Employment Rights Under Attack

Usdaw

Union of Shop, Distributive and Allied Workers

Executive Council Statement
to the 2013 ADM

Foreword

We are living through very tough times. The Government's austerity programme is slashing public services and cutting basic welfare benefits. In the private sector, the last few years have seen some big names go bust with the surviving businesses often struggling in the face of weak consumer confidence.

At the time of writing, the economy is in danger of falling back into recession. The debate in Parliament, in the media and in workplaces is rightly dominated by the economic problems and the austerity policies. But the Government has also embarked on a programme to fundamentally weaken workers' rights.

Important changes to employment rights are being introduced including:

- Workers with less than two years' service no longer have protection against unfair dismissal.
- Introduction of fees for applications to employment tribunals.
- Cuts to the Criminal Injuries Compensation scheme.
- Reducing the consultation period over large-scale redundancies.

The Government is currently considering proposals to:

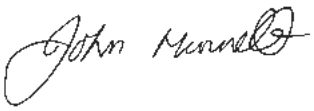
- Introduce 'settlement agreements'.
- Limit the compensation workers can receive for unfair dismissal.
- Introduce a new employment status of 'employee-shareholder' meaning workers, in exchange for shares in a business, will lose key basic employment rights.
- Reduce the protection offered by TUPE to workers affected by business transfers.

But the Coalition is not stopping there. Leading Conservatives want to renegotiate our relationship with Europe to get 'a return of powers to the UK from the European Union' – what they really want is for workers in the UK to lose basic employment rights, such as statutory holiday entitlement, that are underwritten by European directives.

The Coalition is using the problems in the economy as an excuse to attack workers' rights. They say 'red tape' is holding business back – they see employment rights as 'red tape'!

Contrary to what the Tories say, the UK is not overburdened with employment regulations. The problems in the economy will not be resolved by attacking workers' rights.

This Executive Council Statement explains what is happening to employment rights and outlines the Union's response. Employment rights are under attack and we need to act to defend these rights.



John Hannett
General Secretary

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Section 1: Unfair Dismissal – Qualifying Period Extended to Two Years

What's happening to the right to challenge unfair dismissal?

The qualifying period for protection from unfair dismissal increased from one to two years in April 2012. The increase affects those who started with their employer on or after this date. For those who started before this date, the one-year qualifying period still applies.

The qualifying period for an employee to be entitled to a written statement from their employer setting out the reasons for dismissal also increased from one to two years. Any request for such a statement has to be made within three months of the termination of employment – the limit for bringing a tribunal claim.

Who will be affected?

It has been estimated that this change will deny nearly three million workers the right to object to unfair dismissal.

The Government's own data shows that young people, ethnic minorities and female part-time workers will be most affected by the removal of unfair dismissal rights from employees with less than two years' service:

- Nearly 60% of employees aged 24 and under have less than two years' service.
- 30% of ethnic minority employees have less than two years' service.
- Over 32% of part-time employees have less than two years' service.
- 500,000 female part-time workers will lose out as a result of the 12-month extension to the qualifying period.

Are there any exceptions?

There will still be certain situations where employees can make a claim even if they have not had two years' service.

The exceptions include dismissals connected with:

- Pregnancy or maternity.
- Trade union membership.
- Whistleblowing.
- Reporting health and safety risks.
- Asserting statutory rights such as requesting a written statement of particulars of employment.

There is no qualifying period for submitting a discrimination claim. The changes to the unfair dismissal qualifying period could, therefore, result in an increase in discrimination cases.

Increasing job insecurity

The increase to a two-year qualifying period will mean millions of new workers lose out on unfair dismissal protection.

This increase to the qualifying period will unfairly restrict workers' access to justice if they are dismissed by their employer.

The rise to two years is likely to increase job insecurity as more workers will be in constant fear of losing their jobs. This could lead to a return to the hire-and-fire culture we saw under the previous Tory Government.

Usdaw's position

The change to the unfair dismissal qualifying period will not boost the economy as the Government suggests. There is no evidence that the one-year qualifying period had any adverse effect on recruitment or caused job losses.

Workers should have basic rights protecting them from unfair dismissal. Getting protection after two years is not good enough. It will leave a large group of workers, those with less than two years' service, without basic employment protection.

Usdaw believes that workers should have a right to claim unfair dismissal after completion of the probationary period, which should be no longer than six months.

Usdaw reps speak out

"The increase to a two-year qualifying period is very worrying and likely to have quite a big impact on many of our members, in particular young people who already struggle to find employment. I think that some employers will take advantage of this change in law and sack employees who don't live up to their expectations."

Isabel Fyfe
Tesco, Scottish Division

"Increasing the qualifying period from one year to two years will make it faster, easier and cheaper for employers to dismiss loyal employees and basically promote unfair workplaces. During a time of economic hardship it is ludicrous to make it easier to make more people unemployed. Employment should be protected, not destroyed."

