysis of these issues has not been possible in the short timescale given for responding to the consultation. The Commission is seeking legal advice on the proposals and will publish its detailed legal analysis in due course.

That analysis will include consideration of:

- whether the proposals are compliant with European Directives relating to employment, in particular those relating to equality of treatment; pregnancy and maternity rights; and the acquired rights directive applying to transfers of undertakings (TUPE).
- whether the proposals comply with Article 1 First Protocol (A1FP) of the European Convention on Human Rights. This sets out the right to quiet enjoyment of possessions. A shareholding is a "possession" for the purposes of A1FP. The Commission understands that the proposals are that an employee owner would be compelled by legislation to sell their shares to the employing

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13 e.g. in Brameld v Sweden (8588/79); Malmstrom v Sweden (8589/79) (1983) 5 E.H.R.R. 249
company in certain circumstances. This includes where the employing company has unfairly dismissed the employee owner.

2. Right not to be dismissed

The importance of the right not to be dismissed without justification is reflected in its inclusion in international law, including article 4 of the ILO Convention 158 on the termination of Employment and in the EU Charter of Fundamental Rights (Article 30)\textsuperscript{14}. British law recognises the importance of the right to claim unfair dismissal. It provides that the right can only be waived or compromised in limited circumstances, the most common being where the employee receives independent legal advice.\textsuperscript{15}

We believe that the right to ‘sign away’ the right to unfair dismissal should continue to be subject to strong safeguards. This is particularly important where a current employee is changing status from employee to employee owner. Given the current economic climate the bargaining position may be particularly unequal between an employer and employees.

If the proposal is implemented, we believe that any individual should not be able to change status to or enter into a job as an employee owner without being fully informed about the implications of doing so. Given the importance of the rights involved we believe this should be

\textsuperscript{14} The legal effect of Article 30 in the United Kingdom is clarified by Protocol 30 to the Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2008/C 115/01)

\textsuperscript{15} See s.203 Employment Rights Act 1996
by taking legal advice in the same way as they have to do when signing a compromise agreement. This approach will help address the risks that people with certain protected characteristics (for example learning disabled people and young people) may have less understanding of the implications of signing away their rights than other people. It will also reduce the scope for dispute at a later stage about a worker's status and their entitlement to claim unfair dismissal.

We consider that a dismissal for refusing to change status from employee to employee owner should be an automatically unfair dismissal. The law recognises that in some circumstances a dismissal for refusing to accept changes to terms and conditions of employment can be a fair dismissal. However, the Commission believes that this is not comparable to a fundamental change in employment status. Allowing an employer to dismiss an employee fairly for refusing to accept a change of status to employee owner also would not be compatible with the voluntary nature of the proposals put forward by the government.

3. Effect of a TUPE transfer

The proposals would need to clarify the position of an employee owner on a TUPE transfer. As an employee the Acquired Rights Directive requires that their employment rights be preserved post TUPE transfer. Since by definition a TUPE transfer would not be a share sale, the employee owner subject to a TUPE transfer would become an employee of the transferee company in which they would not have shares. It is not clear to the Commission whether the
proposals contemplate that the transferee company would be required to provide the employee owner with equivalent shares.

4. Discrimination relating to employee owner status

The Equality Act 2010 applies to discrimination in the context of "Work"\textsuperscript{16} including the terms on which employment is offered. There is potential for discrimination to arise in the context of offering employee status. For example, where the opportunity to be an employee owner is only offered to some people: e.g. an employer doesn't offer the status to women of childbearing age because they think if the women have children they won't be committed enough to the company; or an employer doesn't offer the status to an older person believing their term of service will be too short for the shares to gain enough value to act as an incentive.

The Commission believes that such cases will fall within the employment provisions in the Equality Act 2010. We would be grateful for the Government's assurance that this is so. If there is any doubt about this then to avoid uncertainty for employers and employee owners the Equality Act 2010 should be amended to make it clear to employers and employee owners alike that employee owner status is within the definition of employment in s.83 of the Equality Act 2010.

\textsuperscript{16} Part 5 of the Equality Act 2010
I think the idea is a very good idea for small company's taking on staff who can help to drive growth and are worried about the implications of the economic cycle.

Karl Hick

For and on behalf of
Karl Hick
Managing Director
Gill Ramm
PA department

This email was received from the INTERNET.

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Dear Paula

Please find attached the response from the Chartered Institute of Personnel and Development (CIPD) on Implementing Employee Owner Status.

Please do let me know if you have any comments or questions.

Kind regards

Genevieve

Genevieve Bach
Public Affairs

Chartered Institute of Personnel and Development (CIPD)
This email was received from the INTERNET.

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Implementing Employee Owner Status
Department for Business, Innovation and Skills
Response by the Chartered Institute of Personnel and Development
October 2012

Opening comments

The Chartered Institute of Personnel and Development is Europe's largest professional body for the management and development of people. Our 135,000 members work in organisations of all sizes, across all sectors of the economy. Our core purpose is to champion better work and working lives, through improving people management and development practices to build greater value for organisations, benefitting economies and society.

We are opposed to the idea of introducing employee share ownership on the basis outlined in this consultation document. We believe the proposal runs counter not only to evidence that deregulation and stripping away employee rights will not create jobs or economic growth, but also to the culture of trust and engagement on which working relationships should be built.

When responding to consultations, we consult with a number of our members throughout the UK through our network of branches. We also consider the academic evidence base and specific case studies on employee share ownership.

General comments

There is very little evidence in the consultation paper as to why this policy is needed or what impact it will have. There is no overall statement of philosophy to explain why this particular package is being introduced now, or at all. The suggestion that employers and employees will find it helpful is wholly implausible, and undermined by public comments by the CBI and others following publication of the consultation paper. The proposal has the hallmarks of having been constructed so as to provide an alternative framework to achieve the broad objective underpinning the earlier Beecroft proposal for compensated no-fault dismissal.

The proposal to create an additional employment status can only be explained on the assumption that it is aiming to create the kind of labour market that operates in European countries such as Spain, where a relatively small proportion of workers have full employment rights. According to research by the OECD, the UK already has the third most flexible labour market in the world, behind the USA and Canada – justified in part by the existing categories of employment status in the UK – employee, worker (including many agency workers) and self-employed. It should be noted that each of the existing categories affords in practice a significant element of choice to individuals, whereas the proposed status of employee owner will be offered entirely at the discretion of the employer.
Will the proposal benefit the economy?

There is no evidence to suggest that removing employees' right to claim unfair dismissal, as will happen if they elect to become employee owners, will have any positive effect on growth or jobs. According to the Government's own research, the right to claim unfair dismissal doesn't figure in the list of top ten regulations discouraging employers from recruiting staff. But even assuming there is a genuine need to support employers in dismissing or otherwise dealing with underperforming employees, we would strongly advocate that that the challenge lies less with existing regulations and more with management skills and capability. Thus, the best solution would be through guidance, learning and development targeted at employers to help them make use of existing provisions to performance manage their employees.

