



The business people – an extension to your team

Employment Law Panel Report

September 2013

Introduction

The Forum of Private Business is a proactive, not-for-profit organisation providing comprehensive support, protection and reassurance to small businesses. We add value to businesses through the collective voice for members in local, central and European government, and the provision of tailored solutions that promote business success.

Our Employment Law Panel comprises approximately 130 members who have volunteered to provide feedback to us on employment law matters.

Our members are business owners, directors or experts who work in small and medium-sized enterprises (SMEs) that employ and typically with less than 50 employees. The Forum feels that these businesses need to be better represented so politicians are aware of the typically more personal approach that many businesses prefer in managing their employees. These types of businesses were responsible for around 2/3 of employment between 1997 and 2007⁽¹⁾ and are expected to provide a similar proportion of employment growth in the next decade.

Note: as figures refer to just over 100 businesses, they should be treated as indicative rather than as representative of all small and medium-sized businesses.

Summary

"We never see the intricacies of law until something bites us on the bum. This seems better but only time will tell..." Employment law panellist response

Panel members were generally positive about the changes that have happened over the last two years, particularly in letting people go and taking people on. Panel members also gave the benefit of the doubt to the Coalition's strategic aims, although many of the changes seemed to be shrouded in impenetrable technical language.

Overall, 6% of businesses felt legal changes were much more likely to make them employ staff in the future and 28% felt that it would make them marginally more likely to employ staff. As with the 33% who felt that it would make no difference, those who saw a marginal increase highlighted the importance of increased turnover and profit to further employment.

There was however concern over the changes in terms of managing people - far from 'nudging' businesses toward best practice and empowering leadership within firms there was a feeling that the 'right' of all employees to request flexible working (due to be introduced in 2014) and a similar 'right' to shared parental leave (due in 2015) would make planning and management more complex and rigid. Overall 45% felt that it would make a negative impact on the way that they can run their business, with 24% feeling that it was a general movement in the right direction from the Coalition.

Those who felt that the changes made by the Coalition would encourage future recruitment thought that this was mainly because of the improvements to the process of letting people go (in particular the extension of the qualifying period for unfair dismissal and tribunal changes). Some business recognised that the tribunal changes could make it too easy for bad employers to get away with non-compliance and a number of other panel members highlighted the potential risk of bad employers taking advantage of the changes. In most cases however they did not see why good employers should suffer as a result of the malpractice of a minority. In most cases members felt that the tribunals process would, in practice, not change much.

There were questions about the overall aspirations of the Coalition and their intention to reform employment law in a way that was flexible, fair, coherent and effective. Panel members particularly challenged the flexibility of reforms. Only one business felt that the changes would definitely be effective although 50% were prepared to give the Coalition the benefit of the doubt.

A minority of businesses felt that employment law changes should not be affected by the wider context of regulation and business climate. 67% of panel members would argue that it is crucial for regulators to take into account economic circumstances. 42% felt that a crucial need was for the government to tackle the underlying cultural issues which have meant that employment law remains a minefield, in particular the use of no-win, no-fee lawyers (or 'blackmailers' as one respondent put it), the sense of entitlement of some employees and the reluctance of managers to take appropriate action in case there are legal repercussions.

Overall, the feeling of the panel members was that we should focus on:

- Reducing the cost of employment
- Reducing the administration required when employing people (and throughout their employment)
- Greater incentivisation of employers with fewer than 50 staff through the tax system
- The disproportionate impact of parental leave on micro and small employers.

Member recommendations

Panel members also suggested the following improvements that the Coalition should consider. Above all these was the wish for the Coalition to focus on economic recovery with employment law reform very much secondary.

Discipline

- Working on making young people employment-ready in schools so they can compete in the outside world and have reasonable expectations on what can and cannot be done in the workplace
- Simplifying the disciplinary procedure and bringing it up to date

Employment tribunals and redundancies

- Increasing the deterrent for weak and malicious cases by penalising the lawyers or making it more normal to award costs to the business
- Campaigning to make ex-employees think twice about bringing a claim as this can have detrimental effects on the claimant as well
- Greater support strategies for those who are made redundant in getting back into work
- Fewer loopholes in the system for employees to exploit

Cost of employment

- Incentives in the tax system for SMEs looking to employ
- Increase the provision of debt-based finance so that recruitment becomes affordable
- Look at ways to make auto enrolment less expensive for employers
- Look at ways to decrease the cost of employment for labour-intensive industries; it is not reasonable for one section of the public sector to demand significant reductions in the cost of services while central government increases the costs of employment through National Minimum Wage, Real Time Information etc.

