

Response ID ANON-D3DV-X6N4-1

Submitted to **Good Work: the Taylor Review of Modern Employment Practices - Consultation on enforcement of employment rights recommendations**
Submitted on **2018-05-04 11:56:00**

About you

What is your name?

Name:

What is your email address?

Email:

Which best describes you?

An employer

If other, please specify :

If you represent employers' or employees'/workers' interests, are you:

Not Answered

If other, please specify :

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

Please type your response in the box below.:

Employment Intermediary/Umbrella company

Are you happy for your response to be published?

Yes, but without identifying information

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

Yes

(optional) How did you hear about this consultation?

Where did you hear of this consultation?:

Other (please specify):

State-led enforcement

1 Do you think workers typically receive pay during periods of annual leave or when they are off sick?

Yes

Please give reasons:

SSP and holiday pay as required by legislation if employed or on an assignment. If they are self-employed or between assignments with no overarching contract of employment they will not receive these payments.

2 Do you think problems are concentrated in any sector of the economy, or are suffered by any particular groups of workers? If yes, please specify which sectors/ groups and give reasons.

Yes

Please type your response in the box below.:

It is assumed that this relates to those engaged on zero hour contracts and "casual workers" who are not employed on conventional employment contracts. CIS operatives and the self-employed will not receive these provisions.

3 What barriers do you think are faced by individuals seeking to ensure they receive these payments?

Please type your response in the box below.:

Lack of knowledge of statutory rights and failure of workers to understand the various models of engagement.

4 What would be the advantages and disadvantages for businesses of state enforcement in these areas?

Advantages:

State enforcement may level the playing field for all businesses - none compliant businesses would not be at an advantage assuming that the state enforcement was effective.

If it was quicker than the court system that would be an advantage.

Disadvantages:

State enforcement may be bureaucratic and not seen as having "teeth".

5 What other measures, if any, could government take to encourage workers to raise concerns over these rights with their employer or the state?

Please type your response in the box below.:

We are of the view that workers are becoming more aware of the issues due to publicity surrounding recent high profile litigation. There could be improved provision of information on workers rights.

Enforcement of employment tribunal awards

6 Do you agree there is a need to simplify the process for enforcement of employment tribunals?

Yes

Please give reasons:

The current system is too slow and an administrative burden. It seems to be easy for parties to evade payment of awards.

7 The HMCTS enforcement reform project will improve user accessibility and support by introducing a digital point of entry for users interested in starting enforcement proceedings. How best do you think HMCTS can do this and is there anything further we can do to improve users' accessibility and provide support to users?

Please type your response in the box below.:

Providing a clear and simple portal system with a chat function.

8 The HMCTS enforcement reform project will simplify and digitise requests for enforcement through the introduction of a simplified digital system. How do you think HMCTS can simplify the enforcement process further for users?

Please type your response in the box below.:

No Comment.

9 The HMCTS enforcement reform project will streamline enforcement action by digitising and automating processes where appropriate. What parts of the civil enforcement process do you think would benefit from automation and what processes do you feel should remain as they currently are?

Please type your response in the box below.:

With the Order to Obtain Information there should still be a requirement for the debtor to attend and there be effective sanctions for non attendance. The other parts of the process should be automated but with a clear line of advice to enable those with debts to make informed choices.

10 Do you think HMCTS should make the enforcement of employment tribunals swifter by defaulting all judgments to the High Court for enforcement or should the option for each user to select High Court or County Court enforcement remain?

Please type your response in the box below and explain your answer.:

Those with judgments are only interested in the simplest, quickest and cheapest methods of enforcement. Whichever route achieves that should be the preferred route.

11 Do you have any further views on how the enforcement process can be simplified to make it more effective for users?

Please type your response in the box below.:

No

Establishing a naming scheme

12 When do you think it is most appropriate to name an employer for non-payment?

Issued with a penalty notice

Please give reasons for your answer and if other please specify:

This is the middle ground option - it gives a reasonable time to pay and there may be legitimate reasons for none payment. If it was at the warning notice stage it may be viewed as harsh and a disincentive to go ahead and make payment.

