

Law Centre NI comments on Employment Bill 2015

About the Law Centre

1. The Law Centre seeks to promote social justice through the provision of specialist legal services. The Law Centre provides a legal advice, representation, training, information and policy comment in different areas of law including social security, mental health, community care, employment and human trafficking. Law Centre services are provided to approximately 350 member agencies in Northern Ireland.
2. Through our employment advice service, we have a daily exposure to the range and type of contentious employment law problems that arise. We provide advice and legal representation before the Industrial Tribunal and Fair Employment Tribunal for employees/workers who do not have alternative access to legal advice/representation.

Introduction

3. Law Centre NI welcomes that this Bill is a reflection of the Department's continued commitment to tailor the employment law landscape to reflect the needs of the Northern Ireland industrial relations and labour market landscape.
4. This paper provides brief comment on certain provisions in the Employment Bill. It also draws the Committee's attention to issues that are not found in the Bill but which we consider nevertheless warrant attention. Detail of our submissions on all these issues are set out in the Law Centre's response to the Department's 2013 Employment Law Review consultation¹ and to the Department's recent consultation on Tribunal Rules.²

EMPLOYMENT BILL

Early Conciliation (clauses 1 – 5)

5. The Law Centre has supported the introduction of Early Conciliation in the expectation that it will help ensure that more disputes are fairly and effectively resolved before they enter the tribunal system. The design of the system of Early Conciliation is important to ensure that it does not hamper access to justice for some vulnerable claimants and to avoid satellite litigation. The detail of how Early Conciliation will operate is not set out in the Bill but, rather, will be a matter for subsequent regulation and the Tribunal Rules.

¹ http://www.lawcentreni.org/Publications/Policy-Responses/DEL_Employment_Law_Review_Nov_2013.pdf

² <http://www.lawcentreni.org/consultation-responses-by-category/employment-responses.html>

6. In its consideration of how this system will operate, we invite the Committee to be mindful of the need to ensure that the system is not unduly burdensome on claimants and on vulnerable claimants in particular. In our response to the Department's consultation on Tribunal Rules, we recommended that the claimants ET1 form should be used by the Labour Relations Agency as the basis upon which Early Conciliation is requested, rather than requiring a claimant to submit a separate form. We highlighted in our response to the Employment Law Review that problems may arise where the detail of the claimants potential claim set out in any Early Conciliation differ from the detail set out in a subsequent ET1.³
7. We have consistently highlighted the fact that conciliation is most effective when the parties both have access to legal advice. Provision of expert, tailored advice for workers and small employers would make a significant contribution to the resolution of employment disputes in Northern Ireland. We believe an investment in advice would bring cost savings: increased uptake of ADR; fewer unnecessary tribunal claims; and, where cases do proceed to the tribunal, they would move through it more quickly. Increased advice provision would be beneficial to all stakeholders, including the Tribunal and DEL.

Neutral Assessment (clause 4 and 8)

8. The Law Centre welcomes the potential offered by the introduction of a system of Neutral Assessment for enhancing the operation of the dispute resolution system. In our response to the Department's consultation on the Employment Law Review in 2013, we recommended a system of early neutral evaluation. We are pleased that a separate system of early case evaluation by an Employment Judge has been developed and extended within the tribunal system. We invite the Committee to consider how the two systems will interact.
9. Further, the Department has undertaken to carry out a review of the operation of the LRA Arbitration Scheme, which remains under-utilised. This presents an opportunity to take a wider look at how the various dispute resolution systems, including early evaluation, inter-relate. There is a need to develop a coherent framework in which the various systems can operate to best effect i.e. to maximise the effectiveness of the various innovations.

Protected disclosures (clauses 12 – 16)

10. We welcome the provisions in the Bill on protected disclosures. We agree that the 'public interest' belief is important and agree that disclosures that are not made in good faith can be protected (albeit with reduced compensation).

³ See page 10 of our Employment Law Review Response.

WHAT IS NOT IN THE BILL?

Zero hour contracts

11. The Bill makes no provision to help tackle the difficulties that we have identified through our advice line with the operation of “zero hour contracts”. We would strongly support regulation in this area. We were encouraged by the debate that the Department facilitated around the issue of casual/zero hour contracts and we welcomed the Minister’s willingness to consider proposals seeking to put in place meaningful regulation of same.⁴ It is regrettable that the Bill as laid has not taken the opportunity to address the problems caused by casual/zero hour contracts. It therefore remains the case that the use of such contracts continues entirely unregulated.
12. One option is to introduce an enabling clause into this Bill that would allow the Department to bring forward regulations to address zero hours at a later stage.

Further areas requiring attention

13. Beyond this Bill, there are a number of broader issues that we recommend that the Committee takes opportunity to raise with the Department. These include:
- **Adjudication** for straightforward or low value claims
 - **Non payment of tribunal awards**: too many tribunal awards go unpaid. This undermines confidence in the whole tribunal process.

We would be happy to provide more information to the Committee if that would be helpful.

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⁴ <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-del/news-del-feb-2015/news-del-190215-farry-seeking-to.htm>