

The Employment Rights Bill: a closer look at the provisions concerning enforcement

On 10 October 2024, the Government published the Employment Rights Bill, which will take forward many of its proposals for workplace reform. In the fifth article in our series analysing the Bill, we consider the proposals concerning enforcement of employment law.

Running to more than 150 pages, the [Employment Rights Bill](#) (the Bill) puts forward a vast array of reforms affecting the workplace, including family-friendly rights, dismissals, equality law, contracts and pay, trade unions and industrial action and labour market enforcement. In the fifth article in our series of articles explaining the Bill, we consider the proposals affecting enforcement of employment law.

Currently, most employment rights need to be enforced by individual workers in the Employment Tribunal system, something which is often challenging for workers with limited resources. A limited number of rights are enforced by the State on behalf of workers, namely, by the Gangmasters and Labour Abuse Authority, the Employment Agency Standards Inspectorate and HMRC's National Minimum Wage Enforcement Team. The Bill provides that the Secretary of State will take over responsibility for enforcing certain aspects of labour market legislation. The Explanatory Notes to the Bill indicate that the Secretary of State will discharge this responsibility by establishing a new body, likely to be called the "Fair Work Agency", which will have responsibility for enforcement of the following areas of law:

- the National Minimum Wage regime;
- the Statutory Sick Pay regime;
- holiday pay rights;
- the regulation of employment agencies and employment businesses;
- the unpaid Employment Tribunal financial penalties scheme for failure to pay sums ordered or settlement sums;
- the licensing regime for businesses operating as “gangmasters” in certain sectors;
- parts 1 and 2 of the Modern Slavery Act 2015; and
- penalties issued by the Fair Work Agency itself.

The Government’s hope is that bringing these areas together under one roof will help create a “*strong, recognisable single brand*” so individuals know where to go for help and lead to a more effective use of resources. For now, it appears that enforcement of equality law is remaining with the Equality and Human Rights Commission (the **EHRC**), however, the Bill reserves the right to expand the Fair Work Agency’s areas of enforcement in future.

Role of the Fair Work Agency

In terms of addressing non-compliance with the labour market laws within its remit, the Fair Work Agency will have the power to:

- obtain documents or information;
- enter business premises in order to obtain documents or information;
- remove and retain documents or information;
- request that “labour market enforcement undertakings” are provided, which are undertakings to comply with prohibitions, restrictions or requirements stipulated by the Fair Work Agency (and which may last for up to two years); and
- apply to Court for a “labour market enforcement order” which prohibits or restricts certain actions or requires certain actions to be taken (and which may last for up to two years).

Where a person provides false information or documents, obstructs enforcement, fails to comply with a requirement of the Fair Work Agency and/or fails to comply with a labour market enforcement order, they will commit a criminal offence punishable by a fine or imprisonment. Notably, where an offence is committed by a company and it is shown that the offence was committed with the consent of an officer of the company, or was attributable to any neglect on their part,

then that officer will also be guilty of a criminal offence. In this context, “officer” means a director, manager, secretary or other similar officer or person purporting to act in such capacity.

Further, the Bill sets out that the Fair Work Agency must establish an Advisory Board of not fewer than nine members who represent the interests of trade unions and employers, as well as independent experts. In consultation with the Advisory Board, the Fair Work Agency must publish a “Labour Market Enforcement Strategy” every three years addressing the scale and nature of non-compliance with labour market laws and setting out how its enforcement functions will be exercised in future. It must also publish an annual report outlining how its enforcement functions were exercised that year, with an assessment of whether its strategy had an impact on the scale and nature of non-compliance.

What do these changes mean in practice for employers?

- The possibility of State enforcement of labour market laws tends not to be on the radar of most employers. Naturally, the focus is usually placed on the risk of Employment Tribunal claims by individual employees, which carry the risk of compensation awards and bad publicity. Currently, State enforcement is dispersed amongst different bodies, with low levels of knowledge about the remit of those bodies and their enforcement powers. The transition to a single State enforcement body is likely to achieve the desired impact of creating a single, recognisable brand, which, in turn, may increase the reporting of malpractice.

- The Fair Work Agency has teeth. It has strong investigatory and enforcement powers, which could lead to fines and criminal convictions, including, in certain circumstances, for the senior executives working in the offending business. This has the effect of incentivising those individuals to ensure that the business is meeting its legal obligations. A failure to do so could mean they end up with a criminal record. Further, if they work in a regulated sector, this could result in regulatory action against them and potentially jeopardise their ability to practice in their chosen career. Therefore, a lot is at stake.
- The establishment of the Fair Work Agency will take time and its success will, in large part, depend on whether it has sufficient resources to discharge its duties.

What are the next steps?

The Bill has just started its passage through Parliament, which will take time. We do not expect the Fair Work Agency to be up and running until 2026 at the earliest. It is worth noting that the Next Steps to Make Work Pay document commits to introducing a separate regulatory and enforcement unit for equal pay. It is not clear whether this unit will sit within the EHRC (which would be its natural home) or be a standalone

body.

Stay tuned for our final article in the series, where we will sweep up the outstanding provisions of the Bill not covered in our first five articles and also look ahead to what else is promised.

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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