Gary Renwick
Makro, Eastern Division

Section 2: Employment Tribunal Fees – Workers to Pay for Access to Justice

During the course of employment, there are times when the normal internal grievance and disciplinary procedures do not deliver the right results. When this occurs, workers are able to go to an employment tribunal and seek an independent legal judgment.

As well as protecting workers who believe they have been mistreated at work, the fact that workers can refer issues to an employment tribunal helps ensure that employers act fairly throughout disciplinary and grievance procedures.

Coalition introducing employment tribunal fees

Within a much wider agenda of restricting access to justice, the Tory-led Coalition are introducing employment tribunal fees that must be paid by workers in order to bring a claim to tribunal. Such a system puts a cost on justice and creates a significant barrier for workers to be able to defend their statutory rights.

The Ministry of Justice has stated that it will introduce the fee system in mid-2013. Two levels of fees will be introduced – Level 1 fees and Level 2 fees:

Level 1 cases are the more straightforward claims relating to, for example, unpaid wages and redundancy pay.

Level 2 cases are more complex claims, such as unfair dismissal, discrimination or equal pay.

The claimant will pay an initial fee to lodge a claim (the issue fee) and a further fee if the claim proceeds to a hearing (the hearing fee). Furthermore, if a claimant wishes to lodge an appeal an additional fee will be required.

The fee costs are detailed below:

	Level 1 Claims	*Level 2 Claims*	*Appeals*
Issue Fee	£160	£250	£400
Hearing Fee	£230	£950	£1,200
Total	**£390**	**£1,200**	**£1,600**

People in receipt of certain benefits will be exempt from paying fees. Also, some workers will be exempt from fees on the basis of annual income as follows:

Number of Children	*Single*	*Couple*
0	£13,000	£18,000
1	£15,930	£20,930
2	£18,860	£23,890

Fees for multiple claims will be calculated according to the number of claimants:

Claimants in the Multiple Claim	*Fee Payable*
2-10	2 x single fee
11-200	4 x single fee
Above 200	6 x single fee

The tribunal may order the fees to be repaid if the claimant is successful, but under current proposals this will be at the discretion of the employment tribunal judge.

Usdaw's position

In line with policy adopted at the 2012 Annual Delegate Meeting, Usdaw is strongly opposed to any restrictions on workers' access to justice.

As part of our campaign against employment tribunal fees, Usdaw supported a proposal at the 2012 Trade Union Congress calling on the TUC to step up their campaign against Government proposals to erode rights at work and to secure full commitment to this programme from the next Labour Government.

What other organisations think

As part of our campaign against the introduction of employment tribunal fees, Usdaw along with Morrisons sent a joint letter to the Ministry of Justice opposing the proposed fee system. This letter stated that the proposals will "restrict access to the justice system by those who need it at a time that they need it most."

The Citizens' Advice Bureau has written that the employment tribunal system delivers a wide range of social benefits and therefore should not be paid for solely by claimants:

"Without it, good employers would be undercut by the bad, and the bad would be undercut by the worst – to the detriment of workers, employers, and taxpayers alike."

Source: http://www.citizensadvice.org.uk

The idea of employment tribunal fees has also received criticism from most parts of the legal profession. In responding to the Government's consultation paper, the Law Society wrote:

"The Society has a long-standing position of opposing the Government policy to recover court costs through fees because in our view this undermines access to justice, particularly for people on low incomes, who typically include many women, people from non-English-speaking backgrounds, and people with disabilities."

Source: http://www.lawsociety.org.uk

What Usdaw reps think

"The introduction of employment tribunal fees will make access to justice unobtainable for the most vulnerable workers."

Phil Waite
Tesco Distribution, Eastern Division

"You need to join Usdaw/Sata to protect your rights, to give you a voice at tribunals when things go wrong, to argue on your behalf to protect your rights and benefits, and most importantly to make your working life fair."

Nicola Robinson
Home Delivery Network, North West Division

Section 3: Cutting Criminal Injury Compensation

The Criminal Injuries Compensation Authority is the Government body that pays out money to people who have been physically or mentally injured as a result of a violent crime. Funding for the Criminal Injuries Compensation scheme has been slashed by £50 million a year.

Under the new rules, almost 90% of people who are victims of violent crime will either no longer get any payment or have their compensation reduced.

These cuts in funding will affect the significant number of Usdaw members who are subjected to violence in the workplace.

The details

The changes will mean that the following injuries will no longer result in any compensation under the scheme:

- Permanent speech impairment.
- Partial deafness.
- Multiple broken ribs.
- Post-traumatic epileptic seizure.
- Burns and scarring causing minor facial disfigurement.

Even for those suffering the most serious injuries, including serious facial scarring, permanent brain injury, and punctured lungs, compensation has been drastically cut by between £1,500 and £2,000.

Payments for loss of earnings have also been cut significantly (these are anyway only paid to people who are off work for more than 28 weeks):

- Payments will be limited to the level of Statutory Sick Pay – this currently stands at just £85 per week.
- Payments will be limited to those who are never able to work again, or only in a severely reduced capacity.
- Compensation for loss of earnings will be denied to anyone with a broken work record during the previous three years.

