TUC

Changing the world of work for good

# Taylor Review: Measures to improve transparency in the UK labour market

**TUC response to the BEIS consultation**

# Introduction

The Trades Union Congress (TUC) is the voice of Britain at work. We represent more than 5.5 million working people in 48 unions across the economy. We campaign for more and better jobs and a better working life for everyone, and we support trade unions to grow and thrive.

The TUC appreciates the opportunity to respond to the BEIS consultation on the recommendations contained in the Taylor Review of Modern Working Practices on measures to improve transparency in the UK labour market.

It is welcome the government plans to act on longstanding calls from unions that all workers should have rights to itemised payslips and to a written statement of their pay and conditions from day one of their employment.

The proposed changes to rules on continuous employment similarly represent a step in the right direction, but wider reform is needed to prevent employers from gaming the system to prevent workers from qualifying for statutory rights.

But overall the government's proposals lack ambition and will not address the imbalance of power in the workplace. The TUC is concerned the proposals will not tackle the problems created by growing insecurity in the UK labour market or prevent the mistreatment and exploitation of working people

The TUC estimates that at least 3.8 million – or one in nine of all workers – are employed in insecure employment – be it agency work, zero hours contracts or low paid self-employment – with job insecurity being a problem in every part of the UK.[1]

Those in insecure work tend to miss out on pay, with zero hours contract workers earning at least a third less than the average employee. They also miss out on key rights at work. The TUC has estimated that at least 1.8 million workers in insecure work are at risk of missing out on key employment rights including rights to:

- return to their job after having a baby
- paid time for union reps to carry out trade union duties, such as representing members and negotiating for better pay and conditions for working people
- statutory redundancy pay when their work dries up
- protection from unfair dismissal

Such workers lack the basic protections needed to challenge bad treatment in the workplace. And as a result, they miss out on the limited rights to which they are entitled. They are also more vulnerable to bullying and mistreatment in the workplace.

Those in agency work or employed on zero-hours contracts are constantly at the beck and call of employers, often receiving less than a day's notice of work or finding work is

[1] https://www.tuc.org.uk/news/1-9-workers-are-insecure-jobs-says-tuc

cancelled at similar short notice. Such working practices mean workers bear all the risk of varying demand, whilst employers reap all the financial rewards.

The government's response to these concerns is to increase transparency in the workplace. But providing workers with more information will not, by itself, change the imbalance of power in the workplace. It will not mean workers have a genuine choice over the type of work they accept or the hours they work. Nor will the proposals meet the government's stated objective of ensuring that flexibility in the workplace cuts both ways.

For there is nothing in the government's plans that will:

- End the hire and fire culture of zero hours working.
- Provide working people with guaranteed hours or the security of knowing how much they will be paid each week.
- Ensure that working people have voice at work.

The TUC believes that the government should deliver a new deal for working people which:

- Raises the floor of rights for all working people
- Provides workers with guaranteed hours and increased the predictability over their working hours and their take home pay, so they can plan their lives outside of work
- Ensures unions can access workplaces to tell people about the benefits of union membership
- Ensures all working people can have a genuine say over the things that matter to them most in the workplace, by promoting and extending collective bargaining

## Summary of key TUC views

The TUC's key views on the government's proposals can be summarised as follows:

### *Itemised payslips*

- It is welcome that the government has finally responded to long standing calls from trade unions that all workers should have a right to receive itemised pay slips. [2]
- While the recently introduced regulations represent a step in the right direction, it is regrettable that the new rules will not require employers to itemise a worker's travel and waiting time or how wages were calculated for these periods. Without this additional information, it will still be difficult for workers to check if they have been paid the National Minimum Wage for all their working hours.

### *Written statements*

The TUC agrees:

[2] See Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No.2) Order 2018 SI 2018/529 and Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018 SI 2018/147 which are due to come into effect on 6 April 2019.

- All workers should have a right to receive a written statement no later than the first day one of their employment.
- The written statement should contain additional information including about sick pay and leave, all forms of parental leave, and work-related training provided by the employer.
- If statements are provided electronically, the worker must be able to download, store and print the information. Preferably workers should also be provided with a backup paper copy.
- If an employer changes any information about pay and conditions, they must notify workers in writing and secure agreement to the proposed changes.
- Extending the right to a written statement will only be meaningful if accompanied by effective enforcement:
  - Workers should be able to take free-standing complaints to an employment tribunal to enforce their rights
  - Employers who fail to comply with their duties should face substantial penalties and the worker should be fully compensated.
  - In all cases, tribunals should check if a worker has received an accurate written statement. If not, the worker should be entitled to a minimum award or a 25 per cent uplift in compensation, whichever is the greater.
- The government should develop an online tool, to assist employers to prepare written statements.

### *Minding the gap – changes to rules on continuous service*

The government's commitment to revise the rules on continuous employment is welcome. However, the proposal to extend the period counted as a break in employment from one week to one month, does not go far enough. It will not prevent unscrupulous employers from gaming the system and depriving working people of their statutory rights.

The TUC believes that all workers should have day one rights to maternity leave, to request flexible working, statutory redundancy pay, and protection from unfair dismissal.

Failing this, the rules 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 then accrue service on a month by month basis.
- Any periods of statutory leave, including annual leave and all forms 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 stop clock will not return to zero. Instead it will pause and restart whenever the work undertakes future for the same employer.

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

### *Holiday pay*

At least 2 million workers do not receive legal minimum paid holiday entitlements, missing out on £1.6bn in paid holiday per year[3]. Urgent action is needed to ensure that all workers can take paid time off to rest, and to have time for their families and leisure.

- The HMRC NMW team should have 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.
- Holiday pay abuses can only genuinely be prevented if the growth in insecure contracts is reversed and the government acts to ensure all workers benefit from stable, regular employment.
- The reference period for calculating holiday pay for those who work variable hours should not be extended from 12 to 52 weeks, as a matter of default. This approach may disadvantage low paid workers who work for short, but intense periods for employers, including zero hours contracts workers and agency workers. But employers and unions should able to agree a longer reference period where such an agreement would ensure that the interests of workers are protected alongside the interests of the business.

### *Right to request a stable contract*

The TUC believes that a right to request a more stable hours contract will not amount to a genuine right or provide the security required by those on zero-hours and short hours contracts. Those in insecure work will be reluctant to request a stable contract for fear they will be sacked or will miss out on future work.

Instead the government should ban zero hours contracts:

- Many 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 these hours of work on an on-going basis.
- The law should create financial incentives 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 and must not undercut any collectively agreed rates. 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 four weeks to arrange child care.

[3]TUC analysis of LFS Q4 2016

- 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 press ahead with a right to request, then safeguards must be put in place, including:

- The right to request must be a day one right. A qualifying period would effectively exclude zero hours contract 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 right to be accompanied by a union rep or full time official. Workers should have the right to appeal any decision and a right to be accompanied at an appeal meeting.
- Effective anti-victimisation provisions should be introduced, to ensure workers are not sacked, refused future work or suffer other forms of detriment 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*

- The TUC agrees with the Taylor Review that the Information and Consultation of Employee (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 should 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 can tell worker about the benefits of union membership.
  - Strengthen the right to be accompanied, so that workers have the right to be represented by an independent union rep when seeking better pay and conditions.
  - Adopt measures to promote and extend collective bargaining, including in low paid, low productivity sectors.

