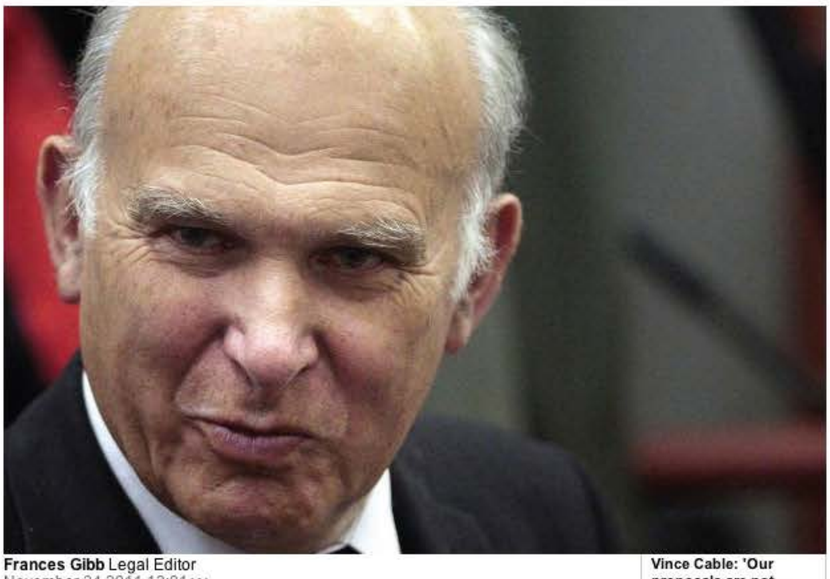
Will Vince Cable's plans curb employment disputes?



Frances Gibb Legal Editor
November 24 2011 12:01AM

Vince Cable: 'Our proposals are not — emphatically not — an attempt to give businesses an easy ride at the expense of their staff'
David Cheskin/PA

The Business Secretary says that the Government's proposals strike 'an appropriate balance'. Frances Gibb looks at both sides . . .

The Government confirmed plans for a "radical" reform of employment law yesterday, provoking in equal measure anger from trade unions but a welcome from business groups and employers' organisations.

Vince Cable, the Business Secretary, unveiled a package of measures including an overhaul of employment tribunals and moves that could lead to a reduction in the present 90-day consultation period when firms are planning to make more than 100 redundancies.

The plans include proposals for all potential employment claims to go to Acas, the conciliation service, before going to a tribunal, the idea of a "rapid resolution scheme" to offer cheaper, quicker decisions on more straightforward claims and a regional pilot scheme for smaller firms to use mediation.

Mr Cable also confirmed plans to increase the qualification period for making a claim for unfair dismissal from one to two years of employment from next April, and a consultation on "protected conversations" to allow employers to discuss issues such as retirement or poor performance without its being used at a subsequent tribunal claim.

The key reforms, which ministers believe will save employers £40 million a year, are * The introduction in April of an increased qualifying period of two years for unfair dismissal * Reform of TUPE arrangements including the end of gold plating and the removal of professional services from scope * A reduction in the redundancy consultation period from 90 days to possibly 60, 45 or 30 days after consultation * A fundamental review of employment tribunal procedure led by Lord Justice Underhill accompanied by extensive rule changes in relation to costs, witness statements and the composition of the tribunal bench * Consultation on fees for access to employment tribunals * Consultation on the introduction of a system of "protected conversations" between employers and employees to offset constructive dismissal claims * Reform of regulation and policy in relation to sickness absence, the national minimum wage, the Agency Workers Directive and the operation of the legislation in respect of whistle blowers.

Mr Cable said in a speech to the Engineering Employers Federation: "Our proposals strike an appropriate balance and we are keeping the necessary protections already in place to protect employees.

"Our proposals are not — emphatically not — an attempt to give businesses an easy ride at the expense of their staff. Nor have we made a cynical choice to favour flexibility over fairness.

"We know that disputes at work cost time and money, reduce productivity and can distract employers from the day-to-day running of their business. Tribunals should be a last resort for workplace problems, which is why we want disputes to be solved in other ways."