None of the other rights which employee owners will forgo have the same visibility to small firms. The package of employment rights to be surrendered has little overall coherence and will have no obvious appeal to employers.

Some existing employee ownership schemes, such as those in operation at John Lewis, make employees “partners” with significant rights to participate in the management of the company. There is no suggestion in the consultation paper that employee owners will necessarily be given similar opportunities. Although share ownership can help reinforce employees' sense of identification with the company that employs them, it is not a magic bullet to ensure commitment. John Lewis management has underlined that the benefits of employee share ownership in their case spring more from the way employees are managed than from the simple fact of employees owning shares. Academic research also supports the view that employee share ownership is but one element that drives employees' performance by strengthening their sense of ownership in their companies.

The offer to give up employment rights in return for shares is unlikely to be attractive to many prospective employees, and we are more than a little concerned about the ethical implications of employees being encouraged to surrender fundamental employment rights for uncertain financial gain. In straitened financial times, such an offer may be tempting to some employees, but there is a real risk in that shares can go down as well as up and it is notoriously difficult to forecast the share price of individual companies over the medium and longer term. Employers have a duty to act responsibly towards their employees and it is questionable whether encouraging them to take up this option will necessarily be consistent with that.

If the scheme is open to all employees, there is a danger that it opens up, or is perceived to open up, a tax avoidance loop at a time when the Government has been trying to close these. The upper limit to the value of employee shares, £50,000, is a substantial amount and if this were awarded to directors or senior managers it may be seen as an abuse of a system intended to support the economy.

Will the proposed status appeal to employers?

The suggestion that “fast growing” companies might be prime beneficiaries of the proposed new status is highly implausible. Such companies are likely to be well run, successful and attractive to potential employees. They are less likely than other companies to have difficulty recruiting
employees and unlikely to see major problems in offering them the full range of existing employment rights.

Most successful companies recognise that their success is influenced by their reputation. Few companies will expect to enhance their reputation by offering shares to employees on the basis proposed. Many will fear that they will be seen as unethical if they are unwilling to respect the kind of legal norms applying to employment across the majority of Western economies.

Another significant issue is the complexity facing an employer who might wish to consider taking advantage of the proposals. If the Government wants to simplify employment regulation, this seems an implausible way to start. The position in relation to the employee owner’s right to request flexible working, for example, will depend significantly on whether or not the employee is a parent. Given the Government’s commitment to relieve micro businesses from new legislation, the size of the company may also be relevant.

It is highly doubtful whether inviting employees to sign away a number of basic employment rights will deliver the motivated, high performing workforce that firms need. Existing, highly successful mutually owned firms do not thrive on employee ownership alone, but on the high trust, high engagement, cultures they promote.

**Will the proposed status be helpful to employees?**

The most significant rights to be forgone by employee owners under the proposed legislation relate to termination of employment, including statutory redundancy pay, which will significantly add to the precariousness in which many employees find themselves. Although share ownership can help employees to identify with the success of their organisation, it can also place them in “double jeopardy” should the company run into difficulties and need to reduce employment. Redundant employees may find the value of their shares has fallen at precisely the time when they are most in need of supplementary income.

The consultation paper suggests that employers might wish to offer shares worth up to £50,000. The statutory limit on the amount that can be invested in “approved” employee share plans is currently £1,500 per year. Having a limit acts as a mechanism to prevent an employee having too much in a single savings vehicle, and limits the scale of damage to the employee’s financial position in the event of redundancy. The proposed £50,000 ceiling is clearly not a figure designed to protect the employee’s interests.

The consultation paper (paragraph 43) states that employee owners will only have the right to request flexible working when they return from the EU-derived entitlement to 18 weeks unpaid parental leave. It also proposes that parents with the new status would not be entitled to request flexible working after the fourth week following their return to work. The impact of these proposals is unclear. Mothers will still be entitled to take 12 months maternity leave: is the intention that they will need to request flexible working arrangements no later than 22 weeks into their maternity leave? Assuming this is acceptable under EU law, it sends a very different signal to that of the government’s stated commitment to ‘family-friendly’ policies that are nowadays taken for granted as core aspects of the employment relationship and important enablers for parents and carers who are attempting to balance work and family life.
It is hard to see an employee’s decision whether or not to accept employment depending on his or her entitlement to the right to request flexible working and training. Most employers will sensibly be ready to consider such requests on their merits without need for statutory support. Their inclusion in the package, though calculated to undermine its appeal to many employers and employees, appears to have at most symbolic value.

There is a danger that organisations containing full both status employees and employee owners will develop two-tier workforces. In the event of redundancies, the scheme would give employers a very clear incentive to target employee owners over full status employees. For employees, this means that accepting the offer of employee ownership would place them in a more precarious situation than other employees. For employers, there is a danger that targeting employee owners for redundancy leads to accusations of discrimination.

*What about the detail of share ownership and buy-back?*

If employers wish to offer shares to their employees, they can already do so under the terms of a statutory share incentive plan (SSIP). What additional benefits will the employee owner receive, beyond those already available under a SIP, in return for surrendering their employment rights? How much discretion will the employer have to determine the terms of the share offer and the way in which shares are to be managed when then employee leaves the company? What arrangements are proposed for informing and advising employees on the terms of the share offer?

It’s unclear how removing the right to statutory redundancy pay and unfair dismissal interacts with the ‘buy-back’ value of shares in exchange for this right. If the employer gives an employee £2000 worth of shares, then makes them redundant and buys back the shares at ‘a reasonable rate’, what has the employee gained? The consultation suggests the employer could buy them back at ‘a fraction of market value’ (p.11). In this case the employer is buying protection from possible statutory claims to an employment tribunal at a very modest price. Who will be responsible for determining what is a reasonable price, at what stage and at whose expense?

*Conclusion*

The proposals are ill-thought out and address a problem that doesn’t exist. They will attract criticism from across the political spectrum as heightening job insecurity at a time of economic uncertainty while failing to provide any significant benefit to employers, employees or the economy as a whole. Few employers concerned to protect their reputation and brand will wish to take advantage of the proposed legislation.
REPRO DTP

From: Charles Fentiman
Sent: 30 October 2012 13:16
To: Employee Owner Status Consultation
Subject: TRIM: Employee owner status
TRIM Dataset: M1
TRIM Record Number: D12/1379592
TRIM Record URI: 13439886

Dear Sirs,

I am an Employment law advisor to Solihull CAB. The opinions within this email are solely mine and do not necessarily represent those of the Bureau.

I cannot understand how these contracts are going to work and what benefit they are to employees or employers.

If the employer Company goes bust the shares will be worth nothing and yet the employee has waived rights to claim unfair dismissal and redundancy.