## Responses to consultation questions

Section A

# Written Statements – Questions for unions

It is welcome that the government has finally decided to act on trade unions' long-standing call for the right to a written statement to be extended to all workers on day one of their employment.

We agree that the range of information provided to all workers should be expanded to include details of expected hours of work, sick pay and sick leave arrangements, parental leave rights and work-related training provided by employers. In our opinion, all prescribed information should be provided no later than the first day of an individual's employment and where possible within a single document.

These measures would help to improve transparency and increase employers and workers' awareness of their rights and responsibilities at work. They would also reduce the risk of disputes in the workplace and assist workers to enforce their rights.

But providing workers with additional information will not by itself change the power dynamic in the workplace or mean workers have an increased choice whether to accept insecure work. For many working people, insecure and low paid employment is the only option available to them. For example, most social care workers are now employed on zero hours contracts and some employers only recruit staff via agencies or umbrella companies.

Extending the right to a written statement will also be meaningless unless accompanied by effective enforcement.

The government should also ensure that future changes to the right to a written statement match – if not exceed – proposals from the European Commission for a new Directive on transparent and predictable working conditions. As the UK prepares for Brexit, the TUC believes it is vital that UK employment laws continue to keep pace with European standards. People working in UK deserve at least the same floor of rights as their counterparts working in Germany, Ireland or Spain. Such a move would also be consistent with the Prime Minister's repeated promises to 'protect and enhance' workers' rights after the UK leaves the EU.

### Question 1:

### Has the employer provided a written statement of employment in the last 12 months to:

### a) Your permanent employees

Unions report that employers are more likely to provide written statements or contracts to permanent staff than to those in non-permanent employment.

In most unionised workplaces, the prescribed information is provided to staff in a written contract of employment which is provided before they start employment or on the first day of employment.

However, in non-unionised workplace, including in sectors such as construction, logistics, agriculture and hospitality, workers often do not receive any written notice of their pay and conditions. Migrant workers are also less likely to receive a written statement of terms and conditions

### b) Your non-permanent staff

In some workplaces, employers recognise it is good practice to provide non-permanent workers with a written statement or contract of employment.

In 2015, the CIPD reported that over four-fifths (81 per cent) of employers provide zero-hours contract workers with a written contract[4]. Agency workers also have a right to basic written information at the point when they first register with an employment business and before each new assignment[5].

But, many workers employed in insecure, non-permanent jobs do not receive any written information about their pay, hours and other working conditions. This inevitably creates an imbalance of power. It also makes it difficult for workers to enforce their rights, including to the National Minimum Wage and holiday pay and to challenge any unfair deductions from wages.

## Question 2

### In general, when do individuals starting paid work at your organisation receive a written statement or contract of employment:

In many unionised workplaces, employers issue staff with a full written contract either before a person starts work or on the first day of their employment.

## Question 3

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

**Under half-an-hour**

[4] CIPD (2015) *Zero-hours and short-hours contracts in the UK: Employer and employee perspectives*
[5] The Conduct of Employment Agencies and Employment Businesses Regulations 2013.

The government's impact assessment suggests it should only take employers a few moments to prepare a written statement for a new starter[6]. The TUC agrees.

Employers should prepare a template written statement for different jobs and will only need to adjust a few details before issuing it to a new starter.

The preparation time for written statements will be lower in workplaces in workplaces:

- Where trade unions are recognised and terms and conditions will be set out in a collective agreement
- With standardised terms and conditions

If employers decide to use individualised terms and conditions, the process may take more time.

## Question 4

### How often do you seek legal advice when producing a written statement?

The TUC is concerned that some employers – particularly SME businesses - report that they usually seek legal advice before completing a written statement. In our view, this is unnecessary.

The government should develop and promote an online tool which assists employers to prepare written statements.

## 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?

**No.** The preparation a written statement should be a relatively straightforward process for most employers. This should particularly be the case in unionised workplaces and where employers use standardised terms and conditions.

An extension of the right to a written statement is likely to have significant business benefits.

It should:

- Improve transparency and openness in the workplace
- Make employers more aware of their responsibilities and improve compliance with employment law standards.

[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701010/extending-right-to-written-statement-non-employee-workers-ia.pdf

- Reduce disputes over employment conditions, thereby reducing the risks and costs of litigation.
- Help to create a level playing field, ensuring that good practice employers are not undercut by the employers who mistreat their staff.

Section A

# Written Statements – Questions for individuals

## Question 6:

### If you are employed, have you received a written statement or a contract of employment from your employer. If yes, when did you receive it in relation to starting paid work with your employer:

As reported above, in many unionised workplaces, individuals will receive a written contract of employment which sets out their pay and conditions. Employers will notify individuals of changes to pay and conditions in a written statement or correspondence.

Unions report that employers increasingly opt to provide information to workers electronically, including through staff intranets.

Whilst electronic formats may be flexible, staff are often not informed if an employer unilaterally decides to change the terms and conditions. Employers rarely send individuals a written statement notifying them of changes and do not secure the agreement of a recognised union or the individuals affected in advance. This may amount to a breach of contract.

In some sectors, individuals are informed of their hours of work, pay rates and holiday pay entitlements via social media, including texts, apps and WhatsApp groups. Such forms of media are controlled by the employer and the information can easily be deleted or changed – making it difficult for individuals to check or enforce their rights.

The TUC believes that the Employment Rights Act 1996 and accompanying guidance should be amended to confirm that if an employer decides to:

- inform a worker of their pay and conditions electronically, the worker must be able to download, store and print the information. Preferably workers should also be provided with a backup paper copy.
- change any electronically held information about pay and conditions, they must inform any affected workers directly in writing and secure their agreement to the proposed changes.

## Question 7:

Unions report that in many unionised workplaces individuals are provided with a contract before their paid work starts or on the first day of starting paid work.

## Question 8

### If yes, was the information presented in a way that was easy to understand?

The quality and transparency of information provided to working people varies from workplace to workplace.

Key information about pay, hours and other working conditions is often not presented in clear terms. The TUC is concerned that contracts are increasingly written in opaque and complex legal language. This can be misleading and inevitably disadvantages workers, especially migrant workers, for whom English is not their first language. Such practices seem particularly prevalent in sectors where there is widespread use of insecure work and false self-employment arrangements.

The develop of online tools to assist employers to prepare a written statement could help with these issues.

Section A

# Written Statements – Questions for all

## 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?

**Agree strongly**

The TUC firmly supports the Taylor Review recommendation that the right to a written statement should be extended to *all workers*.