Greater flexibility for businesses to manage and plan effectively

- Reassess the concept of 'rights' for shared parental leave and flexible working, employers will consider these anyway
- Continue the concept of incentivisation of businesses to use better management tools and focus on provision of guidelines and guidance rather than regulation

Communication

- Better and clearer communication of what businesses can and cannot do. The BIS report on employment law reform should be clear to business owners as well as other stakeholders who may have specialist knowledge of the legal process
- Clarify why regulations are being changed and suggest practical ways in which businesses with limited resources can comply - this would minimise the belief that the government does not understand SMEs.

Forum Policy Recommendations

Cost of employment

The rising cost of employing staff continues to be a disincentive to growth for many businesses. Whilst there have been some steps to promote employment such as the Employment Allowance, policies elsewhere in Whitehall add to the cost of employment, flying in the face of those incentives. Government should ensure cross department policy is joined up in a way that will collectively encourage employment.

The Employment Allowance, announced in the 2013 Budget, whilst welcomed by Forum members, will be taken by the overwhelming majority as a saving rather than as an incentive to employ.

At the same time, increasing the National Minimum Wage at a time when the economy is in the delicate, early stages of recovery is unhelpful to small businesses who have survived the worst of the downturn and are beginning to look to invest and grow.

Shared parental leave and flexible working

The Forum raised its concerns about the Government's proposals on shared parental leave and flexible working earlier this year. Despite voicing these concerns the government has pushed forward with these plans. It is now essential that the regulations strike a fair balance between the responsibilities of the employee and the role of the employer. Similarly, all subsequent guidance on both of these issues must provide clarity to small businesses so they are better supported when trying to navigate the new laws.

Disciplinary process and dismissals

The recent introduction of fees for employment tribunals is a step in the right direction but is not expected to bring about any significant change to small businesses. The government should build on these reforms and focus on challenging the claimant culture that has developed in the UK. A robust system should be put in place to prevent vexatious claims being elevated to a tribunal.

Simplification of process and clarity in regulations

A large proportion of small businesses find the current regulatory landscape complex and confusing. To aid compliance the use of 'plain English' should be required for all regulations and for all published guidance. Jargon should be avoided.

Employment law originating from the EU

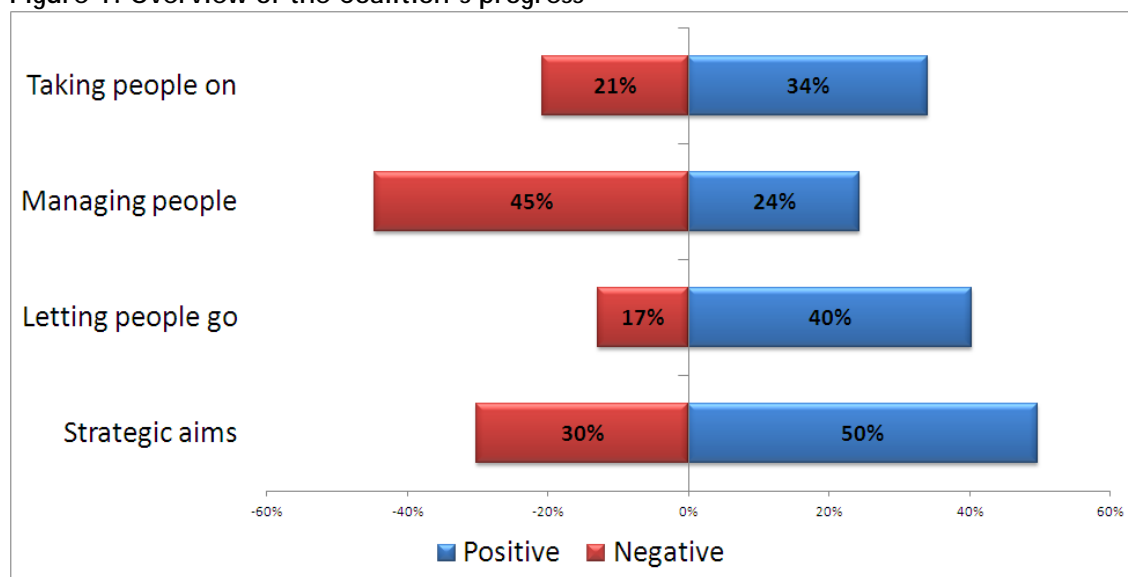
The Forum has been encouraged by the creation of the EU Taskforce by the Prime Minister to identify regulations that are hampering business growth. We would like to see the government use the Taskforce's findings later this year to tackle employment regulations that have a detrimental impact on small businesses. We would also urge the government to consider *all* the employment regulations highlighted to the Taskforce with a view to reducing the burden of employment law on small businesses.

Review of the Coalition's policy

In March 2013 the Department of Business Innovation and Skills (BIS) produced a document reviewing the progress of the Coalition's employment law reforms ⁽²⁾. This report looks at their stated aims and what the impact has been on businesses.