Usdaw's position

Usdaw fought against the changes, with a major campaign which involved lobbying MPs and submitting a petition to Government. The Union was, and remains, strongly opposed to the changes.

The changes restrict compensation for loss of earnings to a very small minority of claimants. Even those who do qualify will almost all be worse off. A victim who earns the National Minimum Wage will be £143 a week worse off when their lost earnings are paid only at Statutory Sick Pay level.

When the changes were announced, Shadow Justice Secretary Sadiq Khan said:

"These heartless cuts to compensation for innocent victims of crime show just how out of touch this Government is. Vulnerable people who have been injured through no fault of their own are being left high and dry by a Government that couldn't care less about victims of crime – this is shameful, even by the low standards of this Tory-led Government."

Why criminal compensation is an Usdaw issue

Research published by the British Retail Consortium has shown that in the last 12 months, incidents of violence and verbal aggression against retail staff have increased by 83%.

Those who are victims of violence and suffer physically or mentally from the trauma that they have been through often have to take considerable time off work.

Some company sick pay schemes provide for little or no improvement on the Statutory Sick Pay scheme, and some Usdaw members who work part-time do not qualify for Statutory Sick Pay at all.

The money that retail workers could get through the Criminal Injuries Compensation scheme gave some small recompense for the financial loss that these workers experienced through no fault of their own.

An Usdaw member who was attacked on his way to work told the Union: “There was more worry on the financial side than anywhere else, because of having to pay for my house and children…It made life a bit easier knowing that I was going to get some sort of compensation.”

Receiving compensation also helps victims to feel that their pain and suffering has been recognised, and helps them to get some closure on the trauma of an attack.

Alternative sources of compensation

It is extremely difficult for workers who are attacked to get compensation through other routes. Their attackers are often not caught and even if they are apprehended it is unlikely they will have the means to pay any damages through the civil courts.

Successful claims for compensation against employers in these circumstances are rarer still, as the employers’ insurance companies fight very hard against such claims.

What can members do?

Any member who is a victim of violence at work should contact FirstCall Usdaw to discuss their options. Phone 0800 555 663 for expert advice.

Usdaw is calling for a Protection of Workers Bill, which would give all public-facing workers similar protection to that given to emergency service workers who are the victims of attacks.

Union members and reps can get involved in the campaign by visiting the Usdaw website or speaking to their local Area Organiser.

Usdaw reps speak out

“I am totally disgusted that people who have already been through the horrendous experience of being attacked in their place of work are now having their chance at compensation snatched away from them. It is an insult. When I’ve been out recruiting for the Union, many of the people I’ve spoken to were really shocked about this”

Simon Eggleton
Cooperative Group, Midlands Division

Section 4: Reducing Redundancy Consultation Rights

What's happening over the right to be consulted over redundancy?

The 90-day minimum consultation period before large-scale redundancies can take place reduced to 45 days from April 2013.

Previously, workers were entitled to 90 days' consultation if there were proposals for 100 or more redundancies. If there are to be more than 20 but fewer than 100 redundancies there must still be a 30-day consultation.

The Government claims that the reduction to 45 days will allow businesses to restructure more easily and give them increased flexibility to respond to changing market conditions. The new 45-day consultation period will reduce the time available for meaningful consultation.

Fixed-term contracts which have reached their agreed termination point will be excluded from collective consultation obligations.

There will also be a new non-statutory Code of Practice advising on the issues involved in redundancy consultations.

Time needed for meaningful consultation

Usdaw does not believe that there has been any convincing evidence that the rules on collective redundancy consultation need to be changed.

When considering redundancies, employers are required to consult over:

- Ways to avoid redundancies.
- Reducing the number of employees being made redundant.
- Mitigating the consequences of the dismissals.

In the Union's experience the 90-day consultation period has been beneficial to employers, employees and the local community. This has been particularly the case in situations where there was the likelihood of large scale redundancies.

A minimum 90-day consultation:

- Allowed for a proper dialogue to take place to find alternatives to redundancy.
- Gave the opportunity to explore redeployment options within the business, build proper support structures and bring in outside agencies to maximise external employment opportunities.

A minimum 45-day consultation:

- Limits meaningful consultation and opportunities for redeployment.
- Puts more jobs at risk as there would not be enough time to bring in employment specialists to help people find work.
- Increases the number of employment tribunals.

Usdaw is also concerned about the removal of consultation rights from fixed-term contract staff as this increases job and financial insecurity for vulnerable groups of workers. It will also have a negative effect on temporary staff who will lose out on redeployment opportunities.

We need stronger not weaker redundancy consultation rights

The Union argued strongly against a redundancy consultation period of less than 90 days.

Usdaw believes that all workers should have a right to be consulted over proposed redundancies, irrespective of the size of the establishment, and that the current '20 employee' threshold for consultation rights should be reduced.

Acas Code of Practice

Although the new Code of Practice has been produced by Acas and addresses some of the issues involved in redundancy consultations, it is non-statutory. This means it is a voluntary code and merely relies on employers doing the right thing.

