

THE TAYLOR REVIEW

1. Introduction

At the end of 2016 the government launched a review of the UK labour market to consider the implications of new forms of work on workers' rights and responsibilities, as well as on employers' freedoms and obligations. The main recommendations in the Taylor Review, published recently, are detailed below.

2. The three status approach

The existing statuses of employee, worker and independent contractor are to be retained but with the intermediate worker category re-designated as 'dependent contractor' and self employed re-designated as 'zero hours', with a recommendation for a new, simpler and clearer statutory delineation between the three categories.

The review acknowledges the need for a simple and clear test to bring clarity for all parties involved. It then goes on to say the government should decide what that test is.

However, companies, individuals, lawyers and the judiciary have grappled with this for years. The result has been an abundance of contradictory case law and a current situation where each case rests on its own unique facts. If there were a simple solution to be found, then it is surprising that the courts have not yet found it!

3. Dependent contractors

This new category is intended to capture those who have the status of a

worker but that do not enjoy 'employee' rights. They would be entitled to basic protections such as the national minimum wage (NMW), paid holiday and other existing 'worker' rights. They would have the right to a written statement at the start of their engagement.

The review recommends that in assessing whether an individual is a dependent contractor there should be a greater emphasis on the degree of control they have, rather than whether they are required to perform the work personally – a traditional element in deciding whether an individual is self employed or not.

4. Right to NMW

Dependent contractors will have the right to be paid the NMW if they choose to do so based on the 'output work' (piece rate) in the NMW legislation. However, the NMW rules would be adapted so that if dependent contractors chose deliberately to work at a time of low demand they would lose that entitlement. Technology available via platform based apps could be used to tell the individual in advance what the demand is so they can make an informed choice about whether or not to work, and so maintain a two-way flexibility. This seems to undermine the essential point of the NMW provisions, where potentially vulnerable workers are given the 'choice' to work for an otherwise illegal wage.

5. Zero hours contracts

These are not to be banned. Instead, after 12 months an individual will have the right to request a guaranteed hours contract. The starting point for the guaranteed hours would be the average weekly hours worked over the previous 12 months.

The review also recommends the Low Pay Commission should advise on the impact of introducing a higher NMW for hours that are not guaranteed in a contract so that businesses could still use zero hours and short hours workers, but they would have to pay them at a higher rate.

The review acknowledges a ban on zero hours contracts would negatively impact more people than it helps. Instead it seeks to draw a fair balance so that those who have worked for 12 months, and so have established a record of loyalty and performance, can request a more permanent form of arrangement. The employer would not have to agree to it, though, similar to the right to request flexible working.

6. Agency workers

Similarly, agency workers engaged by a hirer for 12 months will have the right to request a direct contract from the hirer. The hirer must consider the request in a reasonable manner. In addition, the 'Swedish derogation' should be abolished. This model currently allows workers to opt out of equal pay with permanent workers and instead receive a minimum level of pay between assignments.

7. Workplace consultation/representation

There is no explicit recommendation to extend workplace consultation or representation rights other than widening the rules on entering negotiations about establishing workplace representatives when 2% of employees request it. Currently the

threshold is 10%. There is an acknowledgement that strong employee relations and responsible corporate governance are important in establishing the concept of 'better work'.

8. Supplementary issues

There are a number of less strategic recommendations:

- there should be greater enforcement action to prevent unpaid internships so as to stamp out abuse and improve social mobility
- steps should be taken to ensure taxation is consistent across all forms of employment and to align the employment status and tax status frameworks so as to reduce the differences between the two to a minimum
- there is a more pro-active approach to workplace health, including a recommendation that the current statutory sick pay (SSP) scheme should be reformed so that it is a basic employment right available to all worker. The right should accrue based on length of service so those engaged for only a short time would not be entitled to six months SSP. In addition the review recommends that the relevant government departments explore ways of developing an integrated approach to the improvement of health and well being at work
- in order that casual and zero hours workers can have better access to holiday pay, the pay reference period should be increased from 12 to 52 weeks.

Further Information

More information on this and other equality matters is available from:

- ❑ Val Stansfield, Employment Rights Adviser at stansfieldv@tssa.org.uk or 020 7529 8046
- ❑ the TSSA Helpdesk – 0800 328 2673

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