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Beecroft report: bringing in no-fault dismissals won't help businesses grow, says Vince Cable

David Woods, 22 May 2012



Unfair dismissal plans outlined in the Beecroft report published yesterday, will not help small businesses grow, the business secretary Vince Cable (pictured) has said.

The Government yesterday published Adrian Beecroft's final report as submitted to BIS to dispel some of the myths that have become associated with the report. Because of ongoing interest Cable reached a view that it is in the public interest to allow people to have access to its content.

Proposals in the Beecroft report suggested giving small businesses greater scope to dismiss employees. Under the proposals, small businesses will be able to dismiss a worker even where there has been no misconduct or they have not performed to the required standard. The Government says small businesses are not expanding because of fear of being caught out by employment laws, in particular, unfair dismissal.

It wants to exempt those businesses with fewer than ten employees from these laws.

Cable, said: "One of Mr Beecroft's recommendations was a suggestion to bring in no-fault dismissal. In my daily conversations with businesses, this has very rarely been raised with me as a barrier to growth.

"Businesses are much more concerned about access to finance or weak demand than they are about this issue.

"We have always been clear that sensible and well thought-through reforms need a strong evidence base behind them, not just anecdotal experiences.



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Angharad Harris, chair of the Law Society Employment Law Committee, added: "Making it easier for small businesses to dismiss people will not help them to flourish and expand."

"There is a clear and well understood framework for employers, small and large. Creating a separate system for businesses with fewer than 10 people will create a 'two-tier' system which will be confusing and unhelpful."

The Law Society has also warned there is the risk that 'compensated no fault dismissal' will encourage poor management practices. Employers might not realise that 'no fault dismissal' doesn't allow them to dismiss a worker because they are pregnant, or because they have a disability.

Harris added: "Not only do these changes remove important protections for employees, they also make small businesses vulnerable to other employment tribunal claims."

"What small businesses and first time employers need is support and advice to understand that employment law is largely a matter of good practice."

Edward Wanambwa, partner in the employment team at Russell-Cooke. "If the compensated no-fault dismissal proposals are quietly dropped by the Government, this should be welcomed."

"Affected employees could have been driven to try to bring potentially more complex and costly claims - such as discrimination or whistleblowing claims - to receive what they believed was adequate compensation."

"The proposal was excessive given that employers now have two years (increased from one year on 6 April) to assess new employees and dismiss without facing standard unfair dismissal claims."

"Further, as the proposals were limited to 'micro-businesses', i.e. those with fewer than 10 employees, this would have created a two-tier system of employment rights that could have made it even harder for the smallest businesses to recruit and retain the best staff."

And Nic Scott, CEO, Fairsail, providers of HR management software, added: "It shouldn't matter what the age, gender or race is of an employee, if you follow the correct procedures then a company has the right to fire any employee without being accused of discrimination."

But according to Eversheds, whilst some of the recommendations in the report have hit the headlines, Beecroft's comments on the regulations which protect employees' rights in outsourcing and other scenarios (commonly known as the TUPE regulations) are equally radical and will undoubtedly crank up the pressure on the Government to accelerate reform of the law in this area.

Tim Wragg, principal associate at international law firm Eversheds, said: "A criticism aimed frequently at TUPE is that it is too complex and 'gold-plates' European requirements. The Government placed this subject towards the top of its agenda shortly after coming to power but it was not until the end of last year that the first tentative steps towards reform were taken in the form of a Call for Evidence."

"The purpose of this exercise was to consider the case for change and, possibly, lead to formal consultation later this year. However, the Beecroft report makes the case for urgent review and is likely to lead to greater mobilisation of those sifting through the Call for Evidence responses. The report makes interesting recommendations for a change to TUPE in two key areas: □□ "The fact that TUPE prevents new employers from harmonising the terms of transferring employees post-transfer, without limit in time, is one key area where Beecroft suggests an interesting solution. Beecroft points out that the European Directive upon which TUPE is based preserves the terms of any collective agreement for just 12 months after transfer. The term 'collective agreement' is undefined by the Directive but is applied extensively in Europe to refer to records of pay arrangements and other negotiated employment terms."

"This term is more narrowly construed in the UK allowing European colleagues greater opportunity to vary employment terms after a business transfer than is the case here. Beecroft therefore calls for the meaning of "collective agreement" within the Directive to be clarified for UK purposes. This would allow TUPE to be amended so that UK employers have greater flexibility to change the terms and conditions of transferring employees more than 12 months after a transfer."

"A further practical problem encountered under TUPE is that any redundancies must be made after the transfer has occurred if they are to be lawful. This often means that employees have their contracts of employment transferred only to be dismissed immediately by their new employer. As a result, Beecroft recommends a change in the law, enabling legitimate, genuine redundancies to be effected prior to transfer. □□ "Beecroft voices the opinions of many employers in his



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comments about TUPE. Even if his specific recommendations are not accepted, it is likely that the report will be a catalyst for change in this area. We can expect a response from the Government shortly, most likely the rapid commencement of a formal consultation exercise on TUPE."

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