We are not alone in taking this view. The CBI[7] and CIPD[8] have also called for the right to a written statement to be extended to all workers.

The TUC believes there is a compelling case for this policy change:

---

[7] http://www.cbi.org.uk/cbi-prod/assets/File/Work%20that%20works%20for%20all%20-%20CBI%20submission%20to%20Matthew%20Taylor.pdf

[8] https://www.cipd.co.uk/Images/cipd_submission_to_beis_select_committee_on_future_of_work_final_minus_data_tcm18-17693.pdf

- Many in precarious forms of work, including zero hours contracts workers, do not receive any written details about their pay and hours of work. As the government's impact assessment highlighted, this leads to an imbalance of power, and means that individuals are more vulnerable to mistreatment and abuse in the workplace[9].
- Extending the right to a written statement to all workers could raise workers' and employers' awareness of their respective rights and responsibilities at work
- It could assist workers to enforce their rights, including to be paid the NMW and holiday pay.
- It could encourage employers to plan for their workforce needs and to offer more predictable working patterns to staff. This would assist workers to budget and organise their lives outside the workplace.
- It could encourage managers to treat their staff more consistently. Currently, employers tend to restrict workplace entitlements, such as sick pay and leave, family friendly policies and work-related training, to permanent staff, whilst those on insecure contracts miss out.
- The CIPD has reported over four-fifths (81 per cent) of employers provide zero-hours contract workers with a written contract. Requiring all employers to adopt the same good practice will also create a more level playing field for good employers, by ensuring they cannot be undercut by unscrupulous employers.

The government's proposal to extend the right to a written statement to all workers is therefore welcome. But it is important to note that providing workers with more information at work will not, by itself, reset the balance of power in the workplace or prevent the mistreatment or abuse of working people.

## 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**

Due to the growing fragmentation of the UK labour market and the increasing use of intermediaries such as agencies, umbrella companies and sub-contractors, individuals are often not aware who their employer is. Informing workers of the name of their employer increases transparency and assists individuals to enforce their rights.

[9] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701010/extending-right-to-written-statement-non-employee-workers-ia.pdf

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

**Yes**

Providing individuals with their job title and job description helps to clarify work expectations at work. It also enables people to assess whether they are receiving equal treatment at work.

Notifying people of the start date of their employment helps individuals to check whether they have sufficient continuous service to qualify for key employment rights such as maternity and paternity leave, the right to request flexible working, statutory redundancy pay and protection from unfair dismissal.

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

**Yes**

This information is particularly important for:

- Employees affected by TUPE transfers. The law should be amended to ensure that transferred workers receive a written statement detailing the pay and other working conditions which will be transferred to a new employment - and are therefore protected by the TUPE regulations. This would increase transparency and avoid disputes.
- Currently, service of certain public sector employees with a previous employer counts for the purposes of calculating entitlement to statutory redundancy pay. This includes teachers and local government staff who move to a new school or local authority. The TUC believes these provisions should be extended to other statutory employment rights.

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

**Yes**

It is very important for workers to be informed how much they will be paid and how their pay will be calculated. Workers should also be notified in writing about all forms of remuneration including overtime pay, commission, or bonuses.

This information assists individuals to assess whether:

- they have been paid in full and on time
- their employer has made any unlawful deductions
- they have been paid the National Minimum Wage

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

**Yes**

It is very important that individuals are informed about their hours of work, including whether they will be required to do overtime and/or work at weekends or at night. Such information enables individuals to plan their lives away from the workplace.

Too often those in insecure forms of work, such as zero hours contract workers and agency workers, do not have any guaranteed working hours and can often be offered work or find work is cancelled at very short notice.

A TUC poll commissioned in 2017 revealed:

- Nearly three-quarters (73 per cent) have been offered work at less than 24 hours' notice, with 27 per cent reporting this was a regular experience.
- More than half (51 per cent) of zero-hours workers have had shifts cancelled at less than 24 hours' notice.

As a result, workers feel constantly at the beck and call of employers and find it impossible to organise childcare or plan for and enjoy a social life.

The TUC believes that when the right to a written statement is extended to all workers, the provisions on hours of work should be adapted. All workers should have a right to be informed about their expected hours of work, including the number of hours they will be offered each week / month and the times when they will be called on to work.

Workers should also have right to reasonable notice of any hours of work (See below). Working parents often require at least 4 weeks' notice to plan childcare. Details of this notice period should be included in the written statement.

These provisions would mirror proposals currently under discussion in the EU. (See the EU Commission's proposal for a new Directive in Transparent and Predictable Working Conditions).

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

**Yes**

It is also vital that workers are informed about holiday pay and how it is calculated. Such information is particularly important for agency workers and those on zero hours contracts, who often miss out on paid holidays or receive rolled up holiday pay.

The TUC recently estimated that UK workers lose out on £1.6bn each year on holiday pay. Extending the right to a written statement to all workers may help to improve employers' compliance with holiday pay requirements and assist workers to enforce their rights.

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

**Yes**

The TUC agrees that the current requirement for employers to inform workers of their place or work and if they will be expected to relocate should be retained. Identifying the place of work assists workers to calculate their right to pay for travel time.

It is important that any guidance on the right to a written statement makes clear that any requirement to relocate is reasonable. This would protect workers, including agency workers, from being asked to travel long distances for work, without being paid for their travel time or reimbursed for their travel costs or accommodation.

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

**Yes**

See response to (g)

## Question 11

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

It is welcome that the government plans to expand the information to be included in a written statement, in line with recommendations recently published by the EU Commission.[10]

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

**Agree strongly**

This will provide increased transparency and predictability especially for those in insecure work. It will also encourage employers to plan their work needs in advance.

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

**Agree strongly**

The TUC agrees that all workers – not just employees - should be entitled to notice before the contract can be terminated. Details of the relevant notice period should be included in the written statement. These provisions would go some way towards ending the hire and fire culture of zero hours and agency working.

All workers should also be notified of the disciplinary procedure which will employers will follow before deciding to terminate their contract. In our opinion, it is not fair that employers can currently fire 'workers' at will – without first identifying a potential fair reason for a person's dismissal or in redundancy cases exploring alternative forms of employment.

### c) Sick leave and pay entitlement?

**Agree strongly**

[10] See the Commission's proposals for a new Directive on transparent and predictable working conditions

All workers should be informed about sick pay and sick leave. In too many workplaces, enhanced sick pay and leave arrangements only apply to permanent staff, whilst zero hours workers and agency workers are expected to rely on statutory sick pay when they are too ill to work.

A TUC poll commissioned in 2017 found that just one in eight zero hours contract workers get any sick pay. We also estimate that nearly 500,000 people on a zero-hours contract or in insecure temporary work do not qualify for statutory sick pay because they do not meet the income tests to qualify for these benefits.[11]

Requiring employers to inform all workers of sick pay and leave arrangements in the written statement may encourage managers to treat all staff consistently and to extend enhanced workplace policies to those on temporary or insecure contracts. As a minimum, it would improve workers' awareness of their rights to statutory sick pay.

