



ENTERPRISE & REGULATORY REFORM BILL: Employment

These reforms, alongside secondary legislative reforms implemented earlier this year, will deliver benefits to business of more than **£40 million per year**

They constitute the most significant milestone to date in the implementation of reforms arising from the Government's Employment Law Review, ensuring the right balance between business confidence, economic growth and fairness to employees.

Employment measures in the ERR Bill are designed to:

- encourage the earliest possible resolution of disputes;
- deliver a more efficient employment tribunal system for all users; and
- give employers more confidence to hire new staff – supporting growth.

Early Conciliation – all prospective tribunal claimants will lodge details of their claim with Acas, giving parties the opportunity to engage in conciliation and encourage resolution outside the tribunal system. We have launched a consultation on the underpinning process for early conciliation. You can access the consultation document at

<https://www.gov.uk/government/consultations/early-conciliation-consultation-on-proposals-for-implementation>.

Rapid Resolution – a new power that will enable legal officers to determine straightforward tribunal claims, as part of our work to consider if there is a more efficient way of resolving less-complex tribunal claims. Any scheme we introduce will be subject to a full public consultation.

Settlement Agreements - provides that the offer of a settlement agreement cannot be used as evidence in unfair dismissal cases. We sought views on the guidance and principles to accompany settlement agreements through the '**Ending the Employment Relationship**' consultation, and you can access the full Government response at <https://www.gov.uk/government/consultations/ending-the-employment-relationship>. We are working closely with Acas to make a Statutory Code of Practice and accompanying guidance available to support the use of settlement agreements.

Unfair Dismissal Compensatory Award – power to amend the maximum limit for unfair dismissal compensation from the current £74,200 cap, to encourage realism about tribunal awards. Further to public consultation on '**Ending the Employment Relationship**', the Government has announced its intention to introduce a 12 months' pay cap alongside the existing overall cap. You can access the full response to the consultation here: <https://www.gov.uk/government/consultations/ending-the-employment-relationship>.

Financial Penalties – a new penalty of up to £5,000 that will be imposed at the tribunal's discretion against businesses where the breach of an employment right has aggravating features, such as malice or negligence – not applicable for inadvertent errors and will only affect rogue businesses.

Judges sitting alone in Employment Appeal Tribunal – amending the default composition in the Employment Appeal Tribunal so that judges sit alone unless they direct otherwise, to reduce the costs of the system for taxpayers and allow lay member resources to be deployed more efficiently.

Public Interest Disclosure Act - returning the Act to its original purpose by introducing a public interest test to exclude 'whistle blowing' claims which do not involve issues of a wider public interest (for example, breaches of an individual's employment contract that are of a purely personal interest).

There will be a change made to the scope of "worker" for whistleblowing purposes. This change will ensure various NHS workers who had been excluded from the scope of the legislation due to changes in contractual arrangements are covered. Government will also take a power in the legislation to make future changes to the scope via secondary legislation if required. This will ensure that the legislation is kept current.

Underhill – Sensible changes to primary legislation to help tribunals target deposit orders more effectively, to weed out weak allegations in a claim and address anomalies in the costs regime.

Employment Law Review (background info)

There were 186,300 tribunal claims in 2011-12, a welcome reduction on 2010/11, but there is still more to be done to improve the tribunal system with average costs per claim for businesses and the tax payer at £4,000 and £1,900 respectively.

Since the Employment Law Review was announced the Government has:

- launched an Employer's Charter that reassures employers about what they can already do to deal with staff issues in the workplace;
- launched a review of the compliance and enforcement regimes for employment law, with the aim of streamlining the system;
- removed the Default Retirement Age, thus removing significant paperwork obligations for employers and making it easier for older people to continue working;
- commissioned an independent review (from David Frost and Dame Carol Black) of the system for managing sickness absence;
- consulted on proposals to change the Collective Redundancies consultation rules;
- responded to a call for evidence on proposals to simplify the Transfer of Undertakings (Protection of Employment) – TUPE;
- repealed the planned extension of the right to request flexible working to parents of 17 year olds;
- decided not to bring forward the dual discrimination provision in the Equality Act;
- not extended the right to request time to train to companies with fewer than 250 staff; and
- announced in its response to the call for evidence on 'compensated no fault dismissal' for micro-businesses that it does not intend to proceed with this proposal and that there are no plans to implement any further recommendations from the Beecroft Report using the Enterprise and Regulatory Reform Bill.

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