

Mrs Cathie White
The Committee Clerk
Room 375
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

21 December 2015

Dear Mrs White,

FSB Northern Ireland response to the Employment Bill

The Federation of Small Businesses is Northern Ireland's largest business organisation with approximately 6,500 members, from across all sectors of industry, and over 200,000 members throughout the UK. Our aim is to promote and protect the interests of small businesses and, to that end, we lobby decision-makers to create a better business environment.

We thank the committee for this opportunity to contribute to the debate on the Employment Bill. FSB Northern Ireland welcomes some of the changes being brought forward by the bill but is disappointed with the decision not to take forward some of the policy options identified by the department.

Northern Ireland is a small business economy, and micro and small businesses form the bedrock. Northern Ireland has the highest concentration of SMEs of all the regions in the UK – here, 98% of all firms employ fewer than 20 people, while 95% employ fewer than 10. Northern Ireland SMEs provide 75 per cent of all private sector jobs. Clearly, small businesses are the core of the local economy and have a vital role in contributing to employment opportunities.

Early conciliation and neutral assessment services

FSB Northern Ireland welcomes the proposed Labour Relations Agency early conciliation and neutral assessment services. This should lead to the earlier resolution of employment disputes without the need for a Tribunal hearing, and should also facilitate the potential maintenance of the employment relationship. Typically the cost of preparation and representation for a small business at an employment tribunal averages £6,900. The estimated 13% of tribunals avoided due to early conciliation, and the 27% of tribunal cases avoided due to neutral assessments, will present substantial savings for small businesses.

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No legislative action to assist Small Businesses

FSB Northern Ireland recognises that legislative action is not necessarily the best approach to addressing the problems posed to small businesses. However, small businesses see current employment law in Northern Ireland as a barrier to growth and many are actually deterred from employing more staff in their businesses.

Independent research commissioned by FSB Northern Ireland and conducted by the Ulster University, entitled *The Contribution of Small Businesses to Northern Ireland*, showed that 26% of small businesses in Northern Ireland view employment law as a significant obstacle to business success.

FSB members feel that legislation is usually framed with large businesses, multinationals, and public sector workers in mind. The law places small business with one or two employees in the same category as the large businesses or the public sector, who possess full-time, in-house HR staff.

The vast majority of private sector employers are small firms, individuals employing individuals. Until there is recognition of that fact, and individual employers are put on equal terms as their individual employees, the law will remain a substantial obstacle to economic recovery, growth, and strong, sustainable employment.

We therefore look forward to the introduction of policy solutions in the form of tailored support for small and micro businesses.

Compromise Agreements

FSB Northern Ireland is content that settlement agreements already take place and will continue to do so under certain circumstances, and we see no merit in renaming the practice as compromise agreements.

However, it is important that clear guidance and tailored advice is available to those small employers who need to have difficult conversations with some employees, and we would like to see the LRA's role in this regard promoted and targeted towards micro and small employers.

Qualification period for unfair dismissal

Small businesses seek a longer qualifying period for employees, not only to have a longer period in which to assess performance and suitability, but also to ensure that they have sufficient resources to fund the post on a long-term permanent basis.

In the bid for foreign direct investment, flexible employment is just as vital an ingredient as lower corporate taxes. Indeed, they are two of the most important factors that companies will consider. The UK already lags behind other European Union states in flexible employment law. In Northern Ireland we are even further behind our counterparts in other parts of the UK. Jobs are increasingly

mobile and we need to ensure that our system is fair and is seen to be fair; and that, as a result we create, attract and retain enough jobs to have as close to full employment as is possible. FSB Northern Ireland believes the qualifying period should be extended to 2 years to ensure Northern Ireland's competitiveness and to encourage inward investment and indigenous growth.

The decision to focus on the Department for Business, Innovation & Skills' comment that it would be challenging to quantify the effect of the measure is disappointing. The inability to directly quantify a benefit does not mean that the benefit does not exist. Operating under that assumption ignores the 33% of small business owners who indicated that changing the unfair dismissal qualifying period to two years would encourage them to take on another member of staff in their business.

Maximum tribunal award in cases for unfair dismissal

FSB Northern Ireland is disappointed that the Department did not consider the concerns of businesses persuasive by not recognising the benefits of a cap, which would provide employers with more certainty of the limits of the potential penalty to them. In turn, this may encourage them to be more likely to employ.

We believe that both claimants and respondents have an unrealistic expectation of the size of the awards that can be made by a Tribunal. This is likely to contribute to a potential claimant's decision to lodge, and also to a potential respondent's fear of a claim being made. For the employer, the potential financial penalty of an unpopular decision or a genuine error will be increased by potential legal fees and time lost in preparing a case and defending a claim.

Additionally, while FSB Northern Ireland welcomes the move to improve the formula for inflation movement, we are disappointed that the department did not address other concerns, including the disparity between the growth in the cap (45% growth since 2000) and median earnings (38% since 2000).

Kind regards



Wilfred Mitchell OBE
Northern Ireland Policy Chairman