## d) The duration and conditions of any probationary period?

**Agree**

Where an employer decides to use probationary periods, it is important that workers are informed about the length of the probation and of any conditions which the worker will need to meet.

However, probationary periods are not used in all sectors. It is important this is reflected in any amendments to the Employment Rights Act 1996 and in any accompanying guidance.

The TUC is increasingly concerned employers use probationary periods to dismiss staff without following a full disciplinary procedure. Where this happens, workers may be deprived of their rights to natural justice and to be accompanied by a trade union rep. This is a clear breach of section 10 of the Employment Relations Act 1999 which provides that workers have a right to be accompanied in any meeting which may result in their dismissal.

It is important that any guidance on the right to a written statement emphasises that employers should not use probationary procedures to circumvent disciplinary procedures or trade union rights. The statutory right to be accompanied should also be extended to apply to probationary hearings.

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

**Agree strongly**

It is important that workers are informed about all forms of remuneration including vouchers, lunches, uniform allowances and rights to be provided with personal protective equipment.

Requiring employers to inform all workers about all forms of remuneration may encourage managers to treat staff consistently and to ensure that those on temporary or insecure contracts are not treated unfairly or discriminated against.

---

[11] TUC (2017) *The Gig is Up* available at: https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf

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

**Agree strongly**

It is important that the right to a written statement is updated to take account of new statutory rights to leave. Employers should be required inform all workers about workplace policies, including pay arrangements, for the different forms of leave, for exampe:

- maternity, paternity and adoptive leave and pay,
- parental leave,
- time off for dependents
- time to attend ante-natal appointments, GP, dental or other medical appointments
- time off for jury service etc

Too often those on temporary or insecure contracts miss out on key family friendly rights and entitlements. Requiring employers to include information about leave arrangements in the written statement may encourage employers not to discriminate against zero hours contract workers and agency workers. Any accompanying guidance should encourage employers to extend workplace policies to all workers, not just permanent employees.

## Questions 12 & 13

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

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

The TUC believes that the right to a written statement should be a day one right. Currently, the right to a written statement is limited to employees and must be provided during the first two months of their employment. Employees with contracts which last for less than one month are also not entitled to a written statement. This means that many employed in insecure or short-term work do not receive any written information about their pay and conditions.

Preferably workers should receive full information about their pay and conditions before they start work – and certainly no later than the first day of employment.

We do not agree that employers should have up to two months to provide certain information. This approach would mean that many workers, especially those in insecure and temporary work, may never receive the information. This proposal is also not consistent with EU Commission recommendations.

Where possible, information should be included in a single document. Workers are more likely to keep this in a safe place, whilst supplementary documents are more likely to be misplaced.

Workers must retain the right to be informed in writing of any changes to their terms and conditions.

## Questions 14 to 16

### 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?

Unions have reported that in many workplaces, including in sectors such as construction, logistics, agriculture and hospitality, workers often do not receive any written notice of their pay and conditions. Migrant workers are also less likely to receive a written statement of terms and conditions.

### 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)?

### b) Pursue compensation?

### 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?

In most unionised workplaces, unions will ensure that workers are notified in writing of their pay and conditions.

Unions also play a leading role in supporting members to enforce their statutory rights in employment tribunals, including by seeking compensation for members where they have not received a written statement.

## Question 17

### If we introduced a standalone 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 would have?

Extending the right to a written statement to all workers could prove meaningless in practice unless it is accompanied by effective enforcement. The TUC therefore believes that:

- The government should introduce a standalone right for individuals to claim compensation where their employer has failed to provide a written statement. Non-statutory measures alone will not suffice to change employer practice.
- Employers who fail to comply with their duties should face substantial penalties and the worker should be fully compensated. Workers should also be protected from victimisation for pursuing such a claim.
- In all other employment tribunal cases, tribunals should be required check if a worker has received an accurate written statement. If not, the worker should be entitled to a minimum award or a 25 per cent uplift in compensation, whichever is the greater.
- Statutory enforcement agencies should also be responsible for checking if employers provide all workers with written statements or a contract of employment.
- The government should develop an online tool, to assist employers to prepare written statements.

## Please consider the impact on:

### a) Individuals

The introduction of a standalone right for individuals to claim compensation where their employer has failed to provide a written statement is likely to increase compliance with the new rules. It should also mean more workers receive written statements.

However, the TUC does not believe that a standalone right by itself will be sufficient to change employers particularly in non-unionised workplaces. Most workers are unlikely to take a standalone claim to a tribunal for fear that they will be victimised and lose their job. It is highly unlikely zero hours contract workers or agency workers would take such a claim for fear they would not be offered any future work.

The government should take a proactive approach to enforcing new rights to written statements. The onus should not be placed on workers alone to enforce their rights. Employment tribunals should be tasked with checking whether employers have issued written statements in all cases. Where there is no evidence that employers have complied, workers should receive either a fixed award or an uplift in compensation.

### b) Employers

Requiring all employers to provide a written statement to all workers would help to create a level playing field. Employers, who already adopt such practices, would no longer be undercut by the employers who mistreat their staff.

In the absence of such a right for workers to take a standalone claim to an employment tribunal would mean unscrupulous employers are likely to ignore the law and vulnerable workers will lose out on the rights.

### c) The Tribunal Service

The TUC does not anticipate that the creation of a standalone right to claim compensation will substantially increase the workloads of tribunals.

Most workers are unlikely to take a standalone claim to a tribunal for fear that they will be victimised at work. This is particularly true for zero hours contract workers and agency workers who are likely to be deterred from enforcing their rights for fear they would not be offered future work.

## Questions 18 & 19

### Which of the following best describes your awareness of the Acas guidance on Written Statements?

The TUC has a good knowledge of the Acas guidance on written statements. It is unlikely however that most union reps are aware of the guidance.

### If you have some knowledge of the Acas guidance on written statements, how helpful did you find it?

**Quite helpful**

The TUC believes that the Acas guidance is quite helpful. But the text is slightly misleading as it suggests that the written statement is a legally binding agreement between the employer and the employee. It would be clearer to say that a statement can be taken as evidence of a contract of employment – (which will be legally binding).

It would be helpful for Acas to provide more detailed, good practice guidance on the use of written statements. Throughout this response we have highlighted points for inclusion in the guidance.

The TUC would also support the development of an online tool to assist employers to prepare written statements.

Section B

# Continuous service

The TUC believes the rules on continuity of employment need to be modernised to reflect the reality of the world of work.

Too often those employed on temporary contracts or in intermittent work miss out on key employment protections because they experience gaps in their employment. The current system makes it all too easy for employers to dodge their employment law obligations.

The TUC believes that all workers should have day one rights to maternity leave, and the right to request flexible working, statutory redundancy pay, and protection from unfair dismissal.

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

- Workers should accrue service on a month by month basis.
- Any periods of statutory leave, including holiday and any form of parental leave, should 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.