What about all the employers who are not companies such as partnerships and sole traders? How are they able to offer these types of contracts?

According to Government proposals, these contracts are targeted to small and medium sized start up companies. These are the most likely to fail, especially in the current economic climate.

This is an ill- thought out proposal that needs to be ditched as soon as possible.

Yours sincerely
Charles Fentiman

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This is a way to forcibly remove employees rights. It gives the employer the right to sack staff for no reason and the employee no redress. It is not optional and all companies will take advantage of it to reduce staffing costs using worthless 'shares'.

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From: Elaine Hedley [.]  
Sent: 24 October 2012 21:13  
To: Employee Owner Status Consultation  
Subject: Question

Can you please tell me which "bill" this consultation is a part of?

Thank you.

Regards, Elaine.

Elaine Hedley (MCIIPD)  
HR Business Partner

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Consultation on implementing employee owner status
- response form

A copy of the Consultation on implementing employee owner status: can be found at:

http://www.bis.gov.uk/Consultations/consultation-on-implementing-employee-owner-status?cat=open

You can complete your response online through SurveyMonkey :
(https://www.surveymonkey.com/s/5QJQ935)

Alternatively, you can email, post or fax this completed response form to:

Email:

implementing.employee@bis.gsi.gov.uk

Postal address:

Paula Lovitt MBE
Department for Business, Innovation and Skills (BIS)
3 Floor Abbey 1
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: 8 November 2012
Your details

Name: David Chappell

Organisation (if applicable):

Address:

Telephone:

Fax:

Please tick the boxes below that best describe you as a respondent to this:

☐ Business representative organisation/trade body
☐ Central government
☐ Charity or social enterprise
☒ Individual
☐ Large business (over 250 staff)
☐ Legal representative
☐ Local government
☐ Medium business (50 to 250 staff)
☐ Micro business (up to 9 staff)
☐ Small business (10 to 49 staff)
☐ Trade union or staff association
☐ Other (please describe)
Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment statuses?

Comments:

We need to ensure our employment contracts mirror those across the EU to ensure we have equal opportunities of employment and costs across the EU. Only in this way can we progress the principles of establishing a Common Market for business across the EU.

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:

Yes. The difficulty in presenting this new opportunity to employees as being fair. It could only be seen as fair if the share issue to employees was a realistic share of the business. An arrangement whereby the combined employee share distribution was only a minor share holding and that share holding could be outvoted by existing share owners, whether those share owners are pension funds, banking organisations or large individual would result in employee dissatisfaction, union troubles where appropriate, and generally more trouble than it is worth,

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

Comments:

Existing employment rights should be protected, so that Employers do not abuse the new opportunity for flexible working by enforcing lowered employment rights on an unwilling workforce. Employees should be given a free and secret ballot on the proposal as a protection to ensure any proposed company scheme has the support of its employees.

Question 4: When an employer buys back forfeit shares, should this be at full market value or some other level (eg. a fraction of market value) should some other level be allowed in certain circumstances?

Comments:

They should be at full market value to prevent other share owners making opportunity profits at the expense of those share owners who have reduced share rights. Especially as the success of the business will have largely been secured on the efforts of its employees at whatever level.
Question 5: How should a company go about carrying out a valuation of the shares? What would the administrative and cost impact be for a company if an independent valuation was required?

Comments:

Only an independent stock market valuation could ensure that those taking part where guaranteed a fair value of shares. Any other system runs the risks both up and down that a flawed valuation process either undermines the share price leading to opportunity profits, or that an overvaluation leads to disgruntlement as share values fall and employees feel they have been misled about the value of the scheme when they were signed up for it.

Question 6: The Government would welcome views on the level of advice and guidance that individuals and businesses might need to be fully aware of the implications of taking on employee owner status.

Comments:

Does the government have monies available to provide any level of advice on this matter. I though government was seeking to cut back on its commitments?

Question 7: What impact will allowing individuals limited unfair dismissal protection and equity shares have on employers' appetite for recruiting?

Comments:

That would depend on media coverage on the subject and the risk that certain newspapers will 'stain' the whole process with negative press coverage. It would be best if employees felt they were joining a company that welcomed them with a long term commitment rather than with a contract that gives the employer a quick win on dismissal of the employee. The company may fail to attract the right calibre of employee if other employers offered a more secure positive approach to new employment.

Question 8: What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?

Comments:

A number of companies have demonstrated that they can successfully recruit and run a business based on employee ownership, but that has been genuine employee ownership not on a scheme in which the employee has minimal rights.

Question 9: Do you think these benefits will be greater for larger, smaller or start-up businesses?
Comments:

Cannot be beneficial for start up companies. Such companies are based on an idea on how to make money and an investment of capital to make that happen. Handing out share ownership to employees who have not contributed to the 'profit idea' and not contributed an investment in the business would dilute the profit/reward for the entrepreneur who decided to start the business. There would not be enough employees so the contribution from the employees would be not be sufficient to drive the new company forward.
However, for a large established company, with a clear and known value. This scheme could be used to free the business from dependency on the banks and the share markets enabling the business to transfer ownership and value to employees in a realistic and fair way that could empower the employees.

Question 10: What impact, if any, do you think the employee owner status will have on employment tribunal claims, e.g. for discrimination?

Comments:

This is a clear risk. Employment tribunals are primarily for employees. Employee owners would be in a different category and possible not protected. Instead of asking me this question you should be seeking to establish and to inform me of how this arrangement fits within current employment legislation and employment tribunal rules and procedures.

Question 11: What impact do you think introducing the employee owner status with no statutory redundancy pay will have for businesses, in particular, smaller businesses and start up businesses? What negative impacts do you anticipate and how might these be mitigated?

Comments:

This will differ in different areas of the country. In areas of high unemployment, potential employees may discount the restrictions on their rights in favour of securing employment. In my area of the country employment is high and very few are unemployed. In such circumstances employees may avoid companies offering reduced employment, quite rightly seeing this as indicator that the company is less commited to its employees, instead looking for a short term win to terminate the employment of staff signed up with lower rights.

Question 12: What impact will this change to maternity notice period have on employers?

Comments:

None
Question 13: What, in your view, would employers do if employees wish to return early without giving 16 weeks' notice?

Comments:

This would create a clash with the rights of temporary employees brought in as cover. In general returning employees should be be skilled and valued workers with knowledge of the business and would generally be welcomed back with open arms.

Question 14: How will these changes impact on a company's payroll provisions?

Comments:

It will cost the business money to revise the processes already in place. Just one more red tape process to overcome.

Question 15: What effect will a compulsory 16 weeks' early return notice period have on the length of maternity leave that mothers take or adoption leave that parents take?

