



Institute of Directors

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THE RT HON KEMI BADENOCH MP

Secretary of State for Business and Trade

Department for Business and Trade

1 Victoria Street, Westminster,

SW1E 5ND

Dear Secretary of State,

Consultation on reforms to the Working Time Regulations, Holiday Pay, and the Transfer of Undertakings (Protection of Employment) Regulations

The IoD is an independent, non-party political organisation representing approximately 20,000 company directors, senior business leaders, and entrepreneurs. It is the UK's longest-running organisation for professional leaders, having been founded in 1903 and incorporated by Royal Charter in 1906. Its aim is to promote good governance and ensure high levels of skills and integrity among directors of organisations. It campaigns on issues of importance to its members and to the wider business community with the aim of fostering a climate favourable to entrepreneurial activity in the UK.

The IoD welcomes the opportunity to contribute to [this consultation](#) on proposed changes to annual leave and holiday pay calculations and TUPE consultation requirements. Employment law is a topic of considerable interest to the IoD and its membership, and we are therefore pleased to present our views.

In the first section, we provide a summary of our key perspectives. We then provide more detailed responses to the questions laid out in the consultation.

Summary of the IoD view

We welcome the proposals in this consultation to simplify multiple areas of employment law. Employment law is consistently cited as an area of acute regulatory burden for employers, so the development of a more streamlined system for employers while maintaining the important protections of the Working Time Regulations and TUPE regulations is welcome. In an IoD survey of almost 1000 business leaders in April 2023 (see Appendix), one in five (19%) members cited employment law as the policy area holding the greatest potential for the UK government to reduce the regulatory burden on businesses of EU-derived law.

“Employment regulation is important, but it needs to be simple and flexible. Great opportunity here to free things up” – IoD member, information and communication sector, SME

“I work with small companies and the burden of employment legislation is severely detrimental” – IoD member, wholesale and retail trade sector, SME

“It’s important to reduce some of the burden on employers in relation to employment law” – IoD member, services sector, SME

“There is a desperate need to reduce the burden on employers and ensure that there is recognition of employers in providing employment to others.” – IoD member, transportation and storage sector, SME

Several respondents highlighted the disproportionate burden placed on SMEs with respect of employment law:

“Rules that work in relation to and on the basis of a perceived imbalance between employer and employee apply to big businesses but are making running SMEs almost impossible” – IoD member, professional, scientific, and technical sector, SME

“Employment, H&S and Environmental regulation is clearly necessary, my issue is with a rules based 'one size fits all' approach. A more principles based approach with a 'lighter touch' for SMEs would be helpful” – IoD member, manufacturing sector, SME

“The employment law is debilitating for small business” – IoD member, health and social care sector, SME

The changes to annual leave entitlement, holiday pay, and TUPE regulations proposed in this consultation represent an opportunity to reduce administrative burdens on employers while retaining the UK’s strong track record on workers’ rights.

European court judgement on recording working hours

1. Do you agree or disagree that the Government should legislate to clarify that employers do not have to record daily working hours of their workers?

Agree. Compliance with the Working Time Regulations is essential, but employers should have the flexibility with regards to how demonstrate compliance. The inflexibility and administrative burden of the current requirements for keeping working time records as set out in the European court judgement are such that clarification that employers do not have to record daily working hours of their workers would be welcome.

Proposal 1: Create a single annual leave entitlement of 5.6 weeks

9. Would you agree that creating a single statutory leave entitlement would make it easier to calculate holiday pay and reduce administrative burden on businesses? • Strongly agree • Agree • Neither agree nor disagree • Disagree • Strongly disagree • Don’t know Please explain your answer

Strongly agree. Calculating holiday pay is currently a top area of challenge for employers, particularly SMEs.

A single statutory leave entitlement would also overcome the complexity and confusion engendered by the Working Time Regulations Act (2014) not specifying which type of leave should be used first in a leave year, thus reducing the potential for employer-employee conflict regarding pay and carry-over issues.

12. What rate do you think holiday pay should be paid at? • 5.6 weeks of statutory annual leave at basic pay • 5.6 weeks of statutory annual leave at normal pay • Don't know • Other (please explain)

Don't know. Qualitative feedback from IoD members suggests that few employers are likely to pay basic pay for the 1.6 weeks of annual leave under regulation 13A of the Working Time Regulations Act (2014) due to the administrative burden that doing so would entail. However, this is not a topic on which we have collected quantitative data and thus we would encourage government to obtain robust information on how widespread the practice is before proceeding with any changes.

