



GMB

RESPONSE TO CONSULTATION

**GOOD WORK: THE TAYLOR REVIEW OF MODERN
WORKING PRACTICES**

**CONSULTATION ON MEASURES TO INCREASE
TRANSPARENCY IN THE UK LABOUR MARKET**

What organisation do you represent (if any)?

GMB

If you are representing an organisation, what type of organisation is it?

Trade Union

Are you happy for your response to be published?

Yes

Would you like to be contacted when the consultation response is published?

Yes

Introduction

GMB, Britain's general union, represents over 620,000 members throughout the UK in both the private and the public sectors. We have members working in the following areas of:

Financial, commercial and professional services

Clothing and textiles

Construction

Furniture Manufacturing

Energy and Utilities

Engineering

Food and Leisure

Process Industries

Public Services

Voluntary and Community/Third Sector

GMB welcomes the opportunity to respond to the consultation. GMB made a submission to the Matthew Taylor Review of Modern Working Practices in 2017 and we refer to this in our response to the present specific consultation on Transparency in the UK Labour Market. As a union affiliated to the TUC we also refer to research and survey materials provided by the TUC to assist unions in responding to the present consultation.

Our response is based on:

- i. Our collective day to day experiences representing members in a range of workplaces
- ii. Positions determined democratically by our membership
- iii. Our experience in legal cases and pursuing justice on behalf of workers

It is GMB's view that:

- The current employment rights system is not fit for a 21st century workforce. Employment rights have not kept pace with the changing nature of the working world. Existing enforcement mechanisms are still failing many workers.
- Where employment rights do exist, the proliferation of short-term contracted and agency work effectively limits access to those rights for hundreds of thousands of working people. All workers merit employment rights from day one, if that were the case it would help to address insecurity and poor treatment of agency workers.
- The Taylor Review missed the opportunity to put forward recommendations that would address the underlying problems in the UK labour market that cause large-scale non-compliance with employment rights.
- A much stronger inspection regime is required. Trade unions are part of the solution with workplace reps that can ensure laws are enforced and to help improve pay and working conditions. Workers should therefore have the right to invite unions to access workplaces to inform them of rights, laws and to represent and collectively bargain for them as well as ensuring employment law is correctly applied.

- HMRC has a responsibility to investigate companies suspected of using precarious forms of employment or bogus self-employment to avoid paying the correct level of tax. The current lack of transparency and willingness on the part of Government to prioritise and put resources that allow enforcement bodies to investigate and pursue employers further incentivises exploitative behaviour.
- Unless workers can enforce legal employment rights then their practical value is diminished.

Inspections

According to FLEX (Focus on Labour Inspection] the UK has 'some of the worst inspection rates of any country in Europe with just 0.9 labour inspectors per 100,000 members of the workforce. This is in contrast compared with 4.6 in Ireland, 5.1 in the Netherlands, 12.5 in Belgium and 18.9 in France (FLEX, 2015, 3). The UK therefore has one of the smallest labour inspectorates in Europe....'

Government spending cuts to existing inspectors will only make their job harder.

<http://www.labourexploitation.org/sites/default/files/publications/FLEXBISConsultationFINAL.pdf>

The role of trade unions

Trade Union Workplace reps help to give workers a collective voice and speak out in insecure workplaces without fear of reprisal. Reps help negotiate for greater investment in skills, push for improvements in health and safety, collectively bargain for fairer pay and conditions and contribute worker's insight to decision-making when consulted. Employment laws are important and can make a profound difference. However, if they are not enforced on the ground then they are in practice worth less.

Having union-trained reps familiar with employment law helps ensure businesses don't fall foul of the laws in the way they treat workers.

More and more workplaces would benefit from trade union reps and agreements to work with trade unions. It can be good for the businesses as well as for the employees, society and the economy as a whole. Yet the employers that flout employment law the most, exploit their workers and create a stressful working environment have the most to hide. They often do the most to prevent trade unions from speaking to their workforce or represent their members on the site. GMB believes that every worker should have the right to invite a trade union to their workplace and join a union without any resistance. Collective bargaining should be promoted as the primary method for raising workplace standards and ensuring compliance with employment rights.

Written Statements

Employees are entitled to receive a written statement of their terms and conditions within 2 months of starting work if they have continuous service of at least 1 month. But if no fixed hours have been agreed the employer only needs to state this – there is no requirement to offer a minimum number of hours in a week or month or to schedule them at a regular time. All employees should be provided with a written statement of their terms and conditions on day one.

As GMB understands it the government is proposing to implement the Taylor recommendation that all workers - not just employees - have a right to written statement of employment. Several of the proposals reflect measures recently published by European Commission for inclusion in a revised Directive on

Transparent and Predictable Working Conditions. GMB calls on the UK government to ensure that UK law keeps pace with EU standards, once we leave the EU.