The document attaches various regulatory changes to their three main practical aims and highlighted their main aspiration to produce a framework that was coherent, fair, effective and flexible. The chart below illustrates members' review of the Government's reforms.

Figure 1: Overview of the Coalition's progress



In some cases the split was artificial as one of the main positive changes for taking people on was the change to the tribunal regulation to deter malicious and unfair claims being made against an employer. However it was noticeable that the only section with a negative balance (the proportion reporting a positive impact against a negative impact) included the new right for shared parental leave and the right to request flexible working.

Impact of employment law over the review period

The burden of employment law has not changed over the period of the review with a mean score for respondents of 5.9 out of 10 - the same as the historical average.

Figure 2: Burden of Employment Law

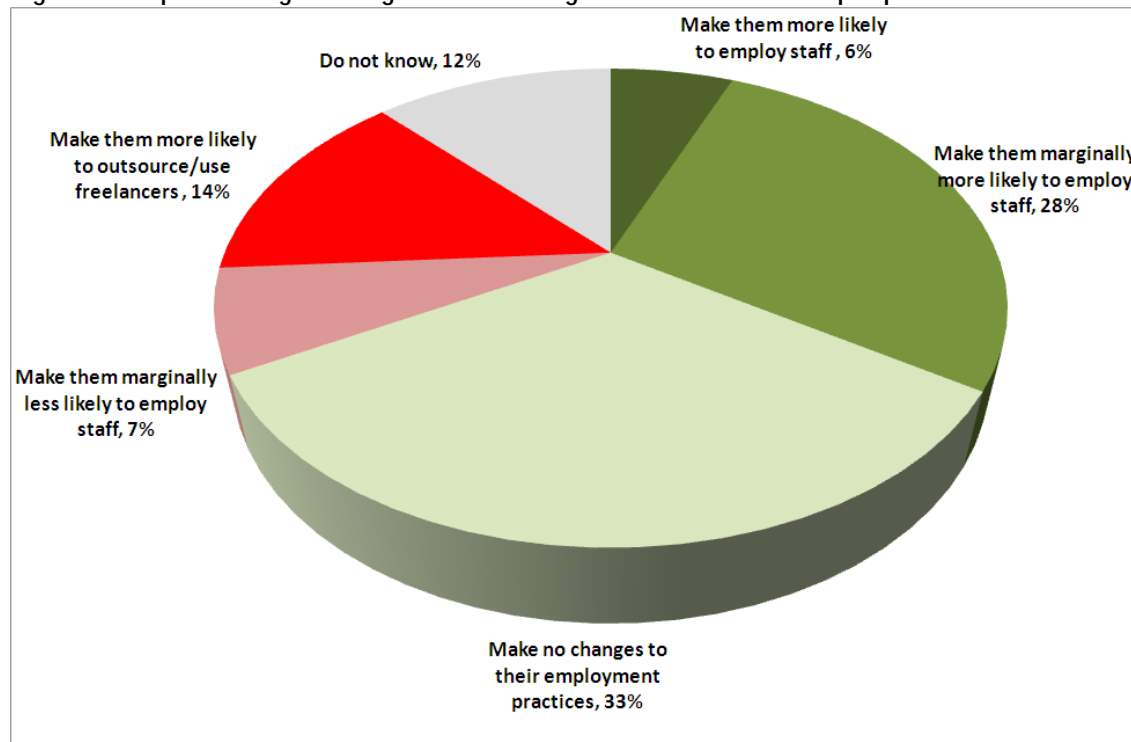
	Panel	Panel 1	Panel 2	Panel 3	Panel 4	Panel 5
	Mean scores (2010-2013)	Feb 2010	Sept 2010	Mar 2011	Sept 2012	Aug 2013
Burden of employment law (out of 10)	5.87	6.19	5.14	6.53	5.61	5.88
% reporting 7-10	46%	46%	32%	60%	50%	44%

The high point of 6.5 was in March 2011, when economic pessimism was at its highest. There has been an increase in the overall score for the burden of employment law over the last year, however the proportion reporting significant difficulties has gone down.

Taking people on

*"The economy is the real driver, the regulatory changes affect employment potential marginally."
Employment law panellist response*

Figure 3: Impact of legal changes to encourage businesses to take people on



A third were positive about the changes, a third felt that it made no changes to their employment practices and a fifth felt that they were detrimental to increasing employment.

Overall there was a feeling that the economy would drive employment and there was little that would impact other than significant changes to the cost and risk of employment.

"For those who are concerned about legality of employees things should be simpler." Employment law panellist response

6% felt that overall it would make them and companies like theirs much more likely to employ in the future - through the detection of a more balanced approach to employment. Clarifying legal issues through improved documentation, greater support in checking the ability of potential employees to work in a sector through the portable Disclosure and Barring Service check were mentioned in this context.