## Question 20

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

Currently, it is too easy for employers to game the system and circumvent employment law obligations.

Employers can make significant cost savings by employing workers on short term or intermittent contracts. For example, they can avoid statutory redundancy payments, making it far cheaper to lay off staff. They can also fire staff at will, without the need to provide workers with notice or to follow a fair disciplinary and dismissal procedure.

As a result, they can gain significant competitive advantage over more reputable firms

## 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 system is heavily weighted against employees. Employers can easily manipulate the rules to deprive them of their rights.

The rules also mean that those most in need of protection in the workplace - including zero hours contract workers, agency workers and those employed on fixed term contracts - are the very ones who are most likely to lose out key protections because they experience gaps in employment.

As a result:

- Working parents in insecure work are not guaranteed the right to return to work after have a baby
- Those who opt for so-called 'flexible forms of work' to balance their work and family lives do not have a right to request flexible working
- Zero hours contracts can be fired at will, without any notice
- Agency workers, zero hours contract workers and independent contractors are not entitled to statutory redundancy pay when the work dries up, even though they may have worked for the same employer for many years.

## Question 22

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

**Yes**

Zero hours contract workers and other employed on casual contracts face significant difficulties accruing sufficient continuous service qualifying for key statutory rights.

In *Carmichael v National Power PLC*[12], the House of Lords confirmed that when at work, casual workers qualify as employees. But their contract ceases to exist as soon as the working day comes to an end, due to a lack of mutuality of employment. This means that if a zero hours contract worker has a gap of more than one week between work, their service will be broken, and they will not qualify for statutory rights. This will be the case even where they have worked for the same employer over several years.

The courts have tried to resolve with this problem by finding that an umbrella contract spans any gaps between work.[13] This has assisted some zero-hours contract workers who work relatively regularly and have a genuine expectation of future hours. But those with more varied or random working patterns continue to lose out.

And the problems with continuity of employment are not limited to those employed in highly insecure work. Staff employed on a succession of fixed term contracts, term-time only contracts and sessional work can also face significant difficulties accruing sufficient

[12] *Carmichael v National Power plc* [1999] UKHL 47
[13] *Pulse Healthcare Ltd v Carewatch Care Services Ltd & 6 Others* UKEAT/0123/12/BA

continuous service to qualify for key statutory rights. Employers will often schedule staff contracts in a pattern designed to prevent individuals qualifying for statutory rights. For example:

- In higher education, universities employ teaching staff on a succession of 9-month contracts, with lecturers facing a gap in employment over the summer period.
- National newspapers lay off staff for a month each year to ensure journalists don't qualify for statutory protections.
- Employers will also lay off staff after 18 months employment to ensure they do not qualify for unfair dismissal rights.

## Question 23

## Do the current rules on continuous service cause any issues in your sector?

**Yes**

Problems with the current rules on continuous employment can be found in most sectors of the economy. But they are likely to be more prevalent:

- In sectors where there is a concentration of non-guaranteed hours contracts, including admin and support services, hospitality, construction and health and social work.[14]
- In schools, where staff are employed on term-time only contracts
- In higher education, where teaching staff are employed on fixed term contracts or employed on zero hours contracts. UCU reports that 46 per of universities and 60 per cent of colleges use zero hours contracts to deliver teaching. 68 per cent of research staff in higher education are on fixed term contracts, with many more dependent on short-term funding for continued employment.[15]
- In sectors where work tends to be seasonal, including tourism and the leisure sectors.

## 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?

The government's commitment to revise the rules on continuous employment is welcome. However, the current proposals to extend the period counted as a break in employment, do not go far enough. It will not prevent unscrupulous employers from gaming the system to deprive working people of their statutory rights.

---

[14] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/april2018

[15] https://www.ucu.org.uk/stampout

The TUC would call on the government to take a more comprehensive approach when reforming rules on continuous service to ensure that workers benefit from full employment rights and employers are not able to game the system.

The TUC's preferred option would be for the government to introduce day one rights for all workers. This approach would solve all the currently problems relating to continuous employment.

Failing this, we would propose a four-pronged approach to the reform of continuity rules:

- Workers would accrue service on a month by month basis (rather than the current week-by week approach).
- 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. The test should also be amended to confirm that mutuality of obligation should not be taken into consideration when determining whether an individual has continuous employment.
- The reasons for absence from work which do not break but rather count towards continuity should be extended to include all forms of statutory leave (including family related leave and statutory holidays)
- Where a worker has a gap in work of more than a month, their continuous service will not be broken and stop clock will not return to zero. Instead it will pause and restart whenever they do future for the same employer.

If the government decides not to adopt this more comprehensive approach, it important that any legal reforms reflect the reality of working practice and that employers are not able to game the system.

In our opinion extending the period which does not break continuity from one week to one month would be insufficient. For example, it would not be effective in the education sector where summer vacations can last for more than one month.

The change might also have a perverse impact, with unscrupulous employers deciding to lay staff off for five or six weeks each year to avoid statutory employment rights. This would place unreasonable pressure on household incomes, as workers would not be paid during this period. If the government goes down this route they will need to substantially extend the period, for example, to 6 months.

## Question 25

## Do you believe the existing exemptions to the break in continuous service rules are sufficient?

**No**

## If no, do you have views on additional circumstances that should be added?

The existing exemptions to the break in continuous service should be updated to include all forms of statutory leave including statutory holidays, maternity, paternity and adoption leave, shared parental leave, parental leave, and time off for dependants.

It is particularly important that statutory holiday is included, as it is not always clear whether zero hours workers' contracts continue to exist during any periods of statutory leave.

## 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 apply)

The TUC agrees that the government should update the guidance on continuous service. It would be helpful for the guidance to include:

- Real examples of how the continuity rules should work in practice, including examples
  - based on existing case law
  - illustrating how the rules apply to zero hours contract workers and agency workers
- Signposts to further information
- Information on what workers should do if they feel their employer has not complied with the legislation

Section C

# Holiday pay

## Question 27

### Do you think that the government should take action to change the length of the holiday pay reference period?

**No**

The TUC 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, as a matter of default.

This approach may 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. For example, retail workers will often work long hours during the Christmas period. Similarly, staff working in fresh food processing factories will work long hours in the run up to Christmas and before other holiday periods. Such workers, who sacrifice time with their families over the festive season, are often keen to take time off soon after the busy period.

But they could lose out on financially if the reference period for calculating holiday pay was extended from 12 to 52 weeks. The amount of pay they would receive when on leave could 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.

We recognise that in some workplaces, employers and working people may benefit from increased flexibility on holiday pay rules. We therefore propose that employers and unions should have the ability to negotiate longer reference periods through collective agreements. Requiring agreement on a longer reference period would ensure that the interests of workers are protected alongside the needs of the business.

## Question 28

### Should the government:

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

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

### c) Set a different reference period

As stated above, the TUC believes that the current 12-week default period should be retained. But employers and recognised unions should be able to agree a longer reference period of up to 12 months where it is in the interests of both the business and the workforce.