Usdaw wanted to see the introduction of a statutory Acas Code of Practice to make it enforceable. We have real concerns that, whilst employers who operate reasonable employment practices are likely to adhere to the Code of Practice, some unscrupulous employers will just ignore it.

What is an 'establishment'?

Usdaw will continue to make the case that the establishment should be defined at the level where the real decisions have been made – that is usually at the national level where company-wide decisions are taken.

When Woolworths went bust, the employment tribunal decided that each store was a separate establishment. This was despite the fact that the decision to close the business was taken centrally and no single store had the autonomy to seriously review the redundancies.

The Woolworths ruling meant that employees in 200 stores with fewer than 20 redundancies were not entitled to consultation. As a result, 3,000 employees did not qualify for a 'protective award' over the absence of meaningful consultation. A similar ruling affected Usdaw members working for Ethel Austin.

Usdaw is campaigning for workers in small establishments in big businesses to have rights to be consulted over redundancies. The Union is challenging the tribunal rulings in respect of Woolworths and Ethel Austin and a full hearing will take place in late Spring 2013.

Usdaw reps speak out

"I worked for Woolworths for 19 years in a store that employed fewer than 20 people. I did not qualify for a protective award. It is totally unjust and discriminatory for an employee in a smaller branch not to be given the same benefits as those in larger branches. We had the same contract, we worked for the same company – we should have the same entitlement when it comes to consultation rights, irrespective of the size of the store."

Maureen Fraser
ex-Woolworth's employee, North West Division

"I work in a large workplace. The reduction of consultation time to just 45 days will have a detrimental effect. Every employee has the right to individual consultation and this can take time. It is important that everyone feels they have gone through a fair process which they will no longer do. It also takes time to retrain people or bring in experts to help them find a new job. This is especially important now as the economic recovery relies on people being in work."

Michelle Barnes
Shop Direct Group, North West Division

Section 5: Settlement Agreements – Replacing Compromise Agreements

Unfortunately, there are occasions where an employment relationship breaks down and it is in the best interests of the parties for that relationship to end. When this occurs, both parties require adequate protections so that they are:

- Treated fairly.
- Able to make informed decisions.
- Not bullied, victimised or intimidated.

To ensure that this can happen, there are legal provisions for both parties to reach a settlement by way of a compromise agreement.

The Government's proposal

As part of their employment law review, the Coalition proposes to introduce so-called settlement agreements. These are where employees agree to leave their employer for a pay-off, but as part of the deal they give up their right to go to an employment tribunal in much the same way as the current compromise agreements.

However, under the current system, a compromise agreement can only be offered as a means of resolving an existing dispute. The offer and any negotiations cannot be considered by an employment tribunal. This is known as the 'without prejudice' rule.

Where there is no pre-existing dispute, the offer and any related discussions can be scrutinised by an employment tribunal in any subsequent unfair dismissal, constructive dismissal or discrimination claim.

Under the proposals, the 'without prejudice' rule would be extended so that employers can offer a sum of money and a settlement agreement even though there is no pre-existing dispute. If the worker accepts the settlement agreement, it will be legally protected and cannot be used later as evidence in any court case or tribunal.

Even if the worker does not accept the settlement agreement, these conversations cannot be admitted as evidence in unfair dismissal cases unless the tribunal is convinced the employer has behaved improperly. There is currently no definition of improper behaviour.

What Usdaw thinks

Settlement agreements will encourage employers to ignore procedures aimed at improving conduct or performance and instead opt for trying to push employees into resigning. Usdaw is concerned that an employee could be pressured into leaving their job through a settlement agreement instead of management managing the performance or conduct issues.

These agreements could also have a negative equality impact in the workplace as employees will be more wary of making complaints of discrimination and employers may feel more inclined to propose a settlement agreement to a worker whose 'face doesn't fit'.

Usdaw is concerned that under the proposed system any employee could arrive at work to find a proposed settlement agreement waiting for them. This is going to increase fears over job security and damage employee loyalty and productivity.

What other organisations think

A number of organisations have announced their opposition to the Government's proposals on settlement agreements.

The Chartered Institute of Personnel and Development (CIPD) issued a press release stating:

"An employer's first point of call shouldn't be to stick a compromise agreement on the table and show staff the door if an employee's 'face doesn't fit'. This can only have a corrosive effect on employee engagement at an individual firm level, and job security and its hand-in-hand relationship with consumer confidence at a macroeconomic level."

Source: www.cipd.co.uk

The law firm, Thompsons Solicitors, has also criticised the Government's proposals as an idea that will ingrain bullying in the workplace:

"They will equip unscrupulous employers to ambush a worker, even bully and cajole them into agreeing to go, without getting advice from their trade union or elsewhere, and the fact of the conversation won't be able to be referred to in any subsequent unfair dismissal tribunal case. Legally, it will be as if it never happened."