GMB therefore welcomes the government decision to act on the long-standing call from trade unions to extend the right to a written statement to all workers as a day one right. These measures should help to improve transparency in the workplace and increase employers and workers' awareness of their rights and responsibilities. However providing workers with additional information will not of itself rid the UK of insecure work. Further measures are required.

Employment status and continuity of employment

The archaic rules about continuity of employment compound the problems associated with employment status so someone with many years of a relationship with an employer can often lose out through gaps in the provision of work.

Government should seek to change the statutory definition of continuity so that accrued service is not lost through breaks. GMB advocate the abolition of continuous service requirements altogether and provide for full employment rights from day one.

Claiming employment protection

Claiming employee or worker status is just one step to obtaining the protection of employment law. Most rights only apply after a minimum period of service. If there is a series of 'spot contracts' there may be no contract in force in the gaps. Therefore, it is difficult to access the most important employment protection rights for example unfair dismissal and redundancy which both require 2 years' continuous service. Even the right to a written statement of terms currently requires 1 month.

Under special the statutory rules gaps between engagements can be counted towards continuity even if there is no umbrella contract if they are caused by a

“temporary cessation of work” or in other words a fluctuation in demand for work of the kind in question. This is often the reason given by employers for offering work on a zero hours’ basis and a tribunal can find that there is continuity in this situation. But in practice this can be difficult where the gaps between shifts or jobs are longer in general than time spent at work. Work sharing or job pooling arrangements where the employer shares out a limited quantity of work may fall outside the scope of this provision.

Dismissal

A zero hours’ worker and one employed on a series of spot contracts may find it difficult to show that the cessation amounts to a dismissal as opposed to a failure to re-employ once more work becomes assailable (which would not be a dismissal).

The ending of a fixed term contract or a task contract is a dismissal but the narrow definition of dismissal will favour employers where there is any doubt about the way in which the relationship came to an end.

The need for change

GMB has called for change to the rules on continuity of employment for many years. Currently, it is too easy for employers to manipulate the system, to prevent individuals from qualifying for basic workplace rights, including maternity and paternity leave, the right to request flexible working, statutory redundancy pay and protection from unfair dismissal. Unscrupulous employers can gain a competitive advantage over reputable businesses for example by avoiding the costs of redundancy payments when deciding to lay off employees.

The decision by the Government to revise the rules on continuous employment is therefore to be welcomed. However, GMB believes that the proposal to extend the

period counted as a break in employment from one week to one month is not sufficient.. It will not prevent unscrupulous employers from abusing the system.

GMB believes that the rules on continuous employment need to be modernised to reflect the reality of the world of work. All workers should have day one rights including to maternity leave, and the right to request flexible working, statutory redundancy pay, and protection from unfair dismissal. The creation of day one rights would remove the problems of the lack of continuity of employment and ensure all workers benefit from the same level of rights.

Failing this, it is proposed the rules on continuity of employment should be reformed so that:

- Any calendar month during which an individual does any work for an employer or which is partly, or wholly governed by an employment contract, will count towards a workers' continuous service. Workers would accrue service month by month.
- Any periods of statutory leave, including holiday and any form of parental leave, will count towards a worker's continuous service.
- Where a worker has a gap in work of more than a month, their continuous service will not be broken and the clock will not return to zero. Instead it will pause and restart whenever they do future for the same employer.

These measures would significantly assist those who work intermittently for employers, including agency workers and those on zero hours contracts to qualify for key employment rights.

Failing this, the government must ensure that any legal changes must reflect existing working practices. In our opinion extending the period which does not break continuity from one week to one month would be insufficient. It would not be effective in sectors such as education where school holidays last longer than one month. A longer period must be prescribed, for example 6 months.

Holiday pay

GMB notes that following research conducted by the TUC at least 2 million workers do not receive legal minimum paid holiday entitlements, missing out on £1.6bn in paid holiday per year. In response, the government is proposing to run a campaign aimed at raising employers and workers' awareness of the right to holiday pay and how holiday pay should be calculated, particularly for those who work variable hours. As GMB understands it the government plans to consult the TUC and unions on this campaign. GMB calls for the campaign to focus on improving employers' compliance with holiday pay rules, rather than placing the onus on workers to complain about breaches of their statutory rights.

Extending the reference period for calculating holiday pay

GMB does not agree that the reference period for calculating holiday pay for those who work variable hours should be extended from 12 to 52 weeks. This approach will disadvantage low paid workers who work for short, but intense periods for employers, including zero hours contracts workers and agency workers.

It is not uncommon for employers to hire staff, including agency workers and ZHC workers to cover peak periods in demand. Under the current proposal, they could lose out financially. Their right to holiday pay would be diluted if it was calculated on

the basis on their average earnings over the course of the year rather than their earnings from the last 3 months.

