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CBI response to the Employment Bill

Introduction

1. The CBI welcomes the opportunity to respond to the NI Assembly's Committee for Employment and Learning's call for evidence on the Employment Bill. The CBI is the UK's leading business organisation, speaking for some 190,000 businesses that together employ around a third of the private sector workforce. With offices across the UK as well as representation in Brussels, Washington, Beijing and Delhi, the CBI communicates the British business voice around the world.

Response to the provisions of the Bill

2. When considering only the actual clauses contained within the Bill, the CBI is broadly happy with the content of the Employment Bill. The decision to legislate for the introduction of a new Labour Relations Agency (LRA) led conciliation service before the end of this mandate is a very welcome step forward and the Committee should wholeheartedly support its adoption.

3. While the employment tribunal must remain as an effective backstop, they should always be the last resort for workplace disputes. A dispute that is resolved through dialogue in the workplace, or with the support of conciliation or mediation, will most likely be viewed as more positive by both parties. While this is not always possible, there must be a step between workplace resolution and a full tribunal which attempts to bring both parties together to attempt a resolution before the time and expense of a tribunal is committed to.

4. The CBI therefore welcomes the department's recognition of the vital importance of ensuring there is a requirement for evidence to be presented to a tribunal that the LRA has offered early conciliation services before a claim is accepted. Businesses have responded positively to a similar service managed by ACAS which has been in operation in Britain since 2014.

5. However, in the context of continued restraint of public sector budgets, the Department must ensure that LRA is properly resourced to meet its new demands. The assertion made by the department in the Bill's Explanatory and Financial Memorandum that the new conciliation service will be effectively cost neutral must be examined rigorously by the committee to ensure that the LRA will have the full resources required to carry out its new role effectively.

6. Finally, committee members must consider how the expertise of the Labour Relations Agency could be used to further increase the efficiency of the tribunal progress. In particular, the tribunal process could be significantly speeded up, and vexatious claims weeded out more effectively, if following conciliation, LRA conciliators were allowed to provide a neutral assessment of the consequence for either party if they proceed to tribunal. This simple action could do much to demystify common misconceptions that exist amongst parties regarding the level of awards that are available via the Tribunal.

A missed opportunity

7. At a strategic level, the CBI sees the proposed Employment Bill as a missed opportunity. The CBI is disappointed at the omissions of key proposed elements in the Bill including extending the qualification period for unfair dismissal, and reducing collective redundancy consultation periods from 90 to 45 days for consultations involving over 100 employees.

8. As Northern Ireland businesses seek to maximise the number of new jobs and transformative opportunities that will be created by a lower rate of Corporation Tax, it is vitally important that our employment law framework provides firms with the right growth incentives and avoids placing undue burden on businesses. Providing adequate employment flexibility is just as important in realising the goal of maximising the impact of Corporation Tax as ensuring sufficient infrastructure and the availability of world class skills.

9. A flexible labour market is vital to Northern Ireland achieving its ambition of growing the economy and ensuring that all groups in our society feel the benefit. 95% of respondents to the 2014 CBI/Accenture Employment Trends Survey who operate in Northern Ireland said that a flexible workforce is either vital or important to their competitiveness. And in research from the Northern Ireland Economic Advisory Group, restrictive labour regulation is among the top four challenges firms face in doing business here.

10. While the proposed Employment Bill will inject some more flexibility into our employment law framework, we must go further on issues like reducing the collective redundancy period to 30 days, securing employment tribunal reform and increasing the qualifying period for unfair dismissal to two years in order to keep our laws competitive with the rest of the UK and the Republic of Ireland.

11. In Great Britain, the unfair dismissal qualifying period (the period employees must work before they become entitled to exercise the right to lodge a tribunal claim for unfair dismissal) changed from one year to two years on 6th April 2012. The qualifying period in Northern Ireland is one year. Not only does this represent a competitive disadvantage in terms of attracting Foreign Direct Investment to the province, but for a micro business based economy like Northern Ireland, with limited or no human resources capacity, this short period acts as a deterrent to them taking on new employees.

12. An extension to two years will also give employees a longer period in which to demonstrate their skills and value to their employer before a decision must be made regarding their future. CBI members have argued that, particularly where there are significant training requirements for a post, a longer qualifying period would allow more opportunity to assess individuals and reduce the level of pressure on deciding whether to retain a trainee before 12 months elapse. In short an increase in the qualification period for dismissal will increase business confidence, encourage companies to recruit more staff, and potentially reduce the number of tribunal claims.

13. The CBI is disappointed that the Employment Bill does not contain proposals to reduce the collective redundancy consultation periods from 90 to 45 days for consultations involving over 100 employees (in line with the approach taken in Great Britain). Meaningful consultation is of course important, but such a lengthy process is to the detriment of both parties and from a competitive standpoint, Northern Ireland's consultation period is now

three times higher than the Republic of Ireland, Germany, Spain and Holland and twice as high as Great Britain and Italy.

14. The 90 days' timescale is simply too long. Under this law employees have to wait for three months to know where they stand and if they leave during this period of uncertainty they receive no redundancy payment as they are not technically redundant. This often causes employee relations problems. Meanwhile, the company wants, and needs, to move ahead with change. The quality of the consultation should not be dependent on the length of the consultation period. There is no reason to drag out the process unnecessarily to the detriment of employees and employers alike.

15. The collective consultation period can be a particularly stressful time for both employees and management and during this time the effect on staff morale can lead to a reduction in productivity within the firm. A shorter, quality and engaging consultation period can reduce the stress and financial burden for all parties concerned.

Conclusion

16. In conclusion, the CBI is broadly content with the provisions outlined in the Bill but is disappointed that the NI Executive did not take the opportunity to put Northern Ireland employment law on a more competitive footing vis-à-vis our competitors in Great Britain and Ireland. The CBI strongly urges the Committee for Employment and Learning to seek a commitment from the Department that this area will be revisited early in the next Assembly mandate.

Further engagement

If you have any queries in respect of our submission, or would like to discuss further, then please contact Iain Hoy, Senior Policy Advisor, CBI Northern Ireland on 02890 101102 or at iain.hoy@cbi.org.uk .

CBI Northern Ireland
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