Comments:

We will only find out when it is implemented. 16 weeks is a long time and at the time of the notice the recipient may not feel as confident in their ability to return to work as they may nearer the time. Companies may lose experienced staff who might resign when the notice is issued, whereas without such a long notice period an nearer the end of their maternity leave they may be be far more happier to commit to that return to work.

Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

Yes ☒ No ☐

Comments:

Question 17: What impact do you think this proposal would have on the ability of employee owners to access support for training?

Comments:

None
Question 18: Do you have any comments on the Government's intention not to amend Company Law to implement the employee owner proposal?

Comments:

It seems like a short sighted, head in the sand, approach

Question 19: The Government welcomes views on particular safeguards that would need to be applied, in order to minimise opportunities for abuse.

Comments:

Ensure the scheme is company wide based on a full valuation and full share value transfer to employees.

Question 20: The Government welcomes views on whether the existing tax rules which apply to share-for-share exchanges (such as might happen when a company is taken over) and schemes of reconstruction should apply where shares issued in return for taking up the new status are involved

Comments:

Question 21: What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?

Comments:

Mixed value, short term advantage, outweighed by employee insecurity and dissatisfaction with a risk that the employees with see the scheme as an indication of the company lacking commitment to its employees.

Question 22: Would you be likely to take up the new status? What would the impact of the status be on your business?

Comments:

No

Question 23: What are your views on the take-up of this policy by:
   a) companies?
   b) individuals?

Comments:

a) advantageous in certain circumstances when high staff turnover is the norm.
b) impractical dilution of profits would result for individual employees. For employees they are likely to question the potential employer's long term commitment to its employees

Question 24: What are your views on the equality impact assessment? Are there other equality and wider considerations that need to be considered?

Comments:

Too much red tape, more costs.

Question 25: Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

☒ Please acknowledge this reply

Question 26: At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes ☒  No ☑
From:  
Sent: 22 October 2012 10:38  
To: Employee Owner Status Consultation  
Subject: Requiring new employees to become owner employees

Dear Sir/ Madam,

In a previous press release BIS stated that companies would able to require new employees to be owner employees. I can’t see this mentioned in the consultation. Has the Government abandoned this idea? Also the consultation does not seem to explicitly state that the idea is voluntary for existing staff – is this still the case?

Thanks

Joe O’Donnell  
IDS Employment Law Brief  
Incomes Data Services, Finsbury Tower, 103-105 Bunhill Row, London, EC1Y 8LZ

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In principle, the concept of awarding shares to employees could sound right. However unless there is a realistic exit for the shareholders a minority stake in a privately owned company has no real monetary value, and as a minority has no effective say in the management or operations of the business. For the majority shareholder, having a group of minority shareholders with disparate needs and objectives will divert management resource from the business of creating a successful business. The motivational effect of having a small stake in a business is, in practice, minimal. There are other implications, for example what happens to the shares if a shareholder leaves to work for a competitor, or is dismissed, or dies, or any other circumstance?

Successful privately owned businesses, of which there are many examples, have shown many ways of creating an engaged and positive workforce without dilution of shareholdings.

Regards

Alan Webb
Company Secretary and Finance Director

www.iracroft.co.uk

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Consultation on implementing employee owner status - response form

A copy of the Consultation on implementing employee owner status: can be found at:

http://www.bis.gov.uk/Consultations/consultation-on-implementing-employee-owner-status?cat=open

You can complete your response online through SurveyMonkey:
(https://www.surveymonkey.com/s/5QJQ935)

Alternatively, you can email, post or fax this completed response form to:

Email:
implementing.employee@bis.gsi.gov.uk

Postal address:

Paula Lovitt MBE
Department for Business, Innovation and Skills (BIS)
3 Floor Abbey 1
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: 8 November 2012
Your details

Name: Nicholas Grier
Organisation (if applicable): Edinburgh Napier University
Address: Craiglockhart Campus, Edinburgh EH14 1 DJ
Telephone: 
Fax: 

Please tick the boxes below that best describe you as a respondent to this:

☐ Business representative organisation/trade body
☐ Central government
☐ Charity or social enterprise
☐ Individual
☐ Large business (over 250 staff)
☐ Legal representative
☐ Local government
☐ Medium business (50 to 250 staff)
☐ Micro business (up to 9 staff)
☐ Small business (10 to 49 staff)
☐ Trade union or staff association
☒ Other (please describe) Academic
Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment statuses?

Comments:

Not this way!

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Comments:

I cannot comment on whether or not businesses would feel able to use all three statuses, but it seems to me that the question is not so much that businesses might or might not feel free to use all three employment statuses as whether or not employees were willing to swim in the uncharted waters of being employee owners. In a company like John Lewis's, with well regarded management, a culture of integrity and employee involvement in decision making, it would no doubt be acceptable. They, after all, appear to operate perfectly well within the current regime without the need to make their employees change status. Their workers are already "employee workers" but still have their rights under employment law. What would possibly make them want to change their status - even if they did get some relief from CGT? With many employees, they would have to have a lot of shares even to exceed the CGT annual allowance or to be in a very successful company. The bonus of freedom from CGT would only be effective where the likely gain was going to be substantial. It would also depend on how many shares their employers would let them sell back at any time (assuming the employer was the only market for their shares, apart, perhaps, from other shareholders). It seems to me that the issue is not one for companies: the issue is whether employees would be willing to take on third status even if it were available. A company could have third status if it wanted, assuming it is enacted, but would employees take it up? As indicated later, a very few might, but they would have to be very confident in the employers' ability to do so.

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

Comments:

Surely this is a matter for the employer to decide. If the employer is desperate to get employee owners, he is going to have to make the offer and the redemption of the shares as attractive as possible. Of course, the Treasury might be unhappy if notwithstanding my answer to 2 it turns out to be wildly effective and employee owners are making huge CGT-free gains. But I rather doubt that this will happen.

Question 4: When an employer buys back forfeited shares, should this be at full market value or some other level (eg. a fraction of market value) should some other
level be allowed in certain circumstances?

Comments:

It would be unfair on an employee if it were at anything less than full market value, and if it were not, it would be one further disincentive to take up the shares in the first place.

Question 5: How should a company go about carrying out a valuation of the shares? What would the administrative and cost impact be for a company if an independent valuation was required?

Comments:

I certainly think that there should be some independent valuation system since no one would trust the company’s own valuation. I cannot comment on the cost.

Question 6: The Government would welcome views on the level of advice and guidance that individuals and businesses might need to be fully aware of the implications of taking on employee owner status.

Comments:

The implications of giving up existing rights should be very clearly spelled out to employee owners. They are giving much for a highly uncertain future. I had shares in Bank of Scotland for years, resulting from my employment there and very good they were too; and then through utter mismanagement of what was once a well run bank their value was lost almost overnight. The same goes for those holding RBOS shares. Or even, to go back further, Railtrack shares. Employees are putting their faith in their managers and sadly that faith is not always justified. This needs to be very clearly spelled out.

