

Factsheet: Fair Work Agency in the Employment Rights Bill

What is the current policy/legal framework?

Most employment rights are currently enforced by individuals submitting a claim to an employment tribunal. A more limited number of employment rights are enforced by the state on workers' behalf – such as the National Minimum Wage or protections for agency workers. The current system of state enforcement is fragmented and inefficient. This complicates the process for both workers and employers seeking help and means many workers are unable to enforce their rights, resulting in certain breaches, like underpayments, going unchallenged.

Policy intent

The Fair Work Agency (FWA) will bring together existing state enforcement functions and, over time, take on enforcement of a wider range of employment rights. This will be a single place where workers and employers can turn for help. It will improve efficiency by ensuring there is one leadership team to oversee work in line with a unified strategy. The FWA will aim to resolve issues upstream by supporting employers that want to comply with the law. But it will have strong powers to investigate and take action against businesses that flout the law, to level the playing field for compliant businesses.

How will it work?

The FWA will be an Executive Agency of DBT, created administratively. It will not have its own distinct legal identity, so the bill gives the Secretary of State a series of functions to enforce certain employment legislation. Those functions will in practice be discharged through the FWA, including by enforcement officers appointed by the Secretary of State.

The bill brings together existing state enforcement functions, as well as functions relating to holiday pay and Statutory Sick Pay, and includes a power for the Secretary of State to make affirmative regulations to expand the remit of the state enforcement functions to include other employment legislation. The bill abolishes two current public bodies – the Gangmasters and Labour Abuse Authority and the Director of Labour Market Enforcement - but the important work they do will carry on under the FWA. The bill also requires the Secretary of State to create an advisory board with a social partnership model: equal representation from businesses, trade unions, and independent experts, which will in practice provide advice to the FWA.

The bill confers a single set of powers to investigate and take action against businesses that do not comply with the law. These powers are based on powers of the existing enforcement bodies. Some additional enforcement powers will be added during bill passage. This will include powers to issue civil penalties and to order employers to compensate workers, based on existing powers in the National Minimum Wage Act 1998.

The Employment Rights Bill is the first phase of delivering the Fair Work Agency. The government will set out further details including timescales for implementation in due course. Once in place, the FWA will be a strong, recognisable single brand so workers know where to go for help. The FWA will take a balanced approach to upholding workers' rights. The FWA will provide better support to businesses on how to comply with the law and will take tough action against rogue employers who exploit their workers. That is fair for workers, and fair for businesses too.

Key stats

Higher-paid workers are 50% more likely to bring an employment tribunal claim compared to lower-paid individuals, despite lower-paid individuals being more likely to have their rights violated.1

The Resolution Foundation found that 14 per cent of the lowest-paid workers report that they receive no paid holiday, five-times higher than the highest-paid. Likewise, a worrying 11 per cent of low-paid workers say they do not have a payslip, twice as many as those in the highest-paid quintile.2

¹ <u>https://www.citizensadvice.org.uk/policy/publications/from-rights-to-reality-designing-a-fair-work-agency-that-delivers/</u>

² <u>https://www.resolutionfoundation.org/publications/enforce-for-good/</u>