GMB recognise that in some workplaces, employers and workers may benefit from some flexibility on holiday pay rules. In these circumstances GMB proposes that employers and unions should have the ability to negotiate longer reference periods through collective agreements only. Requiring agreement on a longer reference period in this way would ensure that the interests of workers are protected alongside the interests of the business.

Rolled up holiday pay

GMB agrees with the Government's assessment that paying workers rolled up holiday pay is unlawful under EU law. But too many employers abuse the rules to reduce their costs and deprive workers of the right to paid-time off. During to the short term nature of their employment, those on zero-hours contracts and agency workers are often the most vulnerable to such practices.

GMB calls for the following:

- The HMRC NMW team should be given responsibility for enforcing holiday pay, alongside the employment tribunals. But such enforcement will only be effective if the HMRC is properly resourced and equipped to take on the role.
- Such holiday pay abuses will only be prevented if the growth in insecure contracts is reversed and the government takes urgent action to ensure all workers benefit from stable, regular employment.

The Right to Request

As the TUC has pointed out in 2017 there were around 900,000 people on zero-hours contracts in the UK. Many of these workers face great uncertainty about how many hours they will work or what wages they will take home each month. In addition other areas workers in retail and hospitality for example have contracts giving them just 5, 8 or 10 hours a week. Often, they may get to work more than this, but any extra hours are not guaranteed.

Very few of those in insecure work, would willingly choose that arrangement over a permanent contract. Many companies argue for the flexibility insecure work provides them with – and it does. It provides the flexibility to have workers when and where they want, for as long as they want. For the worker, this can often mean not knowing what hours they will work, the constant worry of a job ending with little notice and no recompense and it means fewer employment rights. When it comes to exercising the rights that do exist, many such workers will choose not to 'make trouble' or demand their rights be enforced because their contract can be ended easily. This is a growing sector of the workforce and it is again a situation where flexibility for the employer means insecurity for the worker. As a result, workers feel constantly at the beck-and-call of their bosses, making it difficult to plan their lives outside of work.

GMB believes that the government's proposals for reform in this area fall short of what is required lack ambition and will prove ineffective. GMB fears that a right to request a more stable hours contract will not amount to a genuine right and will not provide the security required by those on zero-hours and short hours contracts. Such workers will often be reluctant to request for fear they will be sacked or will miss out on future work.

An employer should be required to issue the written statement of terms from day one to all workers – not just those that might be employees. At present the statement does not require the employer to give any specified working hours if none have been agreed. This could include setting out on call arrangements. The limitation with this is that it would not guarantee income when there is no work. Therefore, there should be a requirement for the employer to guarantee a minimum amount of work over a period of time such as by week or month.

Zero hours contracts

Workers with zero hours on the face of it have no mutuality of obligation and are thus not employees. But when such a worker is actually working, they probably will have a contract of employment for a period of time – a spot contract. If between hirings they are under an obligation to make themselves available for work (it does not have to be in writing), they may have an “umbrella contract” spanning the gaps between the periods of work. Some employers by way of a written agreement include “boiler plate” clauses designed to refute the existence of an umbrella contract. This could take the form of “obligations clauses” under which the employer makes it clear that it is under no obligation to provide work or with “substitutions” clauses which show that the worker by being able to substitute another person to perform the work does not undertake to provide their personal services (a pre-requisite for an employment contract).

GMB calls on the Government to ban zero-hours contracts.

- Most individuals on zero hours and short-hours contracts work regular hours for their employer, but at any point their employer can reduce or zero down their hours without notice. Workers should have a written contract which

guarantees their normal hours of work.

- Financial incentives should be created for employers to reduce their reliance on zero and short-hours business models. Workers employed on zero or short hours should have a right a premium rate of pay, for any non-contractual hours worked. The enhanced hourly pay rate should be linked to the individual's normal pay rather than an enhanced national minimum wage rate. This would ensure individuals are properly remunerated for the flexibility that they provide employers.
- All workers should have a right to reasonable notice of work shifts and of shift cancellations. Working parents often need greater time to arrange child care or indeed those workers caring for elderly relatives face similar difficulties in re-arranging care.
- Employers who do not provide reasonable notice of shifts should face substantial financial penalties.
- Where a shift is cancelled without notice, the worker should have a right to full pay for the planned shift and to be reimbursed for any costs they incurred, including transport and childcare costs.

If the government decides to introduce a Right to Request, then protections must be put in place, including:

- The right to request must be a day one right. A qualifying period would have the effect of excluding zero-hours workers, agency workers and those on temporary contracts from the right to ask for a more stable contract.
- Workers should be able to request a meeting with the employer at which they

have the statutory right to be accompanied by a union rep or full time official.

