



BRC RESPONSE TO BEIS & MOJ CONSULTATION ON ENFORCEMENT OF EMPLOYMENT RIGHTS

The BRC welcomes the opportunity to respond to this consultation following the Taylor Review of Modern Working Practices. The BRC is the lead trade association for the entire retail industry. Our industry spans large multiples, independents, high streets and out of town, from online to bricks and mortar, selling goods across all industries from clothing, footwear, food and homeware to electronics, health & beauty, jewellery and everything in between, to increasingly discerning consumers.

This submission provides responses to the most relevant questions in this consultation to the retail industry, including state-enforcement of SSP and holiday pay and a naming scheme for non-payment of tribunal awards.

The retail industry is concerned about the current enforcement environment in respect of state-led enforcement, particularly of HMRC enforcement. The retail industry supports robust enforcement of the minimum wage and supports an intelligence-based approach to enforcement. However the current approach taken by HMRC shows no distinction between those employers who wilfully disregard the legislation and those employers who have inadvertently fallen foul due to payroll, technical, or judgement issues where the legislation is unclear. There are a number of instances that the industry can point to where the enforcement body's interpretation of the legislation has led to retailers withdrawing or considering the withdrawal of colleague benefits and flexibility. We have been working with colleagues in BEIS and HMRC to raise these issues and develop a more constructive approach to state-led enforcement. Going forward the industry would like to see greater support for employers to comply and a review of the regulations to ensure the legislation provides for progressive pay practices designed to support colleagues manage their work and finances.

State enforcement of SSP and Holiday Pay

Effective enforcement across the labour market is critical to ongoing success of the retail industry. The retail industry is supportive of the UK's system of individual enforcement of employment rights through the tribunal system combined with pro-active enforcement in key areas. This approach provides employees with the confidence that exploitative behaviour will not be tolerated while allowing responsible employers to focus on running their businesses.

This approach is however predicated on up-to-date regulations as well as sufficient guidance for employers to comply effectively. It has become clear over the past 12 months following a shift in HMRC's approach to enforcement that the National Minimum Wage Regulations 1999 need to be updated to reflect modern pay practices and greater guidance is required to prevent broad interpretation of the regulations by compliance officers.

At this stage the retail industry is concerned that state enforcement of SSP and holiday pay would be unhelpful as there is not currently clarity over the regulations, nor sufficient guidance to support employers comply. There remains uncertainty over the regulations in relation to holiday pay and the industry is concerned that SSP guidelines are not reflective of modern and flexible working practices.

It is right for the government to review evaluate the extent of the issue in relation to non-payment of holiday pay and SSP. Calculating holiday pay and SSP entitlements for a workforce that operates flexible hours is challenging given the complexity of the regulations. However BRC members invest significant time and resource to ensure that their workers receive the right entitlements at the right time. BRC data indicates the vast majority of retailers offer benefits over and above statutory requirements including additional paid holiday. These benefits have been maintained despite significant increases to base pay as a result of the National Living Wage. On average, hourly paid employees in retail received 3.2 additional paid holiday days.¹ In relation to SSP retailers also go beyond the statutory minimums and a number of BRC members have occupational sick pay schemes in place. From this evidence we do not believe retail workers are at a higher risk of non-payment of entitlements than other workers in the labour market and there is little to suggest that state-enforcement is required.

Establishing a naming scheme

Workplace disputes are best resolved in the workplace however the employment tribunal (ET) plays an important role for both employers and individuals to ensure that rights and responsibilities are effectively enforced and upheld. The industry supports the principle that where an ET award is ordered, payment should be made promptly and in full. Despite this, the retail industry is not convinced that the introduction of a naming scheme for ET awards will deliver the desired outcome to create a mechanism for redress.

Given the government's decision to take develop a naming scheme, the BRC welcomes the opportunity to comment on how best to introduce a scheme. The retail industry believe it is a logical approach to tie the scheme to existing penalty scheme base the structure of the new naming scheme on the existing naming scheme for NMW and NLW, particularly in relation to the 42 day timeframe from notice to naming. This timeframe provides an adequate period for any appeal to take place. It is also important that employers have an adequate timeframe to respond to BEIS upon receipt of a naming notification. The industry would however urge the government to ensure the naming schemes are kept separate so that one does not get confused with the other.

In developing this new naming scheme, it is important BEIS consider feedback and views on the existing NMW/NLW name and shame scheme. The NMW/NLW naming scheme attracts a significant amount of media attention and public scrutiny. The reputational impact of being named on the list is significant for retailers and is something BRC members strive to avoid by compliance with the regulations. To have the biggest impact, the industry believes that those who have the largest individual underpayments should be listed first rather than the list being ordered by total underpayments. The current approach, ordering by largest total underpayment, will continually mean that large employers, who are often taking the most care to comply and support staff, appear at the top of the list because of the nature of their size rather employers who have underpaid workers by significant amounts.

¹ BRC Workforce Survey 2017.