In some sectors, such as retail and the rail industry, unions have already agreed longer reference periods for calculating holiday pay for those on variable hours contracts. Before reaching such agreements, unions will have fully consulted their members and checked that the longer reference period protected workers' interests, as well as providing the business with additional flexibility.

## Question 29

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

### a) Are they receiving and taking annual leave?

**No**

### b) Are they receiving holiday pay but not taking annual leave?

**Yes**

### d) Do you know of any other arrangements that are used? Please explain your answer.

Recent TUC analysis has shown that 2 million workers are not receiving their paid holiday entitlement, at a cost of £1.6bn. [16] Those in insecure work are at a particular risk of losing out on holiday rights. For example, a TUC survey from 2017 revealed that two-fifths (43 per cent) of zero hours contract workers don't get any holiday pay.

Unions have reported that there is a common perception amongst employers that zero hours contract workers, agency workers and other people in insecure employment are not entitled to paid holidays – even though the legal reality may be very different.

This misconception in part results from confusion and uncertainty over workers' employment status. Unscrupulous employers take advantage of this uncertainty and tell workers that they are not entitled to holiday pay. Others seek to falsely classify workers as 'self-employed' to dodge the requirement to pay holiday pay.

Agency workers and zero hours contract workers, also regularly do not receive any pay whilst taking leave because of the widespread, unlawful, practice of "rolled-up" holiday pay. Such workers often find it difficult to budget and afford to take time off from work. Many are deterred from requesting time off for fear that if they once turn down work, they will miss out on future employment.

[16] TUC analysis of LFS Q4 2016

Those in insecure work are also face significant difficulties and are deterred from enforcing their rights:

- ACAS research from 2014 and 2015[17]shows that zero hours contract workers and agency workers are often unaware of their employment rights and afraid of raising workplace concerns due to fears over job security.
- Research[18] has shown that migrant workers face further problems when trying to enforce their employment rights. The EU Migrant Worker Project found that some agencies in the food processing sector, have taken advantage of migrant workers and denied them their employment rights. The research also showed that some agencies don't pay their workers holiday pay as this is seen as a normal part of agencies' profit margin. Language barriers also make it more difficult for migrant workers to understand their rights, raise complaints when they feel exploited and find out where they can go for help to enforce their rights.

The rules for calculating holiday pay are very complex and are not often not understood by workers. It is important that workers are aware of their annual leave entitlements. It would be helpful for details of holiday entitlement, including holiday pay was included on the itemised payslip.

The government should also introduce clearer guidance on holiday pay, including a more accurate online tool. The TUC is willing to work with the government on the forthcoming awareness raising campaign on holiday pay.

## Question 30

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

## Please provide examples including how worker's entitlement to annual leave could be safeguarded so they are not deterred from taking leave.

The TUC believes that all workers should be able to take paid holidays to rest, to spend time with their families and enjoy travel and leisure activities. A lack of time off from work is also likely to have significant negative health and safety implications.

Urgent action is needed to ensure that all workers benefit from the right to holiday pay and to be paid at the point when they take leave.

The TUC believes:

- The HMRC NMW team should be given responsibility for enforcing both statutory and contractual holiday pay, alongside the employment tribunals. But such enforcement

[17] http://www.acas.org.uk/index.aspx?articleid=5234
[18] http://blogs.lse.ac.uk/brexit/2016/05/11/why-the-failure-to-enforce-eu-workers-employment-rights-matters/

will only be effective if the HMRC is properly resourced and equipped to take on the role.

- Providing all workers with a written statement which details holiday pay entitlements and explains how holiday pay will be calculated may assist in improving awareness.
- It will however do nothing to improve a worker's job security. Ultimately, holiday pay abuses will only be prevented if the growth in insecure contracts is reversed and the government acts to ensure all workers benefit from stable, regular employment.

Section D

# Right to request

Official statistics show that in 2017 there were around 900,000 people on zero-hours contracts in the UK.[19] Many of these workers face great uncertainty about how many hours they will work or what wages they will take home each month.

But zero-hours contract workers are not the only ones who are not guaranteed enough work to make ends meet. Many agency workers also work on a zero hours basis -

And increasingly employers have sought to avoid the reputational damage associated with the zero hours business model and have instead employed staff on short hours contracts. Many working in retail and hospitality have contracts giving them just 5, 8 or 10 hours a week. Often, they will get to work more than this, but any extra hours are not guaranteed.

Employers claim such contracts provide workers with flexibility, especially working parents. However, a poll, commissioned by the TUC in 2017, showed that the vast majority of workers on zero-hours contracts are not there by choice. It's the only option available to them. Sixty-six per cent of zero-hours workers would prefer a guaranteed hours contract. Only 25 per cent want to stay on a zero-hours contract.[20]

Knowing which hours they are going to work and how much pay they will take home each week is crucial for working people. But too many people are not guaranteed hours at work and some get little notice of their shifts – making it difficult to plan their lives outside work. This is particularly a problem for working parents.

Too often those on zero-hours and short-hours contracts can be offered work at the last minute, and have it taken away just as quickly.

According to a TUC poll from 2017:

- Almost three-quarters (73 per cent) of zero-hours contract workers have been offered hours work with less than 24 hours' notice, with 27 per cent saying this is a regular experience.
- Half (51 per cent) have had hours cancelled with the same amount of notice.
- Worryingly, around a third of those on zero-hours contracts (35 per cent) have been threatened with not being given shifts in the future if they turn down work.[21]

As a result, workers feel constantly at the beck-and-call of their bosses, making it difficult to plan their lives outside of work.

---

[19] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/april2018

[20] *Ibid*

[21] TUC (2017) *Great Jobs with Guaranteed Hours* available at: https://www.tuc.org.uk/sites/default/files/great-jobs-with-guaranteed-hours_0.pdf

Considering this evidence, the TUC believes that the government's proposals for reform lack ambition and will prove ineffective. We are also concerned the government appears to have overlooked the Taylor recommendation that agency workers should have a right to request direct employment with the end user.

## Question 31

## Do you agree that we should introduce a Right to Request a more stable contract?

The TUC believes 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 make a request for fear they will be sacked or will miss out on future work.

The TUC believes that the government should 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 to be paid a premium of at least 25 per cent, 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, and must not undercut any collectively agreed rates. 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 four weeks to arrange child care.
- 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**

The TUC agrees that new rights should not be limited to zero hours contract workers, but should apply to all employees, casual workers, and all workers caught by the limb (b) worker definition, including freelancers and independent contractors.