Question 7: What impact will allowing individuals limited unfair dismissal protection and equity shares have on employers' appetite for recruiting?

Comments:

I am not an employer so I cannot answer this.

Question 8: What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?

Comments:

It may engender a great sense of loyalty and "pulling together" in some very well managed companies, since everyone has a lot at stake. It might suit bold employees, but not, I think, ordinary men and women with children (or likely to have more children) and mortgages. People need to feel safe at work and they like the
protection of current law - why would people give that up? I don't think there would be many benefits. As ever, it depends on the market and the type of employee. Where the employee has specialist skills which are much in demand, he will want both the employee rights under the current legislation and employee shares. But in general, the average not very brave employee would do well to avoid such new companies unless he is absolutely desperate for work and can get no other.

Question 9: Do you think these benefits will be greater for larger, smaller or start-up businesses?

Comments:

They might work for small start-up companies with adventurous employees. But in bigger companies with a wider employee mix I can't see it happening.

Question 10: What impact, if any, do you think the employee owner status will have on employment tribunal claims, e.g. for discrimination?

Comments:

I can't say.

Question 11: What impact do you think introducing the employee owner status with no statutory redundancy pay will have for businesses, in particular, smaller businesses and start up businesses? What negative impacts do you anticipate and how might these be mitigated?

Comments:

I think that with the exception of the start-up companies actively seeking very bold employees, most employees would probably shun such companies and choose to work for safer businesses. If I knew that I could be sacked at my manager's whim, whether or not I had shares, I would (a) want to be very highly paid while I was still working and (b) not feel any great loyalty to my employer. The moment I got the offer of a safer job I'd be off. I was once offered an interview for a job at Mirror Communications corporate department - but when I discovered that it would mean working for Robert Maxwell I said that frankly I'd rather stay where I was, even if MCC did pay well. The recruitment consultant unguardedly admitted that the Max Factor put a lot of good people off. The same would apply to a company that didn't have proper redundancy pay packages.

Question 12: What impact will this change to maternity notice period have on employers?

Comments:

I cannot comment on this. But such employers probably won't attract women of child-bearing age to work for them. Perhaps that's what they want. One must
wonder how they would feel about such rules applying to their own wives and daughters.

Question 13: What, in your view, would employers do if employees wish to return early without giving 16 weeks' notice?
Comments:
I can't say.

Question 14: How will these changes impact on a company's payroll provisions?
Comments:
I can't say

Question 15: What effect will a compulsory 16 weeks' early return notice period have on the length of maternity leave that mothers take or adoption leave that parents take?
Comments:
I can't say

Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?
Yes ☐  No ☐
Comments:
I can't say

Question 17: What impact do you think this proposal would have on the ability of employee owners to access support for training?
Comments:
I don't see why it should make any difference

Question 18: Do you have any comments on the Government's intention not to amend Company Law to implement the employee owner proposal?
Leaving the current arrangements alone seems reasonable to me.

Question 19: The Government welcomes views on particular safeguards that would need to be applied, in order to minimise opportunities for abuse.

Comments:

I cannot comment

Question 20: The Government welcomes views on whether the existing tax rules which apply to share-for-share exchanges (such as might happen when a company is taken over) and schemes of reconstruction should apply where shares issued in return for taking up the new status are involved

Comments:

I cannot comment

Question 21: What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?

Comments:

I very much doubt it would make any difference at all. I think it is a half-baked “bright idea” thought up on the spur of the moment without any investigation beforehand into its impact or its likely take-up. According to this week’s Private Eye, it was greeted with both derision and contempt in BIS, derision because it is so perfectly obvious that most employees would need their heads examined to give up their current rights, and contempt because some poor souls in BIS are going to have to go through the motions of drafting legislation etc before the whole idea is dumped, much as many of the ideas in Osborne’s last budget were dumped as being unworkable. Since the idea was first mooted, there has been no chorus of approval from employers. Why would that be? Would any serious employer want to stand up and say that it is keen to dump maternity provisions and other well known protections for staff? Of course not. Such a thing would be a PR disaster for that company. As senior civil servants are fond of saying, 5 out of 10 for effort and 2 out of 10 for feasibility.

Question 22: Would you be likely to take up the new status? What would the impact of the status be on your business?

Comments:

I am not an employer and I work in the public sector. What is immediately apparent is that as a worker you’d be a lot better off working in the public sector than for a company that might well offer lots of shares, which might make you lots of money - or equally might not - in return for giving up your employment rights. Most people
are not particularly entrepreneurial: they want a quiet life with a reasonable amount of money on the table each month, interesting worthwhile work, a degree of security and some free time. I'd personally far rather have that than live with the uncertainty of being sacked at a moment's notice even if I did have shares. This is not an answer to the question (which is posed for company directors) but the point is worth making. If potential employees don't want the new status, a business if not going to be better off offering it.

Question 23: What are your views on the take-up of this policy by:
   a) companies?
   b) individuals?

Comments:

This might suit some companies in certain areas, attracting certain types of employees (young, single, low mortgages, high risk-takers). I can't see it suiting many others. Most individuals, unless they really love risk or have no option because there is no other work available, would be absolutely bonkers to give up their employment rights for uncertain future in shares that might well turn out to be worthless - especially if your own opportunity to influence your company's management is minimal.

Question 24: What are your views on the equality impact assessment? Are there other equality and wider considerations that need to be considered?

Comments:

As I said early, this proposal is not good for women of child-bearing age.

Question 25: Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

☐ Please acknowledge this reply

Question 26: At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes ☒ No ☐
From: Guy Bailey [mailto:Guy.Bailey@cbi.org.uk]
Sent: 09 November 2012 17:16
To: [Redacted]
Subject: CBI response to employee owner consultation

Evening both

Apols for the late nature of the response – got caught in a bit of a pile up of responses and reports.

Happy to discuss.

Guy

Guy Bailey | Head of employment and employee relations
CBI | Employment & Skills Directorate | www.cbi.org.uk
Centre Point | 103 New Oxford Street | London | WC1A 1DU

The CBI's (Confederation of British Industry's) registered address is:
Centre Point, 103 New Oxford Street, London WC1A 1DU
Company number: RC000139

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CBI response to consultation on implementing employee owner status

1. The CBI is the premier lobbying organisation for UK business on national and international issues. We work with the UK government, international legislators and policymakers to help UK businesses compete effectively.

2. The UK’s flexible labour market plays a key role in supporting competitiveness, attracting investment and generating jobs. The pluralism enabled by the diverse array of contracting relationships available in the UK is a key source of this flexibility. This diversity in contractual relationships is matched by diversity in ownership structures, with many companies offering employee share-ownership schemes to motivate and reward their staff. The creation of a new form of contracting relationship that harnesses both these elements has the potential to further flexibility in the UK jobs market. CBI members believe that:

- employee-owner status is a niche idea likely to be of interest to some growing businesses
- a number of practical issues will constrain and target the approach
- the new status must not undermine hiring confidence by injecting uncertainty into the law
- the development of the employee-owner status must not detract from the delivery of wider employment law reform that is relevant for all businesses.