Source: www.thompsonstradeunionlaw.co.uk

Usdaw reps speak out

"The proposed settlement agreement process is likely to instil fear and a culture of bullying in the workplace."

Graham Parkin
Alliance Healthcare, Midlands Division

"As a rep, I've seen first-hand just how important a fair process is if employers are able to side-step the process this is likely to create more problems in the workplace."

Sonia Foster
Sainsbury's, Southern Division

Section 6: Limiting Unfair Dismissal Compensation

The Government's plans

As part of its September 2012 consultation *Ending the Employment Relationship*, the Coalition set out plans to revise the limits on compensation that can be awarded when workers are unfairly dismissed.

Through the Enterprise and Regulatory Reform Bill, the Secretary of State will have wide-ranging powers to vary the maximum amount of compensation payable.

The Government has suggested that it wants to use these powers to limit compensation to a year's salary.

The details

The compensation limit has previously been set at a statutory maximum of £72,300 (except in cases where the employee has been dismissed for making a public interest disclosure or taking action relating to health and safety).

Before the Government's proposed reforms, compensation has been made up of two parts:

1. The basic award – this is based on length of service, age and weekly pay, and is calculated in line with statutory redundancy.
2. The compensatory award – this is based on the amount that the tribunal considers just and equitable for the loss which the employee has suffered. This can include loss of pension, expenses, and future loss, including how long the claimant is likely to be unemployed.

The Government stated that it intends to place a cap of 12 months' pay on unfair dismissal compensation.

The 12 months' pay figure will be limited at three times median earnings, roughly £77,646.

There will continue to be no limit to the compensatory award for discrimination cases.

Usdaw's view

The proposals are just another example of the Government taking the side of bad employers and failing to protect the most vulnerable workers.

The Union believes that the existing compensation limits should be kept in place as there is no evidence or justification for reducing the limit.

Usdaw is firmly of the view that maximum compensation awards for unfair dismissal should not be linked to annual earnings, and that tribunals should retain their discretion to award higher compensation to reflect lost future earnings, pensions etc.

There is also a real risk that reducing the maximum tribunal award will have the knock-on effect of reducing the payments made under settlement agreements.

Hitting the lowest paid workers hardest

Usdaw is opposed to the proposed cap, as a maximum payout of 12 months' pay means that those who are already on low pay will have their maximum compensation limited at the lowest level.

This would particularly affect part-time workers, meaning that women, older workers and disabled people are likely to suffer the most.

Taking into account the stress and upheaval involved – combined with the cost of tribunal fees – in taking a claim to tribunal, these limits could really discourage people from seeking justice after being unfairly dismissed.

Unnecessary changes

The reality of unfair dismissal compensation bears little relation to the myth that has been put about in some parts of the media over huge payouts. Reported large payouts are rare, and when they do occur they are often serious discrimination claims for very high earning workers in the City and their settlements reflect the loss of high salaries, bonuses and pensions, which is not the norm for most employees. The average unfair dismissal award is actually less than £5,000.

Compensation awards are already subject to several deductions – for example, if a tribunal decided that the employee was likely still to have been dismissed even if the proper procedures had been followed, then the compensation will be reduced significantly.

There is no evidence that the current level of maximum compensation for unfair dismissal puts employers off taking on new staff.

What other organisations think

Commenting on the proposals, the TUC General Secretary in 2012, Brendan Barber, said:

"Reducing payouts for unfair dismissals will let bad employers off lightly and deter victims from pursuing genuine cases...Making it easier for bad employers to get away with misconduct is not the way to kick-start our economy and will not create a single new job."

Mike Emmott of the CIPD stated:

"It is not clear how much of an impact the reduction in the limits to payouts for unfair dismissal will have."

Losing out on future earnings

The proposals would severely limit the discretion of tribunals to make higher awards to reflect loss of pensions and future earnings.

Clearly this is a matter of concern in the current labour market, where people remain unemployed for many months or even years if they lose their jobs.

Usdaw reps speak out

"I think the changes to compensation limits are very worrying. Any worker could potentially be affected by this and especially older workers who might find it really diffucult to get another job. This makes it even more important for people to protect themselves at work by joining the Union."

Derek Evans
Phoenix, South Wales and Western Division

"Losing your job is one of the worst things that can happen to you, especially with alternative work so hard to find these days. I live in a small village of just 400 people and new jobs are hard to come by if you get fired. A tribunal should be able to make sure that your compensation reflects that."

Wendy Miller
Co-operative Group, Scottish Division

Section 7: Employee Shareholder – A New Employment Status

Under the guise of 'reducing the burden of employment regulation', the Government is looking to introduce a new employment status whereby employers can buy out a number of key employment rights.

In exchange for shares in the business, employees would be expected to sign away many basic employment rights.

The Government's proposal

The Coalition Government is looking to allow employers to be able to bypass a number of key employment rights through a new employment status called 'employee shareholder'.

This proposal for a new 'employee shareholder' status could allow employers to insist that new starters sign up to this new type of contract and waive important employment rights. Employers will also be able to offer this type of contract to current employees.