- Effective detriment provisions should be introduced, to ensure workers are not sacked, refused future work or suffer from other forms of victimisation because they requested a more stable contract.
- Employers should be required to provide written reasons and to justify any decision not to provide the individual a stable contract.
- Agency workers should have a right to request a direct and permanent contract with a hirer. After three months, the hirer should be required to review whether the need for work is on-going. If so, they should be required to offer the agency work direct employment.

Information and consultation

Trade Unions have a crucial role in workplaces and can:

- Improve pay and conditions for workers
- Tackle inequality
- Negotiate flexible working practices which ensure that all working people, including working parents, can enjoy a decent work-life balance
- Drive up health and safety standards
- Promote training and learning opportunities
- Reduce staff absences and turnover
- Encourage innovate working practices and improve productivity

GMB supports the Taylor Review recommendations that the Information and Consultation (ICE) Regulations should be extended to all workers. The statutory thresholds for requesting ICE arrangements should also be substantially reduced. Employers should be required to enter negotiations on establishing ICE arrangements when requested by a recognised union. In non-union workplaces, a request by 5 employees should also trigger negotiations with an employer.

But the government needs to go further to ensure all workers have the right to a voice at work and to be represented by an independent trade union. The government should:

- Ensure unions have a right to access workplaces so they have the opportunity to tell worker about the benefits of union membership
- Strengthen the right to be accompanied to ensure individual workers have the right to be represented by a union representative including when seeking an improvement in pay and conditions.
- Adopt measures which promote and extend collective bargaining, including in low paid, low productivity sectors for example by placing a duty on ACAS to promote collective bargaining.

This response now goes on to consider the specific questions in the consultation document.

Section A – Written Statements

Questions for employers

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

a) Your permanent employees

GMB's experience is that employers are more likely to provide a statement to permanent employees rather than non-permanent employees.

b) Your non-permanent staff

GMB's experience is that this is less likely despite the fact that there may be an obligation to do so.

Question 2: In general, when do individuals starting paid work at your organisation receive:

a) A written statement

b) An employment contract or other employment particulars

GMB believes that the right to a written statement should be a day one right.

Question 3: How long, on average, would it take a member of staff to produce a written statement for a new starter?

This should be a relatively simple task for the employer where standard terms and conditions apply and where collective bargaining is in place through recognition.

Question 4: How often do you seek legal advice when producing a written statement?

GMB believes that if this is a matter of concern for employers then the TUC's proposal for the Government to provide an on-line tool would be an appropriate solution.

Question 5: Are there other business costs associated with producing a written statement, in addition to personnel and legal costs that we should be aware of?

GMB believes that recognition and collective bargaining will reduce costs since this will standardise terms, reduce the risk of discrimination arising from individual contracts, and reduce the gender pay gap.

Questions for individuals

Question 6: If you are employed, have you received any of the following from your employer:

a) A written statement?

Please see our answer to 8 below.

b) An employment contract or other employment particulars?

Please see our answer to 8 below.

Question 7: If yes, when did you receive the following in relation to starting paid work with your employer

a) A written statement

Please see our answer to 8 below.

b) An employment contract or other employment particulars

Please see our answer to 8 below.

Question 8 – If Yes, was the information presented in a way that was easy to understand?

In GMB's experience employees are more likely to receive a written statement and/or a contract of employment in unionised workplaces. The use of terms being communicated through software such as electronic "apps" is a worrying trend and terms are often repeatedly changed.

All Respondents

Question 9 – To what extent do you agree that the right to a written statement should be extended to cover permanent employees with less than one month's service and non-permanent staff?

GMB strongly supports the right to a written statement being extended to all workers from day one. The TUC has estimated that at least 1.8 million workers would benefit from this including those on zero hours contracts and agency workers. This would enable workers to know their rights and to be able to enforce them, thus taking a step towards equalising the balance of power that exists in many situations.

Question 10 – The following items are currently prescribed contents of a principal written statement. Do you think they are helpful in setting out employment particulars?

a) the business's name

Yes. Workers need to know the name of their employer in order to enforce their rights. The use of intermediaries such as agencies or umbrella companies can often lead to a lack of clarity as to who the worker works for.

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

Yes. A worker needs to know their start date for various purposes such as continuous employment, unfair dismissal, redundancy, the right to request flexible working and so on.

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

Yes. This will help a worker to be aware of their rights and whether there may have been a break in continuous employment. This will be particularly relevant in business transfers (TUPE).

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

Yes. This will allow a worker to know whether they are being paid correctly, whether there are any unlawful deductions from their wages, and to plan and budget accordingly.