Employee-owner status is a niche idea likely to be of interest to some growing businesses

3. The key to the success of the UK’s diverse range of contracting relationships is that it allows businesses and workers to settle on the kind of relationship that works for both parties. The different forms of contract ensure that the labour market is well-placed to match job seekers with jobs that they are happy to undertake.

4. For a new form of employment status to get off the ground, it requires willing participants from both the company and workforce communities. While the majority of firms will already have the right balance of contract options available to them, it is probable that the proposed set of rights and flexibilities will find favour amongst certain sub-sets of the business community.

5. The fact that the biggest flexibilities introduced through an employee-owner contract are tied to exits from the business, while the benefits come in the form of equity in the business, suggest that this model may appeal to sectors and businesses where there is a higher tolerance for risk and reward flexibility. The granting of capital gains exempt equity in the business will allow employee-owners to share in the rewards of a growing business, while the removal of costs associated with unfair dismissal processes and redundancies will make it easier for firms to react quickly to changing circumstances. This form of relationship is reminiscent of the attitude in Silicon Valley, where tech firms and their staff are happy to engage in relatively riskier ventures in the hopes that the project that they are working on becomes the next Google or Facebook. It seems likely that the employee-owner status will be of interest to firms with a similar profile in the UK.
A number of practical issues will constrain and target the approach

6. The profile of companies that will be interested in this model of engagement is also likely to be defined by a number of structural features of the employee-owner status. These will further ensure its main use will be in growth companies of the sort identified in paragraph 5. We set out below the key features of the structure of employee-ownership that will lead to this outcome.

7. For companies, it is clear that the rights that employee-owners will have will not entirely reduce the risk of going to an employment tribunal. The removal of the process needed to protect against an unfair dismissal claim is attractive, but in practice employee-owners could still take a claim for discrimination when the employment relationship ends.

8. Secondly, the cost to firms – in terms of administration, time and external advice – to set up such a scheme is not insignificant. While it is a relatively easy task in the case of listed firms, for those without publically available shares the costs are opaque. Even where firms receive external advice to achieve a fair valuation of the equity on offer, this is no guarantee that HMRC will agree that it is correct. This uncertainty is likely to encourage a highly cautious approach so that firms avoid triggering an unexpected tax liability for under-valued shares.

9. Finally, companies will also incur costs in cases where employee-owners leave the business and have to relinquish their shares. It is likely that in most cases the firm will be the only interested party, given the relatively illiquid market for shares in small companies. The consultation document sets out that employers will be required to buy the shares where no other buyer can be found, at a ‘reasonable’ price. In practice, this will mean that firms will have to keep a ‘reserve’ set aside for such an occasion, as under S692(2) of the Companies Act 2006 they cannot buy back its own shares unless it has distributable profits sufficient to cover the cost of the buy-back.

10. A similar effect is also likely to be in place for employees. Specifically, it is difficult for an individual to make an informed decision about the potential future benefit of (capital gain exempt) increases in the value of the company at the point that they sign the contract. While a degree of uncertainty is inevitable – it is, in effect, a calculated gamble on the equity value rising – the uncertainties about what a ‘reasonable’ price for illiquid shares will be when they are realised, as well as around the valuation that HMRC will place on the shares at the point they are received are likely to be daunting.

11. These challenges – from businesses as well as for individuals – are ‘features’ of the system. Their effect could not be addressed without introducing significant complexity to the new status. The CBI believes that the best route is to accept that these issues will focus the use of the new status on a certain type of relationship and accept that this is the case. There would be too great a risk of unintended consequences if changes are made to long-established rules.

The new status must not undermine hiring confidence by introducing uncertainty into the law

12. It is vitally important that the introduction of these new rules does not have a disproportionate or negative impact on the rest of the labour market. The UK’s employment status tests have been built up organically over time, so that they are a well-understood part of the labour market; elements of the definition of ‘control’ can be traced to case law in the nineteenth century. The nuances that are provided by the current employment status settlement should not be lost through the imposition of an entirely new status alongside those of ‘employee’ and ‘worker’.

13. Practically speaking, this is most likely to manifest itself where an employee-owner is treated in the same manner as an employee. This is because the great strength of employment status is that it is the reality of the relationship – not terms assigned by a contract – that determines the nature of the engagement. For example, where a company requires that an employee-owner informs them of their return date from maternity leave eight weeks in advance – shorter than the 16 weeks that their employer can legally demand – they will look in practice very much like an employee who has been granted shares. It is essential that the new system is monitored to ensure that is does not increase legal complexity.
14. It is also of vital importance that there is no new legal framework imposed around the offering of employee-owner contracts. Employee-owners and businesses that enter into this kind of contractual relationship should do so with the fullest possible understanding of what it means for their rights and responsibilities to each other; this is the case for all contractual relationships.

15. However, the creation of safeguards – be they ‘protections’ against coercion, or the need for an individual to consult a lawyer before signing such a contract (as under S203 of the Employment Rights Act 1996) – would have very troubling implications for the rest of the labour market. The Government has been quite clear that employee-ownership is a different – not lesser – set of rights and responsibilities. It is only a very short step for tribunals to interpret any new regulations and apply them to the offer of all other forms of contract. This would significantly increase the cost of hiring, to the detriment of businesses and job-seekers. Clear guidance will be helpful to secure the successful introduction of employee-owner status, but that is as far as additional Government action should go.

16. Likewise, the creation of a legal framework around the determination of a ‘reasonable’ price that a business should pay to leavers should be avoided. There are a number of factors that might determine whether an offer is reasonable – including the health of the company, general economic circumstances and the circumstances in which the relationship is ending – and a legislative approach would reduce the flexibility to establish a methodology that works for the specific circumstances of a company and an individual. In particular, any attempt to create a legal definition of what constitutes a ‘good’ or ‘bad’ leaver would cut across company practice today, and would similarly be subjected to an expanded interpretation once tribunal cases are taken.

17. Finally, interaction between the new status and TUPE rules does need to be clarified. Given that churn in this type of business is likely to be greater than amongst the wider business community – be that through successful business being bought by other companies, or through failing businesses being passed on as a going concern – it is likely that the new status will interact disproportionately with the rules governing employee transfers. This should be factored into the expected consultation on reforms to the TUPE rules expected later this year.

The development of the employee-owner status must not detract from the delivery of wider employment law reform that is relevant for all businesses.