Under this new 'employee shareholder' status, in exchange for at least £2,000 worth of shares in the business, employers would be able to buy out the following rights:

- Unfair dismissal.
- Statutory redundancy pay (including the right to claim from the Redundancy Payments Office).
- Time to train.
- Right to request to work flexibly – except parental leave returners.
- Longer notice periods (8 to 16 weeks) to return early from maternity leave.

The first £50,000 worth of shares would be free of capital gains tax.

What Usdaw thinks

Usdaw supports the idea of workers having shares in their business – the Union currently supports the principle of such schemes in a number of companies. However, the Union does not believe that workers should have to sign away basic employment rights to be stakeholders in their own business.

Usdaw has responded to the Government's consultation stating that there is no contradiction between employees having strong employment rights and being shareholders in the business. Usdaw members in a variety of businesses are committed to the success of the business both as employees and as shareholders.

Workers having employment protection helps to foster greater commitment and a long-term view from employees and in turn produces a more productive workforce. Usdaw does not believe that pressuring workers into giving up important employment rights will assist recovery in the economy.

Usdaw believes that employees who opt to join employee share schemes should keep the basic employment rights to protection against unfair dismissal, to statutory redundancy pay, to request training and flexible working, and to give the same notice as other employees when returning from maternity leave.

What other organisations think

The Government's proposals have received very little support from elsewhere. Out of the 209 respondents to the Government's consultation document last year, only five supported the proposals.

Talking about the idea last October, Justin King, Sainsbury's Chief Executive, said that the idea is:

"not what we should be doing and could worsen the levels of trust between public and businesses. What do you think the population at large will think of businesses that want to trade employment rights for money?"

The CBI has described the proposals as a 'niche idea and not relevant to all businesses' and the Chartered Institute of Personnel and Development have heavily criticised the scheme.

In spite of widespread opposition, the Government is refusing to back down, continuing to press ahead with unpopular policy.

Usdaw reps speak out

"The proposal to remove protection against unfair dismissal and the right to statutory redundancy pay is going to reduce job security. This is going to directly impact on new employees and create a two-tier workforce."

Kathleen Cummings
Morrisons, Scottish Division

"I completely disagree with the idea of people being asked to sign away their rights in exchange for shares. There is no reason why you shouldn't be able to own shares in the business you work for, whilst at the same time defending your employment rights."

Patrick Gyamfi
Argos, Eastern Division

Section 8: TUPE – Reducing Protection for Workers in Business Transfers

The aim of TUPE is to protect employees' terms and conditions when their employment is transferred to another business. TUPE rules are underwritten by the European Union's Acquired Rights Directive. The current regulations are an important protection for workers affected by business transfers.

Coalition targets 'gold plated' and 'bureaucratic' regulations

Last year, the Government asked for views on the TUPE Regulations. The Coalition believes that the regulations give workers too many rights! They want to reduce the protection offered by TUPE.

Coinciding with the review, some employers and Coalition supporters started to make noises that TUPE gives too much protection to transferring workers. The Government states:

"Some businesses believe the regulations are 'gold-plated' and overly bureaucratic."

The Government-sponsored Beecroft Report recommended that TUPE regulations should be changed so that 'harmonisation of the terms and conditions of transferred and original employees of the transferee company can be enforced after one year.'

The Coalition claims they want to 'provide the flexibility that employers need to grow and compete effectively', to 'simplify' TUPE 'so that business transfers are easier for all concerned'. In other words, they want to reduce TUPE protection to make it easier for employers to get rid of jobs and cut the pay of transferred workers.

The Coalition has now launched a formal consultation on a number of proposals.

Protection of terms and conditions for only a 'defined period'

One of the changes being proposed is limiting the protection of the terms and conditions of transferring employees to only a 'defined period'. The Government wants to make the post-transfer harmonisation of terms and conditions easier. The defined period being mentioned is one year.

In an era when business transfers have become more common, TUPE is an increasingly important employment right for workers. Usdaw does not believe that there is a case for limiting TUPE protection to a 'defined period'.

TUPE transfers are not uncommon in Usdaw sectors of the economy. The proposed changes would mean that members would have uncertainty that their pay and other key terms and conditions would be protected following a transfer.

Limiting the business transfers covered by TUPE

The Coalition wants to limit the situations where TUPE protection applies. They do not want TUPE to apply when a 'service provision change' takes place.

A 'service provision change' refers to a situation where a service contract transfers to another business. This transfer may be the result of a competitive tendering process or simply a decision by an employer to get another business to deliver that service.

The Government are proposing to remove TUPE protection from such transfers arguing that the regulations restrict competition over service contracts.

Amendment regarding workplace location

Under TUPE, a dismissal is automatically unfair if an employee is dismissed for a reason connected with the transfer. The only exception is for legitimate economic, technical or organisational reasons connected with the transfer.

The regulations currently mean that if the new employer intends to carry on the business in a different location, but with the same number of staff, then any dismissals resulting from the change of location are automatically unfair.