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

Yes. Workers on zero-hours contracts who may not have a regular working pattern need to know as they can often be informed of their working hours at very short notice. This will also allow workers to plan and budget. As indicated above GMB believes that the so-called flexibility of a zero hours contract is often a one sided arrangement where flexibility for the employer means insecurity for the worker. Workers should have the right to notice before shifts are allocated, before shifts are cancelled, and to be paid in full if the shift is cancelled without notice.

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

Yes. There is often a view that some workers are not entitled to receive holiday pay. Setting out this right would increase a worker's awareness of the existence of this right. This of itself will not address the fear that many workers have that they cannot take their holiday entitlement because of the risk that they may not be offered further work. This issue needs to be addressed more widely in terms of the general nature of insecure work in the UK.

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

Yes. In this way a worker will know where they have to work, plan travel time, and plan the cost of travel. Any requirement to relocate must be reasonable and subject to consultation with the individual worker.

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

Yes. Please see our answer to h) above.

Question 11 – Do you agree that the following additional items should be included on a principal written statement:

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

Yes. GMB agrees strongly.

This will allow a worker to look at forward planning including when to look for alternative work if the contract is due to end at a set date, and to allow for financial planning. This would particularly benefit those in insecure work. This would also make employers focus on their resource requirements and their business needs.

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

Yes, GMB agrees strongly. Workers should be entitled to notice before an agreement is terminated. Any disciplinary procedure that might be used to end the agreement should be referred to as well. As GMB understands it this is a matter being proposed by the EU Commission.

c) Sick leave and pay entitlement?

Yes. GMB agrees strongly. Workers should be made aware of their rights. This would also encourage employers to ensure that all workers, including non-permanent workers, are treated in the same way.

d) The duration and conditions of any probationary period?

Yes. GMB agrees strongly. If a worker is to be subject to a probationary period they should be made aware of this. The statement should make it clear that dismissal at

the end of the probationary period can only arise if the employer has a fair reason to dismiss and has followed a proper procedure.

e) Training requirements and entitlement?

Yes, GMB agrees strongly. This should make it clear that training is working time and that the worker will be paid for this.

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

Yes, GMB agrees strongly. Any "remuneration" should be set out in the statement to ensure that workers receive the full benefits to which they are entitled.

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

Yes, GMB agrees strongly. This will act as an incentive to employers to offer family friendly entitlements.

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

Question 12 – To what extent do you agree that the principal written statement should be provided on (or before) the individual's start date?

Yes. GMB agrees strongly. Delay may mean that the information is never provided. There should be one key document. If an employer seeks to make changes then they must be obliged to notify the worker of their intention to do so. This will help to avoid the situation whereby an employer may assume that they have a contractual right to vary a contract unilaterally when no such "right" exists, and the worker finds it difficult to challenge because they are unaware of their rights. Including all terms and

conditions in one document will allow the worker to refer back this. If there are agreed changes then these should be included in a new document.

Question 13 – To what extent do you agree that other parts of the written statement should be provided within two months of their start date?

GMB believes that all information should be provided by day one. A piecemeal approach will mean delay and increase the possibility that the worker does not receive the information at all.

Employment tribunal process and ACAS guidance

Questions for employees

Question 14 – Have you ever worked for an organisation that has not provided you with a written statement of employment particulars within 2 months of starting your job?

GMB has had experience of members not being provided with a written statement within two months.

Question 15 – If you answered yes to question 14, did you:

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

GMB has done so for members.

b) Pursue compensation?

GMB has done so.

Question 16 – If you answered yes to Question 15b, were you successful in securing compensation for failing to receive a written statement within 2 months of starting your job?

GMB has been successful in some cases.

Question 17 – if we introduced a stand-alone right for individuals to bring a claim for compensation where an employer has failed to provide a written statement, what impact do you think this will have? Please consider the impact on:

a) Individuals

At present there is no free-standing right for an individual to claim. If they had this it is likely that more individuals would receive it. Alongside this right detriment provisions should be introduced to protect individuals from victimisation.

b) Employers

This would encourage good practice. Employers who fail to provide one should face substantial penalties. In cases that involve other matters as well the tribunal should be required to check if the worker has received an accurate statement, and if not there should be a minimum award or a 25% uplift in compensation.

c) The Tribunal Service

There would be an increase in case load. Resources would need to be provided to the tribunal to take account of this. If trade unions are provided with greater rights of access and support for collective bargaining this would protect workers and see the resolution of disputes without the need for litigation.

Question 18 – Which of the following best describes your awareness of the ACAS guidance on written statement?

GMB is aware of the Guidance.

Question 19 – If you have some knowledge of the ACAS guidance on written statements, how helpful did you find it?

This is quite helpful, but needs to be updated to reflect any changes.

Section B Continuous Service

Question 20 – What do you think are the implications for business of the current rules on continuous service?

The current rules allow employers to manipulate the system. Employers often establish breaks in employment in order to prevent continuity and therefore gaining employment rights.