13 What other, if any, representations should be accepted for employers to not be named? Please give reasons.

Please type your response in the box below.:

None - "public interest" is a wide catch all.

14 What other ways do you think government could incentivise prompt payment of employment tribunal awards?

Please type your response in the box below.:

Awards and penalties at employment tribunal

15 Do you think that the power to impose a financial penalty for aggravated breach could be used more effectively if the legislation set out what types of breaches of employment law would be considered as an aggravated breach?

Yes

Please explain your answer:

Employers would be clear that a breach would hold real, meaningful sanctions.

16 Is what constitutes aggravated breach best left to judicial discretion or should we make changes to the circumstances that these powers can be applied?

Yes

Please explain your answer:

There should be judicial discretion with some clear guidelines issued to the judiciary.

17 Can you provide any categories that you think should be included as examples of aggravated breach?

Please type your response in the box below.:

Wilful disregard for employment rights.

Repeated offences.

The effect on the worker (vulnerable workers are likely to suffer a greater impact).

18 When considering the grounds for a second offence breach of employment status who should be responsible for providing evidence (or absence) of a first offence?

Please type your response in the box below and explain your answer.:

The response depends upon how effective a court could be in obtaining that evidence. In an ideal world there would be an efficient centralised system whereby employers could be recognised - possibly through their PAYE reference number or company number. The burden should not be on employers to prove the "not".

What factors should be considered in determining whether a subsequent claim is a 'second offence'? e.g. time period between claim and previous judgment, type of claim (different or the same), different claimants or same claimants, size of workforce etc.

Please type your response in the box below.:

A previous judgement or settlement (recognising that the settlement element may be hard to prove if the facts are not sufficiently recorded).

Broadly similar facts.

Not the size of the workforce.

20 How should a subsequent claim be deemed a "second offence"? e.g. broadly comparable facts, same or materially same working arrangements, other etc.

Please type your response in the box below.:

Broadly comparable facts.

21 Of the options outlined which do you believe would be the strongest deterrent to repeated non-compliance?

Not Answered

Please explain the reasons for your answers:

Whichever would work out as the most financially punitive and receive the most publicity to act as a deterrent.

22 Are there any alternative powers that could be used to achieve the aim of taking action against repeated non-compliance?

Please type your response in the box below.:

Not sure.

Response ID ANON-D3DV-X6NT-1

Submitted to **Good Work: the Taylor Review of Modern Employment Practices - Consultation on enforcement of employment rights recommendations**
Submitted on 2018-05-09 15:09:28

About you

What is your name?

Name:

What is your email address?

Email:

Which best describes you?

Representing employers' or employees'/workers' interests

If other, please specify :

If you represent employers' or employees'/workers' interests, are you:

☐ Other

If other, please specify :

HR and Payroll Services Specialist and provider

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

Please type your response in the box below.:

HR and Payroll Services

Are you happy for your response to be published?

☐ Yes

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

☐ Yes

(optional) How did you hear about this consultation?

☐ Where did you hear of this consultation?:

Other (please specify):

State-led enforcement

1 Do you think workers typically receive pay during periods of annual leave or when they are off sick?

☐ Yes

Please give reasons:

Generally yes, but there are vulnerable groups where the responsibilities for both are not clear or a little clouded.

So for full-time workers in reputable organisation yes. For casual labour, students, young people in smaller or low paid or low hours jobs, then no, there is much misunderstanding and confusion.

2 Do you think problems are concentrated in any sector of the economy, or are suffered by any particular groups of workers? If yes, please specify which sectors/ groups and give reasons.

☐ Yes

Please type your response in the box below.:

Low paid casual labour. Retail, Hospitality, warehouse, part time employment. Reason being is that the rules on entitlement are difficult or elements of keeping costs low are applied.

3 What barriers do you think are faced by individuals seeking to ensure they receive these payments?

Please type your response in the box below.:

Lack of understanding of their rights, plus complexities of the basis of any rights.

Vulnerability in relation to their personal circumstances and dependency on having an income - ie desperate for paid work and placed into position of accepting compromised terms and conditions in comparison with competition of candidates.