18. While the implementation of employee-owner status will be welcomed by a certain segment of the, the Government’s employment law review provides a welcome opportunity to take stock of the UK’s employment law framework more widely and ensure that it is underpins a pro-growth, pro-jobs environment. The cost of complying with employment rules has increased significantly in recent years, with the burdens felt most keenly by the small and medium sized firms that are rich with high growth potential.

19. While the last two years have been typified by a significant degree of consultation, the number of tangible changes experienced in the workplace is somewhat more limited. In the second half of the parliament, employers would like to see a relentless focus on delivery in a number of key areas:

- Undertake reform of the employment tribunal system by looking beyond simple tweaks and improvements to review the operation of the system as a whole.
- Reverse the damage done to the UK’s agency sector by the Agency Workers Regulations. Initially, the focus should be removing gold-plating of the directive from the UK regulations but in the long-term the government need to challenge the basis of the original directive.
- Speed up the process of collective redundancy consultation to 30 days. This would provide enough time for proper consultation and allow an employer to make swift decisions, giving staff certainty about their future.
- Simplify the rules around the harmonisation of terms in TUPE transfers. The current rules are overly bureaucratic and hamper effective management and good employee relations.
- Deliver a modernised industrial relations framework that is aligned with modern workplace.

Employment and skills directorate
November 2012
RMT response to the BIS consultation on "employee ownership status".

06.11.12

To whom it may concern,

The National Union of Rail, Maritime and Transport Workers (RMT) welcomes the opportunity to respond to the BIS consultation on "employee ownership status".

The RMT is the largest of the rail unions and organises 80,000 members across all sectors of the transport industry. We negotiate on behalf of our members with some 150 employers and have extensive experience of the various statuses of employment.

RMT fully supports the response of the Trade Union Congress (TUC).

Yours Sincerely

Bob Crow
General Secretary
implementing.employee@bgs.gsi.gov.uk

9 November 2012

EOA Response to Consultation on Implementing Newly Defined Employee Owner Status

Please find attached the Employee Ownership Association response, on behalf of our members, to the above consultation. Please note that this is submitted simply as confirmation of our original response to the consultation, a response that took the form of an open letter to Jo Swinson MP, a copy of which is available via a hyperlink cited in this document.

Employee ownership provides a brilliant opportunity for the UK economy and should be at the centre of UK industrial policy – capturing and growing the success of employee owned businesses in productivity, sustainability and innovation to maintain our competitiveness internationally.

Feel free to contact me on or if you have any questions about this response.

Yours faithfully

Iain Hasdell
Chief Executive, Employee Ownership Association
Response From The Employee Ownership Association

The Employee Ownership Association (EOA) is an independent, apolitical, not for profit members' organisation representing employed owned companies and thus thousands of employee owners across the UK. The businesses and employee owners we represent contribute more than £30bn to the UK economy each year. Employee owned businesses and their employee owners make a significant contribution to the economy and to society through successful and sustainable growth, higher rates of productivity and innovation, markedly higher fairness and transparency in operation and governance, more equitable remuneration policies, and a positive effect on the health and wellbeing of employees. We focus our support for our members and the wider employed-owned sector on the encouragement of more businesses into employee ownership, ensuring the sustainability of existing employee owned models, and establishing fair and equitable conditions for employee owners in the UK.

The majority of the 150 or so employee owned businesses we represent would like to see the modern, supportive types of tax and regulatory arrangements for employee ownership that exist, for example in many parts of the USA, and argue that the economic benefits of such arrangements in terms of productivity, innovation and the wellbeing of the workforce are incontestable - rather than being a point of view.

Our member businesses and the employee owners within them are alarmed at this Government proposal that seeks to redefine the term employee owner and promotes a model in which worker rights on such matters as redundancy and unfair dismissal are removed, in return for tax breaks on shares they might own in a business in which they work. Our members are alarmed partly because these proposals are disconnected from the advice Government received via the Nuttall Review about how to grow the number of employee owners in the UK and risk appearing to have ignored that advice, and partly because the proposals are being legislated for in Parliament ahead of the outcomes of this consultation process about the proposals.

There is no need to dilute the rights of workers in order to grow employee ownership and no data to suggest that doing so would significantly boost the number of employee owners. Indeed all of the evidence is that employee ownership in the UK is growing and the businesses concerned thriving, because they enhance not dilute the working conditions and entitlements of employee owners. Furthermore, the return on investment in terms of numbers of employee owners created would be dramatically higher if the estimated £100m of cost associated with these proposals was more wisely invested in initiatives to increase employee ownership in the UK, including investing some of it to implement the recommendations contained in the Nuttall Review.

The views of our members on these proposals were set out here in our recent open letter to Jo Swinson MP, http://bit.ly/R10MEs, which formed our original submission to this consultation process.

Should you wish to discuss any of the points in this submission, please contact EOA CEO Iain Hasdell at

November 2012
Implementing Employee Owner Status
Response from the British Chambers of Commerce

The British Chambers of Commerce (BCC) is the national voice of local business; a national network of 52 quality-accredited Chambers of Commerce, uniquely positioned at the heart of every business community in the UK. The BCC represents more than 100,000 businesses of all sizes, across all sectors of the economy, which together employ over five million people.

Summary

1. In the short period of consultation we have not been able to identify significant support for this new employment status. Most employers with whom we have discussed the concept do not believe that it would be popular among potential new members of staff and that any attempt only to offer Employee Owner (EO) status to new starters would simply reduce the talent pool available to them. It seems most suitable for arrangements where senior skilled workers are brought together to form a start-up with share ownership as an incentive and limited risk to capital from employment disputes.

2. We believe that the EO status does offer advantages for employers over employee status, but will not work for businesses if it reduces the talent pool from which they can recruit. Some businesses have expressed concern about potential reputational damage as a result of potential falls in share value and EOs not fully understanding the difference in employment rights compared to employees.

3. Our key points are:

- We do not believe the length of the consultation period for this change to be proportionate to its potential impacts.

- The new status is most likely to be used by small businesses in the early stages of their formation. In particular, it may be attractive where a small number of highly skilled workers are brought together to form a start-up using equity as an incentive and with reduced risk to capital from employment tribunals. We do not expect take-up of the new status among employers to be high and we believe it will only be attractive to a small minority of workers.
The reduced employment rights afforded to EOs will reduce the cost and risk of employment by removing the burden of formal procedures for dismissal and requests for flexible working. The absence of redundancy pay for these workers and longer notice periods for mothers returning to work will improve employers' ability to plan their workforce and respond to changing business conditions.

This greater flexibility and reduction in employment costs will have a positive effect on employers' willingness to hire. Overall we expect this new employment status to improve labour market flexibility, though the scale of the effect will be proportionate to its take-up.

Employers have concerns about the potential to discourage talent from wanting to work for them, the increased risk of discrimination claims and the cost of offering equity to employees.

Employers must have full flexibility to introduce the type of share scheme, including restrictions, that best suits their business, whether such shares include dividends and voting rights or not. They must be able to buy back shares without prohibitive valuation costs.