Question 21 – If you are employed, or represent employees, what are the implications for you or those you represent of the current rules on continuous service?

The current rules allow employers to manipulate the system. Employers often offer contracts for 23 months or some period just short of the 2 years qualifying periods for unfair dismissal or redundancy. In redundancy situations those with under 2 years' service are particularly vulnerable to selection as they can claim neither redundancy nor unfair dismissal.

Question 22: Do you have examples of instances where breaks in service have prevented employees from obtaining their rights that require a qualifying period?

Employers often use zero-hours contracts or create breaks in the contract to prevent a worker from qualifying for key employment rights.

Question 23: Do the current rules on continuous service cause any issues in your sector?

Please see our answer to Question 24 below.

Question 24: We have committed to extending the period counted as a break in continuous service beyond one week. What length do you think the break in continuous service should be?

As indicated above GJMB believes that the rules on continuous employment need to be modernised to reflect the reality of the world work in the 21st century. GMB believes that all workers should have day one rights including to maternity leave, and the right to request flexible working, statutory redundancy pay, and protection from unfair dismissal. The creation of day one rights would remove the problems of the lack of continuity of employment and ensure all working people benefit from the same decent floor of rights.

Failing this, it is proposed the rules on continuity of employment should be reformed so that:

- Any calendar month during which an individual does any work for an employer or which is partly, or wholly governed by an employment contract, will count

towards a workers' continuous service. Workers would accrue service month by month.

- Any periods of statutory leave, including holiday and any form of parental leave, will count towards a worker's continuous service.
- Where a worker has a gap in work of more than a month, their continuous service will not be broken and the clock will not return to zero. Instead it will pause and restart whenever they do future for the same employer.

These measures would significantly assist those who work intermittently for employers, including agency workers and those on zero hours contracts to qualify for key employment rights.

Failing this, the government must ensure that any legal changes must reflect existing working practices. Extending the period which does not break continuity from one week to one month would be insufficient. It would not be effective in sectors such as education where school holidays last longer than one month. A longer period must be prescribed, for example 6 months.

Question 25: Do you believe the existing exemptions to the break in continuous service rules are sufficient?

No, please see our answer to Question 24 above.

Question 26: We intend to update the guidance on continuous service, and would like to know what types of information you would find helpful in that guidance (Select all that will apply).

The guidance would benefit from more practical examples and references to where further information can be obtained. There should be information about what steps a worker can take if there is non-compliance and a reference to the positive role of trade unions in this regard. The guidance should be updated to take account of any changes in the rules.

Section C Holiday Pay

Question 27: Do you agree that government should take action to change the length of the holiday pay reference period?

As indicated above following research conducted by the TUC at least 2 million workers do not receive legal minimum paid holiday entitlements, missing out on £1.6bn in paid holiday per year. In response, the government is proposing to run a campaign aimed at raising employers and workers' awareness of the right to holiday pay and how holiday pay should be calculated, particularly for those who work variable hours. As GMB understands it the government plans to consult the TUC and unions on this campaign. GMB calls for the campaign to focus on improving employers' compliance with holiday pay rules, rather than placing the onus on workers to complain about breaches of their statutory rights.

Extending the reference period for calculating holiday pay

No. GMB does not agree that the reference period for calculating holiday pay for those who work variable hours should be extended from 12 to 52 weeks. This approach will disadvantage low paid workers who work for short, but intense periods for employers, including zero hours contracts workers and agency workers.

It is not uncommon for employers to hire staff, including agency workers and zero hours workers to cover peak periods in demand. Under the current proposal, they could lose out on financially. Their right to holiday pay would be diluted if it was calculated on the basis on their average earnings over the course of the year rather than their earnings from the last 3 months.

GMB recognises that in some workplaces, employers and workers may benefit from some flexibility on holiday pay rules. In these circumstances GMB proposes that employers and unions should have the ability to negotiate longer reference periods through collective agreements only. Requiring agreement on a longer reference period in this way would ensure that the interests of workers are protected alongside the interests of the business.

Question 28: If you answered yes to Q27, should government:

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

Please see our answer to Question 27 above.

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

Please see our answer to Question 27 above

c) set a different reference period?

Please see our answer to Question 27 above

Question 29: What is your understanding of atypical workers' arrangements in relation to annual leave and holiday pay?

For example:

a) Are they receiving and taking annual leave?

Workers on zero hours-contracts or other forms of insecure work often do not take leave because of a fear that they will not be offered more work. GMB would support the introduction of detriment type provisions to try to ensure that if a worker takes leave to which they are entitled to they are not placed at a disadvantage for doing so.

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

Rolled up holiday pay

GMB agrees with the Government's assessment that paying workers rolled up holiday pay is unlawful under EU law. But too many employers abuse the rules to reduce their costs and deprive workers of the right to paid-time off. During to the short term nature of their employment, those on zero hours contracts and agency workers are often the most vulnerable to such practices.