"The problem is that the existing plans tinker at the edges, though a step in the right direction they don't yet end the micro management of the employer-employee relationship in law which ties ones hands as an employer." Employment law panellist response

28% reported that it would make them marginally more likely to employ in the future with the tribunal changes (although not on the list for this section - see appendix 1), zero hours contracts and schemes to check the legality of individuals helpful.

33% reported that they did not intend to recruit at all and were concentrating on employee retention and, as such, none of the policies were relevant. But for most the economy was not right or the changes were largely irrelevant to their decisions. For some businesses in industries such as security and some healthcare providers, improvements such as making it easier to check that employees were able to work legally in the UK were largely irrelevant as they had more onerous methods of checking to keep up with industry best practice.

"I don't know anything about any of this stuff. The whole thing about employment law is that it is a total minefield for a small business, and a massive disincentive to any new recruitment!" Employment law panellist response

7% felt that the changes were likely to have a negative impact with uncertainty over the Agency Workers Regulations a factor. However the biggest issue for many was the unaffordability of the National Minimum Wage increase. Members are facing demands from clients (often councils or central government) to reduce costs whilst for other employers who already pay above NMW the increase will have a knock-on effect as employees want the difference in pay grades retained. This was particularly an issue for low wage, labour-intensive industries such as nurseries, care homes etc.

"We have had to use subcontractors due to the lack of sales and are restricted over any recruitment. We have not seen anything that would reduce the cost of employing people and the red tape that goes with it." **Employment law panellist response**

21% felt that the changes would be more likely to make them consider outsourcing, in some cases simply because the length of the list and apparent complexity of some of the more marginal changes (some of which are largely irrelevant to the majority of members) were difficult to understand. Others felt that the changes merely tinkered around the edges and that with so much uncertainty in the economy as well as the law the best solution was to use freelancers or outsource.

"Who knows what a 'review' will find for Agency Worker Regulations?!" **Employment law panellist response**

12% were uncertain about the changes and what they would mean - one business felt that if reduced regulations would bring the cost of recruitment from agencies down (which was considered to be very high) then there would be a benefit. A handful were concerned about the impact of the agency working review and the majority were sceptical that the changes would improve the opportunities for potential employees in their business.

"Allow businesses to make a profit and give them credit for employing people." **Employment law panellist response**

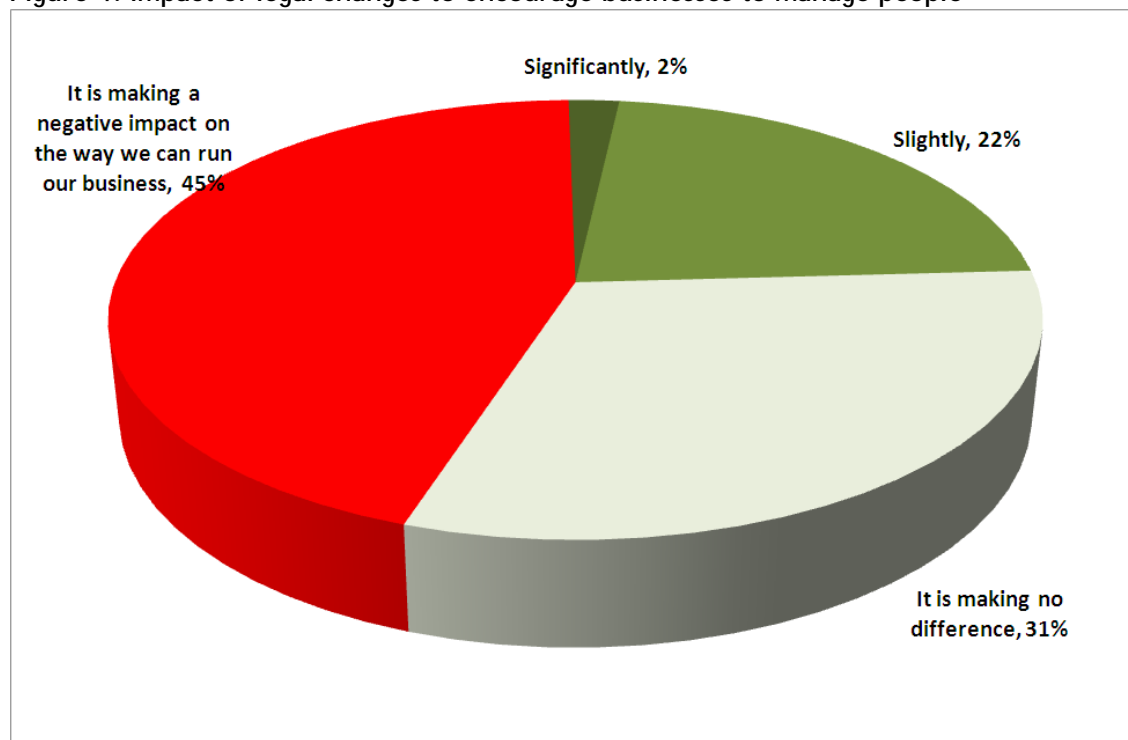
Improvements wanted:

- Greater balance between employer and employee and a reduction in the risks entailed in employing staff:
 - Businesses wanted greater protection for the employer (and the other employees in the firm), particularly through the tribunal system where there are unreasonable demands on the business owner and senior management.
 - More support for the employer in being able to discipline staff; smaller businesses want more opportunity to rectify errant behaviour but feel they have to 'walk on eggshells'.
 - Fewer loopholes in the system for employees and less of an assumption that an employee who makes an unfair claim has nothing to lose.
 - A greater tolerance of technical mistakes by businesses, more credit needs to be given for employing in the first place and their obligation to their other employees, who may end up the real victims as a result of the tribunal.
 - Allow employers to hold employees to their notice period in the same way that an employer would be expected to provide for an employee while the redundancy process was taking place.
- Reducing the cost of employing staff:
 - Reduce the cost of recruitment, parental leave, health and safety process.
 - Greater assessment of the affordability of regulatory changes - government should not demand increases in the cost of employing individuals on one hand and then demand significant savings from labour-intensive industries at the same time.
 - Tax breaks and incentives for businesses looking to recruit.
 - Make auto-enrolment less expensive for employers.
- Improve the business climate:
 - Increased start-up funding and support for businesses needing debt-based finance to cover the cost of recruitment.
 - Support for the high street and other industry-specific support to help businesses deal with temporary issues.

Encouraging businesses that manage people

*“Parental leave/maternity leave sharing is a way of making more and more people unemployed.”
Employment law panellist response*

Figure 4: Impact of legal changes to encourage businesses to manage people



“Reducing red tape and improving self-management are good drivers towards an improved management climate.” Employment law panellist response

A number of businesses focused positively on the idea of improved management tools to help them deal with issues as and when they came up.

“Parental leave comes with the territory. Limiting the working time directive has helped and something needed to be done to support whistle-blowers as their treatment by organisations like the NHS has been outrageous.” Employment law panellist response

The idea of reducing red tape and reform of the whistle-blowing laws also had significant support after high profile failures by public sector institutions, banks and other corporations in dealing with issues highlighted by failures.

“Though the changes are on the whole in the right direction, quite a few of the changes will result in even more regulation, not less.” Employment law panellist response

Limiting the application of the working time directive was also positively received by some business owners and anything that looked at repealing laws on the statute book were seen as movement in the right direction, although many felt that there would actually be more requirements on business owners and less chance for them to manage in their own natural style.

“The regulations tend to give employees more rights and so put more demands on employers. For example there is nothing to stop anyone from requesting flexible working so why does it have to become a right? There was nothing to stop an employer from retaining staff over the age of 65 so why has the age at which people can compulsorily be retired been removed?” Employment law panellist response

The major concerns were that some of the changes actually meant that businesses could no longer manage themselves. The focus for a number of businesses was on the compulsory nature of some of the laws such as the right to flexible working, with employers fearing that they right would mean that the burden of meeting such a right would fall on some key members of staff (including themselves) rather than shared in

a fair and equal manner. Some businesses felt that the right to flexible working could not be met for their business and others in their industry, fearing that this would create unrealistic expectations from employees and make management far harder.

“Things like the shared parental leave and right to flexible working are both concerns to small business such as ours. Our employees are for the main part youngish males (7 out of 9) 6 of which could be eligible to shared parental leave. It would seriously impede our business if one of them took parental leave, if more than one did, it could potentially devastate the business.” Employment law panellist response

Shared parental leave was also an issue particularly in traditionally male-dominated industries such as manufacturing, engineering and construction. There was also a concern that fathers may be less likely to tell their employer in good time leaving the business unable to plan for their absence. Others pointed out that for specialist setters, tradesmen and technicians there is not a ready supply of replacements so parental leave would disrupt the capacity of the business. At best, businesses felt that shared parental leave added uncertainty to the rules and would increase the risk of employing or even retaining their current levels of employment.

“The thinking and language used is strewn with jargon, gobbledegook and abysmal grammar making interpretation ever more uncertain.” Employment law panellist response

A number of businesses commented on the language used, noting that some elements were difficult if not impossible for a non-specialist to understand. As far as possible we have used the language of the report and while the principle audience may not have been business owners, there was a clear concern that regulators were too far removed from the realities faced by business owners – as one business owner put it, they no longer planned for law changes they were just hit by them when they became relevant.

It also brought into question whether management tools provided for employers would be tailored to the needs of smaller businesses and whether the government belief in the facilitation of employers and employee to work out what works best for them was the main focus of the new regulations.