4 What would be the advantages and disadvantages for businesses of state enforcement in these areas?

Advantages:

A more level playing field in relation to costs of employment being more equalised across common industries. A more enthused workforce who consider that they are being looked after and consequently will look after their employee in return and the employer customers.

Disadvantages:

Misunderstandings of the actual requirements and being caught on what may be technical misunderstanding of the rules to the disadvantage of individual employees. It is perceived that some of the national minimum wage naming and shaming is for minor misunderstandings in some cases.

5 What other measures, if any, could government take to encourage workers to raise concerns over these rights with their employer or the state?

Please type your response in the box below.:

Whistleblowing measure similar to NMW. Rights to worker representation. Non discrimination clauses for those who wish to have their rights applied.

Enforcement of employment tribunal awards

6 Do you agree there is a need to simplify the process for enforcement of employment tribunals?

Yes

Please give reasons:

A more simpler statutory notice and enforcement process would be beneficial. would also incentivise employers to do the right thing as opposed to hiding behind the complexities or the enforcement process.

7 The HMCTS enforcement reform project will improve user accessibility and support by introducing a digital point of entry for users interested in starting enforcement proceedings. How best do you think HMCTS can do this and is there anything further we can do to improve users' accessibility and provide support to users?

Please type your response in the box below.:

A spread of access would be of benefit for web or mobile type entry or contact. Chat etc.

8 The HMCTS enforcement reform project will simplify and digitise requests for enforcement through the introduction of a simplified digital system. How do you think HMCTS can simplify the enforcement process further for users?

Please type your response in the box below.:

No further comment

9 The HMCTS enforcement reform project will streamline enforcement action by digitising and automating processes where appropriate. What parts of the civil enforcement process do you think would benefit from automation and what processes do you feel should remain as they currently are?

Please type your response in the box below.:

No further thought

10 Do you think HMCTS should make the enforcement of employment tribunals swifter by defaulting all judgments to the High Court for enforcement or should the option for each user to select High Court or County Court enforcement remain?

Please type your response in the box below and explain your answer.:

High Court enforcement

11 Do you have any further views on how the enforcement process can be simplified to make it more effective for users?

Please type your response in the box below.:

None

Establishing a naming scheme

12 When do you think it is most appropriate to name an employer for non-payment?

Unpaid penalty

Please give reasons for your answer and if other please specify:

13 What other, if any, representations should be accepted for employers to not be named? Please give reasons.

Please type your response in the box below.:

Genuine mistake or misunderstanding which is rectified.

14 What other ways do you think government could incentivise prompt payment of employment tribunal awards?

Please type your response in the box below.:

No further comment

Awards and penalties at employment tribunal

15 Do you think that the power to impose a financial penalty for aggravated breach could be used more effectively if the legislation set out what types of breaches of employment law would be considered as an aggravated breach?

Yes

Please explain your answer:

No further comment

16 Is what constitutes aggravated breach best left to judicial discretion or should we make changes to the circumstances that these powers can be applied?

Yes

Please explain your answer:

No further comment

17 Can you provide any categories that you think should be included as examples of aggravated breach?

Please type your response in the box below.:

None

18 When considering the grounds for a second offence breach of employment status who should be responsible for providing evidence (or absence) of a first offence?

Please type your response in the box below and explain your answer.:

No further thoughts

19 What factors should be considered in determining whether a subsequent claim is a 'second offence'? e.g. time period between claim and previous judgment, type of claim (different or the same), different claimants or same claimants, size of workforce etc.

Please type your response in the box below.:

No further comment

20 How should a subsequent claim be deemed a "second offence"? e.g. broadly comparable facts, same or materially same working arrangements, other etc.

Please type your response in the box below.:

No further comment

21 Of the options outlined which do you believe would be the strongest deterrent to repeated non-compliance?

Not Answered

Please explain the reasons for your answers:

No further comment

22 Are there any alternative powers that could be used to achieve the aim of taking action against repeated non-compliance?

Please type your response in the box below.:

No further comment