GMBG calls for the following:

- The HMRC NMW team should be given responsibility for enforcing holiday pay, alongside the employment tribunals. But such enforcement will only be effective if the HMRC is properly resourced and equipped to take on the role.
- Such holiday pay abuses will only be prevented if the growth in insecure contracts is reversed and the government takes urgent action to ensure all workers benefit from stable, regular employment.

Question 30: How might atypical workers be offered more choice in how they receive their holiday pay?

Atypical workers should be entitled to take paid holiday in the same way that other workers are entitled to.

Section D Right to Request

Question 31: Do you agree that we should introduce a Right to Request a more stable contract?

Yes. But what is proposed falls short of what is needed and GMB fears it will be no “right” at all. It will not provide security to workers most in need of it including those on zero-hours contracts. Instead the right should be to a fixed hours or guaranteed hours contract.

GMB calls on the Government to ban zero hours contracts.

- Most individuals on zero hours and short hours contracts work regular hours for their employer, but at any point their employer can reduce or zero down their hours without notice. Workers should have a written contract which guarantees their normal hours of work.
- Financial incentives should be created for employers to reduce their reliance on zero and short-hours business models. Workers employed on zero or short hours should have a right a premium rate of pay, for any non-contractual hours worked. The enhanced hourly pay rate should be linked to the individual's normal pay rather than an enhanced national minimum wage rate. This would ensure individuals are properly remunerated for the flexibility that they provide employers.

- All workers should have a right to reasonable notice of work shifts and of shift cancellations. Working parents often need greater time to arrange child care or indeed those workers caring for elderly relatives face similar difficulties in re-arranging care.
- Employers who do not provide reasonable notice of shifts should face substantial financial penalties.
- Where a shift is cancelled without notice, the worker should have a right to full pay for the planned shift and to be reimbursed for any costs they incurred, including transport and childcare costs.

Question 32: Should any group of workers be excluded from this right?

No.

GMB draws attention to the recommendation in the Taylor Review to the effect that agency workers should be given a right to request a direct employment contract with the hirer when they have been engaged with the same hirer for 12 months. GMB calls for this recommendation to be brought forward, along with other measures to protect agency workers including the abolition of the Swedish Derogation.

Question 33: Do you think this will help resolve the issues the review recommendations sought to address?

No.

But if the government decides to introduce a Right to Request, then protections must be put in place, including:

- The right to request must be a day one right. Any qualifying period would have

the effect of excluding those on zero-hours contracts, agency workers and those on temporary contracts from the right.

- Workers should be able to request a meeting with the employer at which they have the statutory right to be accompanied by a union rep or full time official.
- Effective detriment provisions should be introduced, to ensure workers are not sacked, refused future work, or face other forms of victimisation because they have requested a more stable contract.
- Employers should be required to provide written reasons and to justify any decision not to provide the individual a stable contract.
- Agency workers should have a right to request a direct and permanent contract with a hirer. After three months, the hirer should be required to review whether the need for work is on-going. If so, they should be required to offer the agency work direct employment.

Question 34: Should employers take account of the individual's working pattern in considering a request?

Yes. A fixed or guaranteed hours contract should reflect a worker's normal pattern of work.

Question 35: Should there be a qualifying period of continuous service before individuals are eligible for this right?

No. GMB believes this should be a day one right. Workers who work zero hours, agency workers, and those on short term contracts will rarely meet the requirements for continuous service. A gap of one week will normally be sufficient to break continuity and is likely to be a common occurrence for many in practice.

Question 36: What is an appropriate length of time the employer should be given to respond to the request?

GMB believes that this should be less than one month. Employers should be required to respond promptly as any further delay is likely to mean that those on short-term or intermittent work will lose out.

Question 37: Should there be a limit on the number of requests an individual can submit to their employer in a certain period of time?

No. GMB believes there should be no limits on the number of requests. Detriment provisions should be introduced to prevent any disadvantage from making a request.

Question 38: When considering requests, should Small and Medium Enterprises (SMEs) be included?

Yes. GMB believes that all workers should be entitled to the same rights regardless of the size of the employer

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

No. GMB believes that workers should not be penalised because they work for a smaller employer. BEIS should encourage Small and Medium Businesses to apply good practice and to respond to requests promptly.

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

GMB believes Trade Unions have a crucial role in workplaces and can:

- Improve pay and conditions for workers
- Tackle inequality

- Negotiate flexible working practices which ensure that all working people, including working parents, can enjoy a decent work-life balance
- Drive up health and safety standards
- Promote training and learning opportunities
- Reduce staff absences and turnover
- Encourage innovative working practices and improve productivity

GMB supports the Taylor Review recommendations that the Information and Consultation (ICE) Regulations should be extended to all workers. The statutory thresholds for requesting ICE arrangements should also be substantially reduced. Employers should be required to enter negotiations on establishing ICE arrangements when requested by a recognised union. In non-union workplaces, a request by 5 employees should also trigger negotiations with an employer.