“We are running a business, not a social service, and we should be allowed to do so in the way that is most effective for the business.” Employment law panellist response

Many businesses felt that they should be left to manage in a way that fitted their business on the basis that:

- The days of vicious employers had long gone.
- Most businesses understood the need to manage effectively and the benefits that good management offers.
- Smaller employers are less likely to be able to afford a high turnover of employees as they have to devote proportionally more resources to recruiting and training an employee.
- Certain elements of employment law make it hard to manage staff in a reasonable manner or worse still makes it easier for managers to do nothing.
- The overriding focus of the government should be managing the economy not micro management of businesses.

Few businesses were comfortable with “management by lawyers” and specific improvements called for tended to be around removal of or significant reform to employment law:

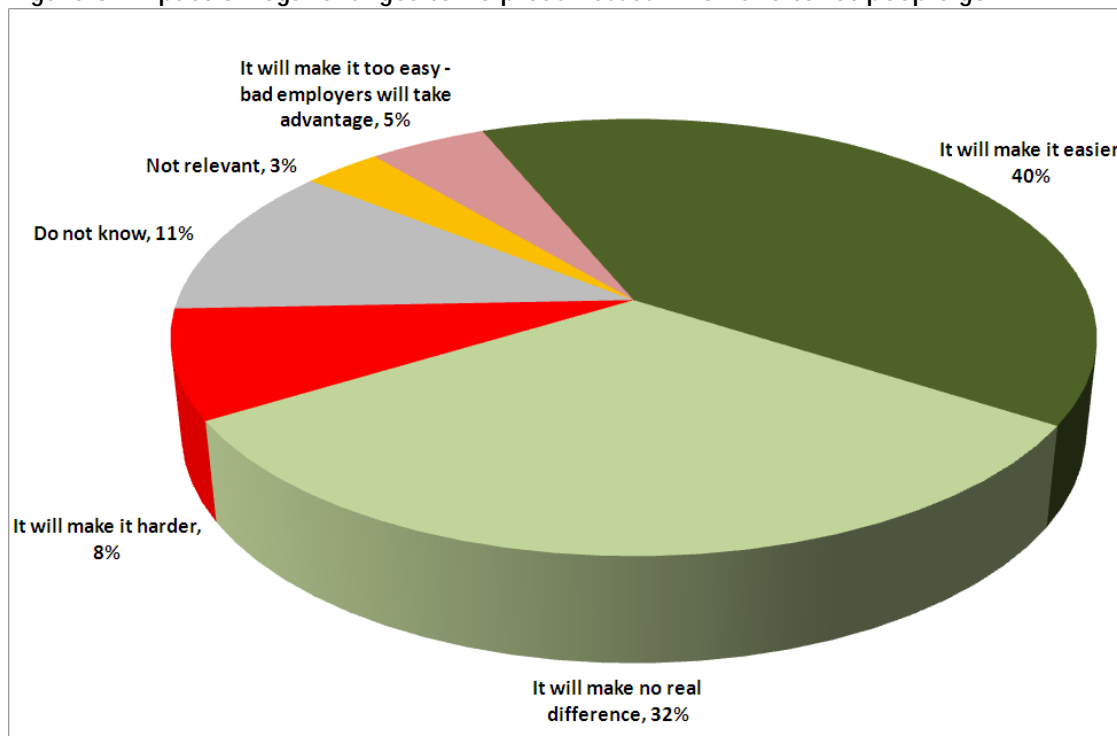
- Significant changes to the framework to allow businesses to manage in an informal way rather than have to adopt rigid and inflexible positions which while legally defensible, were not appropriate.
- Consistency between government departments (e.g. HMRC and tribunals over the definition of self employment).
- Greater support for businesses in dealing with parental law.
- Less demanding disciplinary and grievance procedures.
- Easier and less demanding procedures for performance management and dismissal due to incapacity.
- Greater use of exemptions for businesses with fewer employees – a number of panel members felt that the regulatory changes were not really relevant for smaller businesses.
 - Less requirements for keeping records from meetings and greater use of unofficial conversations to allow for a frank conversation between employer and employee without legal ramifications

- Reduction of taxation/tax simplification to allow businesses greater resources to improve management and the workplace
- Clearer communication of what businesses have to do and what they could do without regression into jargon
- More flexibility – the negative focus of zero hours contracts was a concern when it offered a number of panel members a useful option for individual employees as well as the business
- Greater realisation from school leavers about the world of work and what is required from them

Letting people go

“As in anything there are good and bad employers - for the bad it will make it easier to dismiss, for the good it is just another thing (but could be used if required) but overall I don't think it will change too much.” Employment law panellist response

Figure 5: Impact of legal changes to help businesses who have to let people go



“The whole dismissal procedure is completely unworkable and anti-business. It is completely impossible for a small business to remotely get a grip on all those silly regulations, let alone abide by them. What on earth do the government think that we do all the time?” Employment law panellist response

5% felt that the changes would make it too easy to let people go and that there was the possibility that bad employers could take advantage. Double this number felt that the reforms will make it harder to let people go as the burden on the employer in terms of red tape has, in their view, worsened. There was also a concern that employees automatically claim gender discrimination to avoid the current changes (for instance if they had only been employed for 15 months). This would open up a further can of worms for businesses that need to prove this is not the case but have few workers who are directly comparable.

