

ID	69
Type	CS
Name	
Email	
Respondent type	Representing employers' or employees'/workers' interests
Which best describes you? - Other respondent type	
Representative type	Trade Union
Other representative type	
Organisation type	
Publication consent	Yes
Response contact consent	No
Where did you hear of this consultation?	Email from elsewhere
Other (please specify)	
Do you think workers typically receive pay during periods of annual leave or when they are off sick?	No

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Please give reasons	<p>Equity members typically experience problems with regard to the recognition of their right to holiday pay. Many of our members also work on a fee-earning basis and can find it difficult to access support during periods of sickness or injury.</p> <p>Our members are a vital component of one of the economy's fastest growing sectors in terms of GVA and employment. This growth sometimes comes at the cost of good, decent working conditions and it is crucial that the Government acts to ensure that these jobs are recognised as professional, highly skilled and deserving of proper terms and conditions. Unfortunately Equity is regularly called upon to assist individual members and groups of members with holiday pay queries and concerns. There are particular problems with productions which go bust or do not budget for their holiday pay obligations to performers, including but not limited to commercial tours. Despite the best efforts of Equity officials and staff it can be incredibly difficult to recover holiday pay (which is often paid out at the end of contracts to our members, due to the nature of their working patterns).</p> <p>Transparency in non union contracts is also a significant issue. The collective agreements negotiated by Equity in mainstream, well organised areas of work such theatre, film, television production etc. contain robust provisions for holiday and sick pay which are generally adhered to by employers and engagers. Where the union does not have collective agreements, members often report that there is a lack of clarity in their contracts about their rights to holiday and sickness pay.</p>
Do you think problems are concentrated in any sector of the economy, or are suffered by any particular groups of workers?	Yes

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What barriers do you think are faced by individuals seeking to ensure they receive these payments?	<p>Performers and creative workers currently operate in an employment environment characterised by a strong degree of flexibility, but no real security and often a denial of basic employment rights. They often work for a number of different employers in quick succession, on short term contracts with atypical patterns of work.</p> <p>Job insecurity, the informal nature of recruitment practices (discussed in Equity's Manifesto for Casting which recommends a series of reform to make access to the industry fairer) and a lack of knowledge about the employment status of performers are all factors inhibiting individuals from pursuing their entitlements under law. The fear of being excluded from the job market is a real concern for many of our members and leaves many feeling isolated and unable to raise an issue without the collective support of the union.</p> <p>Equity has had considerable success in educating employers and engagers about the need to pay the National Living Wage, through the Professionally Made, Professionally Paid Campaign however 47% of our members told us, in our most recent membership survey, that they had had to work for free at least once in the past twelve months.</p> <p>Equity has also taken on responsibility for educating our members and employers about the need to recognise legal duties to holidays and holiday pay through our Right to Rest campaign. We think that our efforts could be much more effective if backed up by Government intervention through the provision of sector specific guidance for a number of employment rights' issues in the creative industries - not just holiday and sick pay rights but also information about the Living Wage, agency regulations, health and safety, parental rights and discrimination/equality rights.</p>

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What would be the advantages and disadvantages for businesses of state enforcement in these areas?	<p>Sector specific advice, intervention and enforcement would be of enormous value to new and existing businesses in the creative sector who want to do the right thing and who wish to work in good faith with performers and other creative workers, but could do with guidance about their responsibilities. It is not right that it has been left to Equity to enforce and promote basic employment rights in our sector.</p> <p>Providing sector specific advice and better enforcement activity would give greater certainty to businesses and drive up professional standards in our growing sector. A greater understanding of the need to respect basic employment rights such as holiday and sick pay could lead to better practice across a range of issues including promoting diversity, an increase in family friendly working and action to prevent health and safety breaches.</p>
What would be the advantages and disadvantages for businesses of state enforcement in these areas?	<p>For state enforcement of basic employment rights to be effective it is essential that those who provide advice giving services (HMRC helplines etc) are educated about the worker status of performers and creative professionals. All too often our members report misunderstandings on the part of HMRC and other Government Departments about their status, leading to a lack of action in response to complaints.</p>

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What other measures, if any, could government take to encourage workers to raise concerns over these rights with their employer or the state?	<p>Supporting the growth of collective bargaining would be of enormous benefit to the state and the tax payer. Together with existing law and the tribunal system collective bargaining has been a vital component in extending rights for self employed workers in the creative sector - most notably through the enshrining of maternity, paternity and other rights in contracts.</p> <p>Workers in our sector would also be greatly aided by better enforcement activity with regard to agency regulations. For many years Equity has contributed to the creation and reform of legislation and regulations concerning agencies including important safeguards in the modelling sector. Because of the high number of mobile and potentially vulnerable workers in our sector, including supporting artists, it remains vital to properly resource enforcement activity. Equity is aware of continuing unscrupulous practices by agents including the charging of up front fees. Fees charged by agents for the services they provide should be limited to deductions from earnings so that agents can only benefit as a result of finding work for their clients. Equity also believes that a system of licensing continues to be urgently needed backed up by a dual system of civil and enforcement sanctions for breaches of the licensing regime and wider agency regulations.</p>
Do you agree there is a need to simplify the process for enforcement of employment tribunals?	Yes
Please give reasons	We agree with the submission made by the TUC for questions 6- 22
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?	
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?	

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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?	
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?	
Do you have any further views on how the enforcement process can be simplified to make it more effective for users?	
When do you think it is most appropriate to name an employer for non-payment (issued with a penalty notice / issued with a warning notice/ unpaid penalty/ other)?	Not Answered
Please give reasons	
What other, if any, representations should be accepted for employers to not be named	
What other ways do you think government could incentivise prompt payment of employment tribunal awards?	
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?	Not Answered
Please give reasons	
Is what constitutes aggravated breach best left to judicial discretion or should we make changes to the circumstances that these powers can be applied?	Not Answered
Please give reasons	
Can you provide any categories that you think should be included as examples of aggravated breach?	
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?	
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.	

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How should a subsequent claim be deemed a "second offence"? e.g. broadly comparable facts, same or materially same working arrangements, other etc.	
Of the options outlined which do you believe would be the strongest deterrent to repeated non-compliance? a. Aggravated breach penalty b. Costs order c. Uplift in compensation	Not Answered
Please give reasons	
Are there any alternative powers that could be used to achieve the aim of taking action against repeated non-compliance?	