The Government will need to invest in raising awareness of the new employment status among businesses and the UK workforce. The BCC will undertake to inform members of accredited chambers about the new status. The new Gov.uk website should include comprehensive guidance for potential Employee Owners and their employers explaining the consequences of different employment statuses.
Introduction

4. 2012 has been marked by a second technical recession and low employer confidence with levels of unemployment that remain high but considerably lower than would usually be expected considering other economic indicators. The Bank of England acknowledges that the UK is unlikely to return to its pre-crisis growth path for some time. In this context the Government must continue its commitment to deregulation and work to increase business confidence to create additional private sector jobs.

5. Employers have welcomed the Government’s recent focus on resolving workplace disputes and attempts to improve employer confidence about managing their workforce. The extension of the qualifying period for unfair dismissal is perceived by employers as greatly reducing their risks when hiring. However, employment regulation including upcoming additional burdens such as flexible parental leave and right to request flexible working remains a significant barrier to employers when considering hiring additional staff.

Consultation period

6. The Government’s new consultation principles states that the governing principle should be proportionality. Meaningful consultation about the introduction of a new employment status would require longer than three weeks.

Existing employment statuses

7. Employers are able to use different types of employment status and choose between them based on their needs and the costs associated with each type of worker. This has been demonstrated recently with the fall in use by employers of agency workers as a result of the Agency Workers Regulations. Many employers value the ability to plan projects with the greater levels of control of their workforce and continuity afforded by employee status.

Limited appeal

8. The new status is most likely to be used by small businesses in the early stages of their formation. In particular, it may be attractive where a small number of highly skilled workers are brought together to form a start-up using equity as an incentive and to limit risk to capital from employment tribunals. We do not expect take-up of the new status among employers to be high and we believe it will only be attractive to a small minority of workers.

9. When consulting chamber members employers have regularly expressed their concern that potential employees may decide not to apply for a role if forced to accept EO status. The success of the EO

1 Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response. http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf
status will depend on the extent to which skilled workers are willing to trade the affected employment rights for equity.

10. The new status may also be used by some employers to recruit low skilled workers who are otherwise unlikely to find work, though we did not find any evidence of this among Chamber members.

Benefits to employers

11. The reduced employment rights afforded to EOs compared to employees translates to lower employment costs and reduced risk for employers. The real appeal for employers though will be to create a self-selecting pool of candidates who believe in the future growth of the business, are confident that they can contribute to that growth, and who want to benefit from it.

Removal of certain rights to claim unfair dismissal

12. The extension of the qualifying period from one to two years has greatly reduced the risk for employers when taking on new members of staff and most will only dismiss long-standing employees as a last resort. However, sometimes it is necessary and warranted to end the employment relationship, but employers can be tripped up by procedural errors, causing risk-averse firms to take on unnecessary cost and time to protect themselves. Malicious claims have to be defended and pose reputational risk to a business regardless of the strength of the case. The removal of certain rights to claim unfair dismissal beyond the two-year qualifying period will make EO status an attractive way to employ people.

Redundancy pay

13. Businesses are sometimes forced to cut staffing costs as a last resort. Not having to pay redundancy pay would save the business important cash at a difficult time.

Right to request flexible working

14. Employers already accept the vast majority of requests (97% according to a survey of our members in 2011) on business grounds and would do so regardless of whether they are made formally or informally. Not having to conform to a process will save time and reduce risk, without reducing the chances that a request will be granted.

Increase in notice for early return from maternity leave

15. Employers are not against maternity leave, but it is a fact that it causes disruption to a business. It is helpful for employers to receive the maximum warning about their employee’s plans to return to work so that they can plan appropriate cover. An employer is unlikely to make a valued member of staff wait the full 16 weeks if they can be accommodated sooner.

16. To be effective, the 16-week notice period must also apply to changes in planned parental leave. Otherwise a mother could give 16 weeks notice of her intention to return to work two weeks after giving birth then change her plans with just 8 weeks’ notice and finally give just 8 weeks’ notice of her actual planned date of return.
Disadvantages

17. Employers expressed concern that potential members of staff are unlikely to choose EO status over employee status unless offered equity of a value that would outweigh the benefits to the business, and that moral hazard might mean that those who choose EO status are those least likely to use employment rights, while those most likely to benefit from them would choose to be an employee.

18. The moral hazard argument means that in most situations for EO to work it would have to be compulsory for new members of staff, or for a particular category of the employer's staff.

19. Although claims of unfair dismissal remain a concern for employers, most believe that the extension of the qualifying period from one to two years has reduced much of the risk that comes with taking on a new member of staff. However, they remain extremely fearful of discrimination claims. Just as we expect an increase in discrimination claims from April 2013 as a result of the extension to the qualifying period for unfair dismissals, we would expect the introduction of EO status to increase the chances of discrimination claims from EOs. Discrimination claims are notoriously difficult to defend, take more time at tribunal and pose greater reputational and financial risk than unfair dismissal claims. This reduces the benefit of the removal of certain rights to claim unfair dismissal, but there remains an overall deregulatory benefit.

20. The Government must offer clear guidance to employers about behaviour that may superficially be allowed under the EO status, but actually be deemed discriminatory. For example, some lawyers have suggested that the refusal to consider flexible working requests may be considered as indirect sex discrimination.

21. Employers were universally concerned that only offering EO status would mean limiting the pool of talent from which they were recruiting. For most employers this potential loss of talent outweighed the benefits of reduced employment costs.

22. Most small businesses believed that the bureaucracy and cost of offering shares to employees would put them off using the EO status. There was also concern that it might make it more difficult to attract future investment or to sell the business, and that existing shareholders might object.

Types of shares

23. Employers must have full flexibility to introduce the type of share scheme, including restrictions, that best suits their business. This may include shares which carry rights to dividends and voting rights or not. They must be able to buy back shares without prohibitive valuation costs.

24. Just as employers should have maximum flexibility in the restrictions that they can apply to the shares that they offer EOs, the Government must invest in resources that EOs can consult to understand consequences of different employment statuses.
25. The Government must also invest in raising awareness of the new employment status among businesses and the UK workforce. The BCC will undertake to inform members of accredited chambers about the new status.

Conclusion

26. The Employee Owner status will offer reduced employment risk and costs to businesses that offer it. However, there are significant disadvantages which put most companies off using it. We believe that the success of the new status will depend on the number of employees willing to consider Employee Owner status for their next job. As a result, we do not expect many businesses to use the EO status.

Contact

27. We hope that the points raised in the above response are useful. If you would like to discuss any of our views in further detail, please do not hesitate to contact John Wastnage at j.wastnage@britishchambers.org.uk or on 020 7654 5806.

Yours sincerely

[Signature]

Dr Adam Marshall
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