Len McCluskey, the general secretary of Unite, said: "At a time when unemployment is at a 17-year high and youth unemployment has topped a record one million, it is appalling that this Government should concentrate on making it easier to fire people, rather than getting people back to work.

"Ministers are hell-bent on removing long-established rights at work, making dismissal easier and promoting a culture of fear in the workplace. These proposals are a charter for rogue employers and bullies."

More from Law

Public policy prevents sale of claim

1 minute ago
Court of Appeal Published November 16, 2011 Simpson v Norfolk and Norwich University Hospital NHS Trust Before Lord Justice Maurice Kay, Dame Janet Smith, and Lord Justice Moore-Bick Judgment October 12, 2011 A claim for damages for personal injury was a chose in action capable of assignment

Assessing costs in group litigation

1 minute ago
Court of Appeal Published November 22, 2011 Motto and Others v Trafigura Ltd and Another Before Lord Neuberger of Abbotsbury, Master of the Rolls, Lord Justice Maurice Kay and Lord Justice Hughes Judgment October 12, 2011 In assessing base costs which the costs judge had first determined to be disproportionate, the general rule, that the judge was required to satisfy himself that the work on each item was necessary and, if so, that the cost of each item was reasonable so as to render the costs proportionate, applied equally to the costs in group litigation

Related topics:

Politics

Vince Cable

Lawyers were split over how much impact the changes would make, with some warning that far from diminishing workplace disputes, the idea of "protected conversations" could even increase them but others predicting that they would head off contentious disputes.

Richard Fox, head of employment at Kingsley Napley, said that the proposals could be more far-reaching than appreciated and the idea of "protected conversations" make "a considerable difference" he said, to the number of disputes that went to litigation.

This is because technical difficulties now make it risky for employers to engage employees at an early stage seeking to compromise issues, "an approach that might otherwise have led to an early pay off".

But the proposal for tribunal fees was also radical and possibly unprecedented, he added.

"Normally court fees are introduced to make the parties contribute towards the cost of bringing a claim before the court or tribunal. For the first time, it seems, fees are being introduced not for that purpose, but rather to dissuade employees from bringing 'unmeritorious' claims. There could be a considerable backlash from those who believe this is to deny access for many to the judicial system."

Stephen Gummer, a partner at PwC Legal, however, suggested that the impact would be far less than some predicted. "Reducing the timeframe of a consultation may help employers; however, it remains an onerous and timeconsuming process.

"So the question should really be what is it about the process itself that could be changed to help employers to react more quickly to rapidly changing market conditions. Further, this change will make little or no difference at all to smaller employers."

He also cast doubt on how the proposal for "protected conversations" would work. "It is difficult to see how these conversations will work alongside the existing employment law regime. This proposal is more likely to give rise to yet another area of dispute between employers and employees much in the same way as the previous Statutory Grievance and Disciplinary procedures did."

Edward Wanambwa, employment partner at Russell-Cooke LLP, said that the proposals were unfair to employees.

The only justification for having a qualifying period at all is that it gives employers a period during which they can part company with employees who turn out not to be a good fit, without having to have one of the justifications needed after the qualifying period has been worked.

"Essentially what this means is that, during the qualifying period, the reason for dismissing can be one that would be regarded as unfair by any objective bystander, provided it is not a discriminatory one, does not relate to any whistle-blowing, and does not fit within any of the other very limited exceptions to the qualifying period. One year is quite long enough for an employer to decide whether or not someone is a good fit."

The two-year period might also discriminate against women because, on average, they had shorter periods of service than men, he said, as well as young and disabled employees, he added.

He also warned that the proposal for "protected conversations" was open to abuse and "arguably contrary to natural justice, in particular the right to a fair hearing".

A Law Society spokesperson said: "These are far-reaching and wide-ranging proposals that have the potential to change the employment law landscape significantly. They all require careful and considered thought and an open channel between the Government, business and employee representative groups.

"The Law Society will be looking particularly closely at the proposed changes to employment tribunals and what they will mean for access to justice."