The Government wants to remove this unfair dismissal protection from workers impacted by a change of workplace location.

Usdaw believes that the dismissal of workers during a TUPE transfer as a result of a business moving location should be viewed as automatically unfair. There is no strong case to weaken the protection of workers affected by TUPE transfer resulting in a change of workplace location.

Will Europe save TUPE protection for transferred workers?

The protection offered by the TUPE regulations can be traced back to the European Union's Acquired Rights Directive. As part of the European Union, the UK is signed up to the Directive which aims to protect the rights of workers affected by business transfers.

It is unclear how the UK Government is going to proceed with some of the proposed changes and still comply with the Acquired Rights Directive.

Usdaw says improve workers' TUPE rights

Usdaw would like to see workers having stronger, rather than weaker, employment rights when affected by a business transfer.

Usdaw would like to see:

- Stronger information and consultation rights in TUPE transfers.
- TUPE applying in insolvency business transfer situations.
- TUPE protection to apply to share transfers and private equity buy-outs.
- Better protection over pension provision in TUPE situations.

Section 9: On The Horizon – Trade Unions Under Threat

The Tory-led Coalition Government has already announced sweeping changes to employment law and it has started the process of making further changes. However, even this is not the end of the story.

The Government has shown itself to be hostile to trade unions. The Cabinet Office is leading a radical overhaul of the arrangements that allow civil servants to undertake trade union work during working hours. Some private sector employers will inevitably follow this lead and adopt a similar approach.

Boris Johnson, London Mayor, has spoken of an eight-part plan for reducing union power, which would make it even more difficult for unions to take strike action.

The CBI, which has a track record of heavily influencing Government policy, has been pushing for changes to union rights including new hurdles for statutory trade union recognition.

The right to strike

The legal barriers to taking industrial action in the UK are already extremely tough, following legislation implemented by previous Conservative Governments.

There is no right to take secondary action, and there are very strict timetables which need to be observed for industrial action to be legally valid.

A failure to comply with any of the rules on industrial action can leave a union open to legal challenge from the company involved.

Despite this, Boris Johnson has repeatedly called for industrial action to be legal only if at least 50% of the union membership balloted, vote positively in favour of the action. He has also expressed the view that picket lines should be restricted and that emergency services workers should have their right to strike minimised.

Industrial action is something that trade union members only consider as a last resort; but the right to strike is a fundamental human right and we must be vigilant against any attempts to undermine it.

Union reps' facilities

Reforms recently announced by the Cabinet Office will compel civil servants who are trade union representatives to spend at least 50% of their working hours delivering their Civil Service role. This will effectively remove all full-time convenors from their role. Any exemptions to this will require specific agreement from their Secretary of State and will be published.

Announcing the changes, Francis Maude, Minister for the Cabinet Office, said:

"For too long there has been insufficient monitoring of union work done by civil servants during their working hours. That's why we are limiting the amount of time civil servants can spend on trade union work and introducing a benchmark which will slash the cost of facility time to the taxpayer."

Usdaw is concerned about these changes, not just out of solidarity for our colleagues in public sector unions, but also because of the possible impact that this could have for our own reps and members if private sector employers implement similar rules.

Trade union reps are entitled to basic paid time off for trade union duties, but many agreements go further than the legal requirements.

There is a real danger that the hostility to the trade unions in the public sector will spread to the private sector.

Statutory trade union recognition

When a union is seeking recognition from an employer, they can make an approach to the Central Arbitration Committee (CAC) for statutory recognition.

The CAC makes a decision based on the level of support the union has in the workplace and this may require a ballot of the workforce.

This process is complex and difficult, but Usdaw has been successful in gaining statutory recognition in some companies including Ladbrokes in Northern Ireland.

Dr Neil Bentley, CBI Deputy Director-General, has called for the statutory recognition process to be made even more difficult, by requiring that a vote is always held in cases of statutory recognition and that the employer can require a vote every three years to maintain statutory recognition.

The CBI's proposal would place unreasonable burdens on unions and would make it even more difficult for workers in unorganised workplaces to be represented by an independent trade union.

Usdaw believes that winning statutory recognition is difficult enough without more obstacles being created. The current complexity and hurdles to winning statutory recognition do not encourage employers to enter into a dialogue over voluntary recognition. The CBI's proposal would make the situation even worse.

Usdaw reps speak out

"The overall effect of all these changes would be a gradual chipping away at union rights are this is bad news for every union member."

Rosemin Adam
Home Retail Group, North West Division

"I am really concerned about what the Government is doing to unions in the public sector. Reduced trade union rights make it harder for workers to have their voices heard and to be protected when they need it the most."

Bev Bates
Co-operative Travel, North East Division

Section 10: The UK and the European Union – Workers' Rights Under Threat

David Cameron has recently announced that if the Tories win a majority at the next General Election they will hold an in-out referendum on Britain's European Union (EU) membership.

The Conservatives say they will renegotiate the UK's position in the EU and 'bring back' powers of law to the UK. But this is a smoke-screen for their true intentions. The Tories will use this as an opportunity to turn back the clock on hard won workplace rights.

