

What is the current policy/legal framework?

Most employment rights are currently enforced by individuals presenting a complaint 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 also 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 the Department for Business and Trade (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 Secretary of State must obtain consent of the relevant Northern Ireland department before exercising this power in relation to legislation that is transferred for Northern Ireland.

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 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 are based on powers of the existing enforcement bodies as well as new powers to ensure the FWA has the tools it needs to enforce its wider remit. These include:

- Powers to inspect workplaces and require employers to produce relevant documents and evidence to demonstrate compliance with employment law, based on powers the existing bodies have.
- A civil penalty regime (based on the National Minimum Wage Act 1998) – where enforcement officers find that employers have underpaid their workers, they will be able to issue Notices

of Underpayment that require the employer to pay workers their due and pay a penalty to government.

- A civil proceedings power – the power to bring proceedings in the employment tribunal on a worker's behalf, and to offer legal advice and assistance where someone is, or may be, party to civil legal cases related to employment or trade union law.
- An enforcement regime in respect of labour market criminal offences (based on the Labour Market Enforcement regime in the Immigration Act 2016) - this involves voluntary Labour Market Enforcement Undertakings and compulsory Labour Market Enforcement Orders that require employers to correct their behaviour. Breach of a Labour Market Enforcement Order is an offence that can result in fines or imprisonment.
- Cost recovery - the Secretary of State will be able to set out, in regulations, how the Fair Work Agency can impose charges to recover enforcement costs from employers against whom enforcement action has been taken for non-compliance.

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

The Resolution Foundation estimates that 900,000 UK workers per year have their holiday pay withheld, valuing around £2.1bn (£2,300 each).¹

Research by the Resolution Foundation finds that 14 per cent of the lowest-paid workers report that they receive no paid holiday, six-times higher than the highest-paid.²

The Low Pay Commission estimates that 19.4% of workers paid at or around the wage floor were underpaid the minimum wage in 2024 (around 371,000 employee jobs).³

Common questions

What employment rights will the FWA enforce?

The FWA will have a more ambitious remit that goes further than the previous 'single enforcement body' proposal. It will take on enforcing domestic agency rules, the minimum wage, licensing standards for gangmasters and certain aspects of the Modern Slavery Act 2015. It will also take on additional rights such as holiday pay and statutory sick pay. As mentioned above, there will be flexibility to bring in additional legislation as new challenges emerge.

How will the FWA be kept accountable for doing its job?

The Employment Rights Bill requires us to produce an annual report on the work of the FWA and an enforcement strategy every three years. Both the reports and strategies, as well as any updates, must be published and must be laid in Parliament and the Northern Ireland Assembly. They will be subject to parliamentary scrutiny in the usual way.

¹ Enforce for Good, Resolution Foundation (2023)

² Enforce for Good, Resolution Foundation (2023)

³ Compliance and Enforcement of the National Minimum Wage in 2024, Low Pay Commission (2024)

When will the FWA actually be up and running?

Creating the FWA is complex and requires primary legislation. The Employment Rights Bill is just the first phase of that and lays the foundation for the creation of the FWA. Implementation will be done in phases following Royal Assent, and we will publish details of our approach to implementation in due course.