13. Would you agree that it would be easier to calculate annual leave entitlement for workers in their first year of employment if they accrue their annual leave entitlement at the end of each pay period? • Strongly agree • Agree • Neither agree nor disagree • Disagree • Strongly disagree • Don't know Please explain your answer.

Agree. Calculating annual leave entitlement at the end of each pay period in the first year of employment would align best with existing administrative arrangements.

Proposal 2: Introducing 'Rolled-Up' Holiday Pay

15. Do you think that rolled-up holiday pay should be introduced? • Yes, rolled-up holiday pay should be introduced as an option for employers in relation to all workers • No, rolled-up holiday pay should not be introduced • Don't know • Other (please explain) Please explain your answer.

Yes, rolled-up holiday pay should be introduced as an option for employers in relation to all workers, as recommended by the report *Good work: the Taylor review of modern working practices*. Prior to the European Court of Justice's ruling that rolled-up holiday pay is unlawful, many employers opted to use rolled-up holiday pay on account of the complex administration entailed in calculating employees' average wages over the previous 52 weeks. Reintroducing rolled up holiday pay would therefore be a welcome reduction in administration for employers, particularly for organisations which employ agency, casual, or 'gig economy' workers.

However, the risk that rolled-up holiday pay will deter employees, particularly those in low-wage occupations, from taking annual leave will need to be addressed from a health and safety perspective. Employers may be held liable for accidents which occur in the workplace deemed to be at least partly a result of employees not taking annual leave, but few employers currently mandate that employees take a set number of days of annual leave. Guidance should therefore be produced to support them to understand what their options are for increasing employee take up of annual leave.

The proposed requirement that employers include specific information on holiday pay compensation in employees' payslips would be a sensible step, in order to increase employee awareness that the rolled up holiday pay system does not financially penalise them for taking leave in relation to the existing system.

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

17. Do you agree that the Government should allow all small businesses (fewer than 50 employees) to consult directly with their employees on TUPE transfers, if there are no employee representatives in place, rather than arranging elections for new employee representatives? • Yes • No Please explain your answer

Yes. Extending the flexibilities currently available for microbusinesses to small businesses will significantly reduce the complexity of the TUPE process for small businesses, which are likely to have small or outsourced HR functions which struggle to cope with the administrative burden of arranging elections for new employee representatives where they have not existed prior to that point.

18. Do you agree that the Government should allow businesses of any size involved with small transfers of employees (where fewer than 10 employees are transferring) to consult directly with their employees on the transfer, if there are no employee representatives in place, rather than arranging elections for new employee representatives? • Yes • No Please explain your answer

Yes. In cases where fewer than 10 employees are transferring, employers are well placed to communicate directly with all of the employees involved. Arranging elections for new employee representatives is an administrative burden disproportionate to the impact on the consultation process when so few employees are involved.

19. What impact would changing the TUPE consultation requirements (as outlined above) have on businesses and employees? Please explain your answer.

The changes to TUPE consultations outlined above would reduce the administrative burden involved with compliance with TUPE regulations, with the provisions for larger small businesses being particularly impactful.

20. What is your experience of the TUPE regulations? Beyond the proposals above, how, if at all, do you think they could be improved? Please explain your answer

TUPE regulations represent a particularly complex and difficult area of employment law for employers; any work to simplify and clarify TUPE regulations would be welcome. For example, more clarity on the kind and extent of consultation with employees required would be useful. Similarly, employers struggle to harmonise the employment conditions of old and new employees in a manner consistent with TUPE regulations. Liability is another challenging area of TUPE regulations, a fact exacerbated by HR data only having to be transferred to the new employer 28 days before the transfer.

I hope you have found our comments helpful. If you require further information about our views, please do not hesitate to contact us.

With kind regards,



Alex Hall-Chen

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Appendix

IOD MEMBER SURVEY RESULTS: APRIL 2023

IN WHICH POLICY AREA DO YOU BELIEVE THERE EXISTS THE GREATEST OPPORTUNITY FOR THE UK GOVERNMENT TO REDUCE THE REGULATORY BURDEN OF EU-DERIVED LAW - THEREBY ENABLING YOU TO IMPROVE THE PERFORMANCE OF YOUR ORGANISATION? IF NOT LISTED BELOW, PLEASE STATE IN 'OTHER'.

949 RESPONSES

Health and safety regulation	42	4.4%
Environmental regulation	48	5.1%
Financial services regulation	107	11.3%
Employment regulation	178	18.8%
None - my preference is for stability in the current regulatory framework	448	47.2%
Other	50	5.3%