But the government needs to go further to ensure all workers have the right to a voice at work and to be represented by an independent trade union. The government should:

- Ensure unions have a right to access workplaces so they have the opportunity to tell workers about the benefits of union membership
- Strengthen the right to be accompanied to ensure individual workers have the right to be represented by a union representative including when seeking an improvement in pay and conditions.
- Adopt measures which promote and extend collective bargaining, including in low paid, low productivity sectors for example by placing a duty on ACAS to promote collective bargaining.

Question 39 – Are there formal provisions in your workplace for informing and consulting employees about changes that may affect their work?

If yes, were these provisions

Requested by employees?

Initiated voluntarily by the employer/manager?

As the TUC has reported, only 7% of UK workplaces have formal joint consultative councils, and only one in ten workplaces have stand alone joint consultative committees dealing with matters such as business transfers (TUPE) or redundancies. There is generally an absence of formal information and consultation arrangements. However collective bargaining takes place where unions are recognised including information and consultation as part of standard industrial relations procedures.

Question 40 (for employees only) – Have you ever requested Information and Consultation of Employees provisions in your workplace?

Yes. Existing private sector arrangements were generally updated through pre-existing agreements. In the public sector most existing collective agreements provided for information and consultation arrangements. The Regulations have not been widely used.

If no, please describe why you have not made a request for ICE provisions.

Please select all that apply:

The reasons are due to the weaknesses in the current regulations:

The high level of thresholds means it is not practical to make a request particularly in larger organisations

Where thresholds are reached unions will generally look to the statutory recognition route via the Central Arbitration Committee as the preferred way forward (this allows for bargaining on pay, hours, and holidays).

The ICE Regulations undermine the primary role of trade unions to be consulted upon by contrast with business transfers (TUPE) or redundancies for example, and undermine existing industrial relations arrangements.

The limited nature of any penalty for failing to establish arrangements or failing to consult discourages take up as penalties are paid to the government and not the affected workforce. This undermines the deterrent nature of the process and its usefulness as a tool for unions.

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

GMB recognises the potential for information and consultation in the workplace in terms of higher productivity, democracy in the workplace, and a voice for workers in decision making. But it needs to be overhauled.

Question 41 – How might the ICE provisions be improved?

- The right should be extended to all workers
- Thresholds should be reduced
- Where unions are recognised employers should primarily by with unions

- The penalties for non-compliance should be increased to place them in line with Protective Awards for non-consultation over collective redundancies and non-consultation over TUPE transfers.

Question 42 – Should the ICE regulations be extended to include workers in addition to employees?

Yes. GMB believes all workers should have this right.

Question 43 – Should the threshold for successfully requesting ICE regulations be reduced from 10% of the workforce to 2%?

GMB agrees that the threshold should be reduced but believes that:

- Where a recognised union requests information and consultation arrangements employers should be required to negotiate with the union, and
- Where a union is not recognised, a request should be triggered if 5 workers make the request (in a very small employer the 2% trigger should apply).

Question 44 – Is it necessary for the percentage threshold for implementing ICE to equate to a minimum of 15 employees?

No. For the reasons above GMB believes that the requirement for 15 employees to request arrangements should be removed.

Question 45 – Are there other ways that the government can support businesses on employee/worker engagement?

Yes. This can be done by ensuring that trade unions are consulted on industrial strategy, and by ACAS promoting the benefits of the information and consultation arrangements (with updated guidance).

Question 46 – How might the Government build on the expertise of stakeholders such as Investors in People, ACAS, and Trade Unions to ensure employees and workers engage with information about their work?

Trade unions have a key role. They

- Improve pay and conditions for workers
- Tackle inequality
- Negotiate flexible working practices which ensure that all working people, including working parents, can enjoy a decent work-life balance
- Drive up health and safety standards
- Promote training and learning opportunities
- Reduce staff absences and turnover
- Encourage innovate working practices and improve productivity

GMB calls for a new right of access for unions to workplaces to be introduced alongside measures to support collective bargaining.

Question 47 – What steps could be taken to ensure workers' views are heard by employers and taken into account?

GMB believes that the Government should support unions to be able to represent workers by introducing a new right of access, extending the right to be accompanied, and adopting measures that support collective bargaining.

Question 48 – Are there other ways that the Government can support businesses on employee/worker engagement?

GMB believes a greater use of labour inspection would assist alongside measures to support collective bargaining. GMB calls on the Government to reinstate the duty on ACAS to promote collective bargaining.

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