This could have a huge impact for Usdaw members – many of our current employment rights have their origins in European legislation.

Employment rights which could be under threat include:

- Working hours.
- Protection for part-time workers.
- Holidays.
- Maternity.
- Agency workers' rights.
- Consultation.

Frances O'Grady, TUC General Secretary, commented:

"There's one set of workers' rights David Cameron can't touch. Those are the rights provided for by social Europe – paid holidays, health and safety, equal treatment for part-time workers and women, protection when a business is sold off, and a voice at work.

"The Prime Minister wants to repatriate those rights, and not because he thinks he can improve them. Cameron wants to make it easier for bad employers to undercut good ones, drive down wages, and make people who already work some of the longest hours in Europe work even longer."

Employment rights underpinned by Europe

Here is a summary of some of the rights workers stand to lose if we do not have the protection of European Union employment law:

Working hours

Currently the Working Time Directive means workers are legally entitled to breaks, rest periods and a working week that is not too long. This means:

- A 20-minute break at least every six hours.
- A minimum rest period of 11 hours between working days.
- At least two 24-hour rest days once every two weeks.
- A ceiling of 48 hours on the maximum average working week.
- Free health assessments for night workers.
- Protection from discrimination as well as equal treatment in the workplace.

Holidays

The Working Time Directive also provides a minimum of four weeks' paid holiday every year.

Agency workers

The aim of the Agency Workers' Directive is to ensure that agency workers receive the same terms and conditions (including pay) as permanent workers in the same role, once they have been on an assignment for 12 weeks.

Part-time workers

Under European law, part-time workers must receive the same fair treatment as their full-time counterparts. This includes holiday pay, sick leave and pay, maternity and parental rights and many other benefits.

This protection is vital for Usdaw members, as many workers in our sectors are employed on part-time contracts. It also affects women in particular, as many women work part-time to fit around caring commitments.

Flexible working

All workers currently have the right to request flexible working if they have caring responsibilities. This means parents and carers can approach their employer to ask to change their hours, and employers are legally required to look at whether it would be possible, and workers cannot be penalised for asking.

Equality

It is a breach of European law to discriminate for reasons of race, gender, sexual orientation, disability or religious belief.

Maternity

Statutory Maternity Leave and pay in the UK exceeds the EU minimum, but other aspects of maternity rights – such as the right to go back to the same job you had before going on maternity leave – may be under threat.

Consultation on collective redundancy

Under European law, an employer wishing to make more than 20 people redundant is legally obliged to consult with the employee representatives to discuss ways of mitigating the effects of the redundancies, or of avoiding redundancy all together.

The anti-employment rights agenda

The above employment rights would be at risk if the UK votes to leave the EU.

When the Conservatives criticise Europe for too much 'bureaucracy' and 'red tape', their real targets are the employment rights that are underpinned by European directives. When the Eurosceptic Tories attack EU rules and regulations, they are really saying they want the ability to exploit workers without the 'interference' of employment rights.

Conservative renegotiation of the terms of EU membership – or even the UK leaving the EU altogether – would spell disaster for employment rights in Britain.

Conclusion

Employment rights are under attack and this will have a big impact in every workplace. Opposing the Government's austerity policies is a priority for the trade union movement but it is equally important that we campaign over what is happening to employment rights.

Workers with less than two years' service in their current job have already lost the right to go to tribunal over unfair dismissal. In mid-2013, fees will come in for anyone who wants to make an application to an employment tribunal. Then there are the cuts to criminal injuries compensation – where Usdaw has been at the forefront of the campaign to protect workers.

The Government has further plans to attack employment rights. Proposals for reducing consultation rights over redundancies are well advanced. They want to introduce settlement agreements to make it easier for employers to pressure workers into resigning. Compensation for unfair dismissal is to be limited.

The Coalition is also pushing ahead with proposals to introduce a new employment status of 'employee shareholder' despite widespread opposition and a lukewarm reception from business.

They also want to reduce the protection that TUPE offers to workers who have their jobs transferred to another business.

Leading Conservatives are making noises about attacking trade union facility time, increasing thresholds for strike ballots and making statutory recognition even more difficult.

The Tories and their Lib Dem friends are trying to make workers pay for the economic crisis. Public services are being cut, benefits are being slashed, jobs are being lost and now the Coalition is targeting workers' employment rights.

The Tories have made it clear that they do not value or respect workers' rights. The changes that we have seen so far are likely to be the tip of the iceberg, and if the Conservatives achieve a majority in the next Parliament there is no doubt that there will be more bad news for employment rights.

The Conservatives' increasingly anti-European agenda is really a cover for attacking workers' rights. When they talk about bureaucratic red tape they mean the framework of employment rights.

The importance of employment rights in the workplace is one of the reasons why Usdaw will be campaigning to achieve a Labour victory in the 2015 General Election.

This Executive Council statement commits the Union to continue to campaign to defend the employment rights under attack.

Improving workers' lives – Winning for members

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