“The way employment tribunal regulations are interpreted is so biased against the employer that none of the above will make much difference unless fraudulent claims are vigorously prosecuted, which they do not appear to be.” Employment law panellist response

The costs to employers are also seen as an issue as changes of any sort to existing regulations means that employers have to recheck that they are still compliant. Issues over shared parental leave and the right for flexible working were also felt to leave businesses vulnerable.

“Qualifying period change will certainly help but most of the other points will on balance make little difference for employers.” Employment law panellist response

The feeling was that even the early reforms have not yet had an impact on businesses but there is an expectation from 40% of businesses that the changes will make it easier for them to make employees

redundant, if only because there is a realisation that a greater balance is needed within the tribunal system. Settlement agreements were felt to be a positive inclusion as it shows that the state seems to understand that sometimes businesses have to let an employee go because of issues between them and their work colleagues.

"I do feel it has been a little easier to dismiss problem employees but feel that employment lawyers seem to know that they can obtain a compromise agreement from most employers and get a settlement of about £5k just by threatening a tribunal hearing as they know that generally, this is cheaper than trying to fight a tribunal hearing, even if the employer is in the right." Employment law panellist response

In general, however, the threat of undeserved pay outs by employees threatening a tribunal were not expected to change, which led a third of panel members to conclude that this would not make a noticeable difference. Other reasons why there was unlikely to be much change was due to the business performing well, having a low turnover of staff and a focus on subcontracting in the future.

"At present people are afraid of firing staff." Employment law panellist response

11% were uncertain at the moment about the implications with a number suggesting that there would be loopholes or that the ability for employers to fire employees would depend on greater confidence in the tribunal system and the way in which employers are treated.

Improvements suggested by businesses included:

- Remove weak cases from the tribunal system using methods other than a fee for employees:
 - Ban no-win, no-fee lawyers. There is a feeling that these will provide the fee for litigants on the basis of a greater proportion of the proceeds from any successful case
 - Allow costs to be awarded to more frequently employers
 - Allowing businesses to bring criminal proceedings against malicious cases.
- Leave qualifying period as 2 years and let the current procedures bed in.
- Clarification and general improvement of procedures:
 - Better communication of what businesses have to do
 - Better communication of what is available for business
 - Speed up process - if the cost was lower and the processes were similar there would be greater opportunities for growth.
- Greater flexibility for different strategies depending on the reason for letting the employee go:
 - Sackings - because the individual is not up to the job, disrupts the team or has done something that cannot be tolerated - businesses often want such people off site as soon as possible but have limited ability to do so
 - Redundancies - when the job is no longer require, employment cannot be afforded and redeployment is not feasible - in these cases a mutually beneficial arrangement could be sorted out, but one eye always has to be on the law as opposed to the needs of the business
- More support for individuals who are made redundant because of the needs of the business:
 - Better return to work strategies
 - Greater support to keep people in work when the company is struggling.

Coalition's strategic aims

"Some parts of legislation seem to be affected by experience and cutting out loopholes rather than implementing a strategy." Employment law panellist response

"One could say it is a start but it [is] all just tinkering and for every reduction in regulation another new one is added which means that the overall effect is limited." Employment law panellist response

The conceptual framework behind the regulation changes was that the Coalition's policy would be flexible, fair, coherent and effective. These aspirations were looked at in turn.

Figure 6: Business view of the strategic aims of the Coalition

Base	Definitely	Possibly	Not at all	Uncertain
It is flexible	2%	39%	36%	23%
It is fair	12%	42%	35%	12%
It is coherent	7%	46%	29%	18%
It is effective	<1%	50%	21%	29%

"It is getting there but still more needs to be done to make things more flexible and reduce the cost of employment." Employment law panellist response

Overall 54% thought that the changes were relatively fair, just 2% thought that the changes allowed for flexibility and less than one percent thought that the changes were effective. Almost 30% of businesses felt that it was too early to work out if the changes had been effective. There was an overall feeling that the changes had broadly been in the right direction and were well intentioned, although there were questions about whether there was a strategic vision behind them.

"Experience tells me that new legislation from the Coalition is always a short-term fix, and that no thought is ever given to long-term effects." Employment law panellist response

Lack of coherence was mainly down to the minor nature of the changes to the framework although the use of jargon did not help nor did the fact that overall there was expected to be an increase in the difficulty of employers to manage and comply with regulatory changes due to the right for shared parental leave and flexible working.

