

The government's plans for employment law reform are a gift to bad employers and another smack in the face for employees.

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The government has recently announced plans to make it easier for businesses to hire and fire people by extending the period for unfair dismissal protection, reduce the time that they have to consult over proposed redundancies, and by giving them the ability for “protected conversations” with employees. [Sarah Veale](#) argues that these reforms are not needed; employment regulations are in no way a major concern for small firms, and that they have the potential to have very negative consequences for employees.



While the [British Chambers of Commerce](#) predictably applauded the Business Secretary Vince Cable for announcing that the Government was going to make it easier to hire and fire people it was encouraging to hear another employers' organization, the [Chartered Institute of Personnel Development](#) (CIPD) take a much more intelligent and measured approach. There are emerging signs that other business organizations are seeing employment regulation as less of an issue than they had previously thought and are listening to their members, who have much bigger concerns.

The CIPD are already on record pointing out that there is no credible evidence that employment regulation impedes business growth. So too is the Organisation for Economic Cooperation and Development. Furthermore, the rhetoric about the inexorable rise in employment litigation is not based on facts either. The number of unfair dismissal claims, and indeed most other claims, actually fell last year, and at fewer than one million claims a year out of a workforce of 26 million, that is hardly an acceptable prompt to introduce fees for using Employment Tribunals to stem the flow. Fees, even with an exemption for unemployed people, will act as an unfair deterrent for vulnerable workers who may have been treated appallingly at work.

BIS recently [conducted a survey](#) of small firms and asked them what their main concerns were. It transpired that their big concerns were the tough economic climate and the problems with getting loans from the banks to allow them to expand. Employment regulation only came out sixth. Curiously this response was reported by the Business Secretary during interviews in which he was also announcing further de-regulatory moves to encourage business growth!

To extend the qualifying period for unfair dismissal protection from one to two years, as the Government now intends – and even to scrap the right to claim unfair dismissal altogether, as the Prime Minister is considering – will make no real difference to whether or not employers take on more staff. The qualifying period has periodically been raised and reduced by different governments and there has not been any detectable impact on employment – indeed if there is a causal link it would be the opposite to what the Government is claiming. When it was raised by the Conservatives in 1980 unemployment soared; when it was subsequently reduced by Labour, unemployment dropped.

Other proposals are similarly futile in terms of business growth and an assault on the rights of employees to be protected against bad bosses. At a time when thousands of jobs across the economy are under threat reducing the time that organizations have to consult with their employees over proposed redundancies flies in the face of good sense. During the last couple of years many employees have proved themselves willing to work longer hours and accept reductions in pay in order to help their organization to survive and save as many jobs as possible. This discretionary effort will become much less likely if workers feel that their employer is going to spend less time considering alternatives to job loss. Even Conservative MPs have lauded the value of having ninety days to examine alternatives to job cuts when they have seen major companies like BAE Systems in trouble.

The TUC welcomes any efforts to improve and expand workplace dispute resolution – unions spend a great deal of time working with employers to resolve individual and collective disputes before they get to court. Nonetheless there will be times when employers get things wrong, or bully and discriminate and will not discuss the matter any further. In those situations employees have an absolute right to have their complaint looked at impartially in the Employment Tribunal. As for the myths about “vexatious” and mischievous claims, the Tribunals already have perfectly adequate procedures for weeding these out early on and can already ask for a deposit or use costs as a deterrent.

The employers' lobby argues that employers settle cases even when they believe they are right to avoid time and costs defending the case. If they looked at the statistics they would see that more cases are lost than won in the courts so it makes no sense not to contest the claim if they think they have done nothing wrong. Their immediate reaction is often to get a solicitor involved – this is extraordinarily risk averse and often a waste of money and counter-productive as it moves the dispute rapidly into the legal arena, instead of trying to sort it out at work.

Finally, the strange new proposal to legislate to allow employers to have “protected conversations” with employees is, as the CIPD has said, likely to have unintended consequences. It is a redundant proposal too as it is already possible to have conversations that will not be used in any subsequent legal proceedings. Agreements can be reached between the two parties that ensure that in exchange for settling the case the employee agrees not to pursue the matter in court. There is plenty of good ACAS guidance on having informal conversations with employees. Recently ACAS produced specific guidance on handling retirement dismissals, which is the issue that seems to have triggered the protected conversations proposals. The TUC, jointly with the CIPD, has produced guidance on age issues at work.

It seems perverse in the midst of all the de-regulatory proposals, to announce codification of conversations at work – how much regulation will that need to get it onto the statute book? More importantly it will encourage bad employers to push employees into agreeing to protected conversations then bullying and harassing them without fear of such behavior becoming part of a legitimate subsequent claim in the Employment Tribunal.

All in all the Government's programme of employment law reform is not a strategy for growth but a generous gift to bad employers – the new victim class – and another smack in the face for employees, already working the longest hours in the EU and for less money.

This [article](#) is also available on the Equality and Diversity Forum's website, as part of a consultation response on employment law reform.

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