The TUC is concerned that the government has sought to quietly ignore the recommendation in the Taylor review 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.*"

This is despite the fact that agency working no longer appears to be a stepping stone into regular employment in many sectors and workplaces, at least for the less skilled.[22] Official statistics suggest that more than 420,000 agency workers have been in their jobs for more than a year, and shockingly, over 120,000 have worked for an agency for over five years.[23] Agency workers can remain trapped in low paid, insecure work, with few rights in the workplace. Younger agency workers are particularly missing out on career progression with over forty per cent of all those who have been in agency work for over a year are aged 16-34.[24]

The government should introduce wide-ranging reforms to protect agency workers. These should include

- The first priority must be to repeal the Swedish derogation, to ensure all agency workers have the same rights to equal pay.
- After 12 weeks doing the same job for the same hirer, hirers should be required to assess whether the work done by the agency worker is required on an on-going basis. If so, the agency worker should be offered a permanent contract with the hirer.

## Question 33

## Do you think this will help resolve the issues the review recommendations sought to address?

**No**

As stated above, the TUC believes that a right to request will not amount to a genuine right and will not provide the income and job security required by those on zero-hours and short hours contracts. Such workers will often be reluctant to make a request for fear they will be sacked or will miss out on future work.

If the government decides to press ahead with a right to request, then safeguards 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 ZHC workers, agency workers and those on temporary contracts from the right to ask for a more stable contract (see the section on continuous employment above).
- Workers should be able to request a meeting with the employer at which they have the right to be accompanied by a union rep or full time official. Where a group of workers

[22] Countouris, N, Deakin, S, Freedland, M, Koukiadaki A, and Prassl, J. (2016) Report on temporary employment agencies and temporary agency work: A comparative analysis of the law on temporary work agencies and the social and economic implications of temporary work in 13 European countries: ILO
[23] TUC (2018) Ending the Undercutters' Charter available at: https://www.tuc.org.uk/sites/default/files/EndingtheUndercuttersCharter.pdf
[24] Ibid

employed by the same employer want to request stable contracts and asks for their union to represent them, the employer should be required to meet with the union.

- Workers should have a right to appeal a decision. A right of appeal would ensure that senior managers can review the reasons for rejecting a request. Workers must have a right to be accompanied in appeal hearings.
- Employers should be required to monitor and publish the number of requests received and the number of applications for stable contracts which should be accepted. Under the current right to request flexible working, there is no effective method record keeping system and anecdotal evidence suggests that many managers take a blanket approach to rejecting requests.
- Effective anti-victimisation provisions should be introduced, to ensure workers are not sacked, refused future work or suffer other forms of detriment 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.

## Question 34

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

**Yes**

The TUC believes that all workers should have a right to a guaranteed hours contract which reflects their normal hours of work.

If the government introduces a right to request, employers should be required to take the individuals existing working pattern into account when deciding whether to offer a more stable contract.

Employers should be required to provide the individual a stable contract which reflects their existing working patterns unless the worker requests a different working arrangement.

## Question 35

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

**No**

The right to request should be a day one right. A qualifying period would in practice exclude zero hours contract workers, agency workers and those on temporary contracts from the right to ask for a more stable contract.

Zero hours contract workers and other employed on casual contracts face significant difficulties accruing sufficient continuous service qualifying for key statutory rights.

If such workers have a gap of more than one week between shifts, their service will be broken, and they will not qualify for statutory rights – even though they may have worked regularly for the same employer over several years.

## Question 36

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

**Less than a month**

It is essential that employers are required to respond promptly to requests for stable contracts. Any delay in responses will mean that the right becomes meaningless for those employed on a short-term basis or who work intermittently for the employer.

## 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?

## Please explain your reason for this and include a suggestion of what an appropriate limit might be and why.

**No**

Workers should be able to make unlimited requests to an employer and should have the right to request a meeting with the employer and to be accompanied by a trade union rep on each occasion.

## Question 38

## When considering requests, should Small and Medium Enterprises (SMEs) be included?

**Yes**

All workers should be entitled to the same rights regardless of the size of their employer. Many employers in SMEs recognise the importance of treating staff fairly. This assists employers to retain their commitment and skills of valued staff.

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

**No**

The TUC recognises that many SMEs will not have dedicated HR departments. Nevertheless, employers in such firms recognise the importance of maintaining good communication and good working relations with their staff. They are likely to want to respond to requests promptly.

Section E

# Information and consultation of Employees Regulations (2004) (ICE)

It is welcome that the Taylor Review and the subsequent government consultation is considering ways of providing working people with an independent voice in the workplace.

Evidence demonstrates that union presence in workplaces, delivers significant benefits for both workers and employers, from much improved uptake of learning and skills to improved health and safety outcomes, and more equal workplaces.

For example:

- Union workplaces are safer, with union safety reps reducing serious workplace injuries by 50 per cent[25]
- Union safety reps save taxpayers between £181m and £578m (2004 prices) every year by reducing the time lost due to occupational injuries and work-related illnesses by between 286,000 and 616,000 days.[26]
- Union workplaces are more likely to offer better flexible working practices, including job shares, term-time working and annualised hours. Fifty-two per cent of unionised workplaces provide enhanced maternity pay compared with 35 per cent of non-unionised workplaces. Seventy-seven per cent of unionised workplaces offered retraining for women returning to work after maternity leave, compared with 58 per cent of non-unionised workplaces.[27]
- Unions negotiate high-quality training and skills, helping the workforce gain transferable skills and employers to meet their future skills needs. Every £1 of government investment into the Union Learning Fund generates a total economic return of £12.30.[28]
  - More than three in four (77 per cent) employers say that engagement with union learning has a positive effect on their workplaces and just over three quarters (77 per cent) of employers believe their organisation receives a return on their investment in union learning activity.
  - More than two thirds (68 per cent) of learners with no previous qualifications gained a qualification as a result of union learning.

---

[25] https://www.tuc.org.uk/research-analysis/reports/union-effect
[26] Ibid
[27] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398557/bis-14-1027-fourth-work-life-balance-employer-survey-2013.pdf
[28] https://www.tuc.org.uk/research-analysis/reports/union-effect

  - Two thirds of union learners (65 per cent) became better able to organise, mentor and support other people.
  - Sixty-eight per cent of employers recognise that unions are effective at inspiring reluctant learners to engage in training and development.

- Union workplace reps help to resolve disputes in the workplace, thereby reducing the risk of employment tribunal claims and all the associated legal costs and reducing staff turnover and recruitment costs.
- Where organisations face difficult economic conditions, unions work with employers to develop fair processes for managing redundancies and restructuring. Analysis of the 2011 WERS found that a large majority of lead union representatives reported working closely with management where changes were being introduced in the workplace. This included 66 per cent of union representatives in the public sector.
- Unions improve business performance.[29] A report commissioned in 2007 by the then Department of Business, Enterprise and Regulatory Reform found that the work of union reps resulted in overall productivity gains worth between £4bn to £12bn to the UK economy.
- Union reps also play an important role in improving workforce engagement and morale, by helping to ensure employees' concerns regarding their working conditions are listened to and addressed. This in turn can improve workplace productivity, the quality of services provided, and ultimately the financial performance of organisations.[30]
- Research undertaken by ACAS found that union representatives play an important role in improving workforce engagement and morale, by helping to ensure employees' concerns regarding their working conditions are listened to and addressed.[31] This in turn can improve workplace productivity, the quality of services provided, and ultimately the financial performance of organisations.
- Union workplace reps also work with employers to secure improvements in public service delivery. For example, the Fire Brigades Union trains highly qualified Serious Accident Investigators (SAIs) who work with fire authorities to investigate where firefighters are killed on duty and to identify and implement service improvements which can prevent future fatalities.

In the light of this evidence, it is welcome that the government is considering ways of giving workers a genuine voice in the workplace. But, in our opinion, the Taylor review proposals on information and consultation do not go far enough.

The government needs to act to ensure all workers have the right to a voice at work and to be represented by an independent trade union. The government introduce a new framework of rights which:

---

[29] https://www.tuc.org.uk/sites/default/files/tucfiles/thefactsaboutfacilitytime.pdf
[30] http://www.acas.org.uk/media/pdf/7/j/icoct03_1.pdf
[31] http://www.acas.org.uk/media/pdf/7/j/icoct03_1.pdf

- Ensure unions have a right to access workplaces so they can 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 rep, including when seeking an improvement in pay and conditions.
- Adopt measures which promote and extend collective bargaining, including in low paid, low productivity sectors.

## 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 or initiated voluntarily by the employer/ manager?

Unlike many Western European countries, the UK generally lacks a culture of formal information and consultation arrangements. According to the 2011 Workplace and Employment Relations Survey, just 7 per cent of UK workplaces have formal joint consultative councils. One in ten workplaces had standalone joint consultative committees which engaged with specific issues, such as collective redundancies and TUPE transfers.

However, unions also report that employers also regularly inform and consult with unions, as part of established industrial relations arrangements.

## Question 40

### Have you ever requested Information and Consultation of Employees (ICE) provisions in your workplace?

**Yes**

When the ICE Regulations were first implemented, employers and unions in parts of the private sector updated existing collective agreements to accommodate the new ICE regulations. These arrangements took the form of pre-existing agreements

In the public sector, there was a general consensus that existing collective agreements already provided for information and consultation arrangements. The ICE regulations were therefore largely disregarded.

Since 2004, a limited number of unions – primarily Unite – have made formal applications to the Central Arbitration Committee (CAC) for ICE arrangements.

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

The limited interest in formal information and consultation arrangements is largely due to the weaknesses of the current regulations:

- The high statutory thresholds mean it is not feasible for workers to request ICE arrangements, especially in large undertakings with multiple work-sites.
- Where unions have secured sufficient levels of support to trigger an ICE application, they are more likely to seek voluntary or statutory recognition with an employer. As this provides the ability to negotiate over pay, hours and wider working conditions for the workforce.
- Unlike TUPE and collective redundancy rights, the ICE regulations do not provide a primary right for unions to be consulted. The Regulations are perceived as undermining established and constructive industrial relations systems in many workplaces.
- The penalties for an employer's failure to establish ICE arrangements or to inform and consult employee representatives are very limited and are paid to the state rather than to the affected workforce. The penalties therefore do no provide an effective deterrent for employers who consider flouting the law. Nor do they provide unions with an effective bargaining tool with which to bring the employer to the consultation table.

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

The TUC recognises that the case for information and consultation can be made in the name of both economic efficiency and social justice. Information and consultation is one of a range of measures which, taken together, are known as High Performance Work Practices.

Evidence shows that such work practices contribute to higher productivity at the company level. However, information and consultation also introduces basic democracy in the workplace. While responsibility for major decisions still rests with management, providing a voice for workers not only improves decision-making but also fosters greater trust between management and employees.

## Question 41

### How might the ICE regulations be improved?

The TUC believes that the existing ICE Regulations should be overhauled. Reforms should include the following:

- The right to information and consultation arrangements should be extended to all workers.
- The thresholds for triggering ICE arrangements should be substantially reduced (see the response to question 43).
- In workplaces where unions are recognised, employers should primarily consult with the relevant unions.
- The penalties for non-compliance with the regulations should be substantially increased in line with protective awards in collective redundancies and TUPE transfers.

## Question 42

### Should the ICE regulations be extended to include workers in addition to employees?

**Yes**

### Please explain the reasons for your answer.

The TUC believes that all working people should have a voice at work and a genuine say over the things that matter to them most in the workplace.

A key feature of the rise of insecure forms of work has been the shift in risk from employers to workers. Collective voice and power in the workplace is the most effective way for working people to ensure that, rather than this one-way shift, the burden of managing risks at work is fairly shared between employers and employees.

We agree that the ICE regulations should be extended to all workers including those on zero hours contracts, agency workers and other limb b workers.

## Question 43

### In your opinion, should the threshold for successfully requesting ICE regulations be reduced from 10% of the workforce to 2%?

### Please explain your answer.

As stated above, the TUC agrees that the thresholds for triggering negotiations on ICE regulations are far too high and have proved a serious hindrance to workers securing information and conditions rights. But in our opinion, the Taylor recommendations do not go far enough.

The thresholds for triggering ICE arrangements should be substantially reduced.

- Where a recognised union requests ICE arrangements, employers should be required to enter into negotiations.
- In non-unionised workplaces, a request from 5 employees should trigger negotiations on information and consultation arrangements.

## Question 44

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

**No**

### Please explain your answer.

For the reasons outlined above, the requirement for a minimum number of 15 employees to request ICE arrangements should be removed.

## Question 45

### Are there other ways that the government can support businesses on employee engagement?

The government believes the government should play an active role in promoting employee engagement, including consultation through trade union representatives. To this end, the government should:

- Ask Acas to promote the benefits of information and consultation arrangement and to refresh its guidance on the ICE regulations.
- Ensure trade unions are fully consulted on the development and implementation of the government's industrial strategy and represented on the industrial strategy council.

## 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 play a leading role in:

- Informing workers of their rights at work
- Raising employer's awareness of their employment responsibilities
- Consulting and representing members on key strategic issues at work,
- Negotiating improvements in pay and conditions
- Tackling inequality
- Promoting learning and training opportunities
- Resolving disputes in the workplace
- Where necessary supporting members to enforce their rights.

The government should support unions to represent working people by introducing a new framework of rights including:

- A right for unions to access workplaces so that they have the opportunity to tell workers about the benefits of trade union membership
- Measures which promote and extend collective bargaining

## Question 47

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

The TUC agrees that all workers should have a genuine say over their pay and conditions. Evidence confirms that the most effective way for workers to have a voice at work is where they can collectively organise and are represented by independent trade unions.

The government should support unions to represent working people by

- Creating a right for independent unions to access workplaces so that they can tell workers about the benefits of trade union membership
- Strengthening the right to be accompanied so that all workers have a right to be represented by an independent union, including when seeking an improvement in pay and conditions
- Adopting measures which promote and extend collective bargaining
- Taking forward proposals for elected worker representatives on company boards

## Question 48

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

The government should encourage employers to engage in constructive employment relations with recognised trade unions. One key way of achieving this would be to reinstate Acas' statutory duty to promote collective bargaining.