"We are expected to provide cuts to government but they increase the cost of doing business." Employment law panellist response

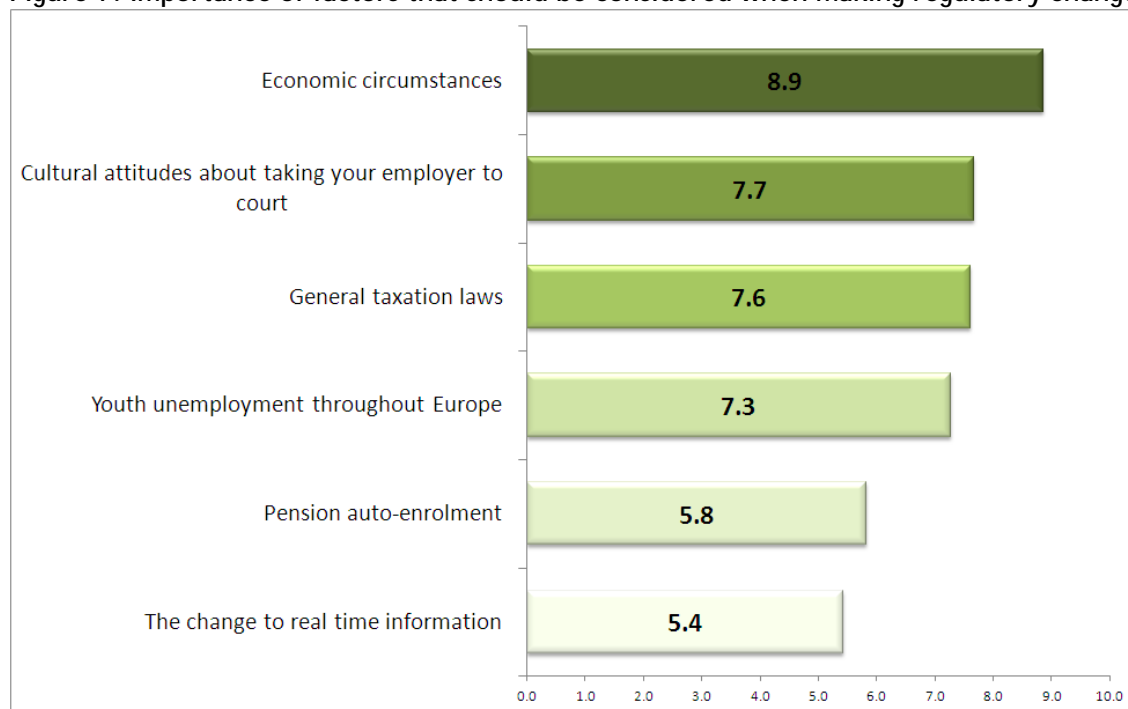
For some business the lack of coherence and fairness were indistinguishable as different parts of the state seemed to be working in different ways and creating problems for business owners.

36% felt that the changes also meant less flexibility as the state continued to tell them how to manage rather than let them work it out with their employees. A similar number were concerned about the fairness of the changes - not just to themselves but for some of their employees as businesses envisaged winners and losers in the workplace from the increased rights for flexible working.

Factors to be considered alongside regulatory change

Unsurprisingly business owners wanted economic circumstances taken into account, with many worried about the timing of potentially expensive legislative change on their business. 67% of businesses felt this factor was crucial when assessing the speed and focus of regulatory change. There was also a feeling that more legislation had been piled on them over the last 5 years when they could least afford it. Some businesses did however feel that there had been a slowdown in additional legislation over the last few years and others felt that some of the changes to the tribunal system would have been helpful to protect them when they were having to make redundancies during the recession.

Figure 7: Importance of factors that should be considered when making regulatory change



“People are still of the belief they have an entitlement.” Employment law panellist response

Cultural attitudes about taking your employer to court was also a key issue for businesses, with 42% feeling that this was crucial to avoiding further disincentives for bringing a tribunal and others feeling that the introduction of tribunal fees had been caused by this attitude. A number of businesses also noted that former employees are often talked into taking a case against their previous employer without understanding the full implication of doing so. This has been corroborated by research in 2010 from the Department of Business Industry and Skills which found that 36% of claimants found their case emotionally draining and there is concern that employees enter into the process with unrealistic expectations⁽³⁾. Charges may partially address this, but a wholesale cultural change is needed as there was concern that the UK was adopting the litigious culture of the US, but with the complex legal rights of the EU alongside a common law system that makes it difficult for business owners in the UK to do the right thing.

“We live in a bankrupt country in a largely over-indebted western world, it is crucial that we raise our game, to do this it is crucial that business can flourish, this is not easy when tax and regulation disincentivises people from building up their businesses in this country due to the levels of taxation and regulation.” Employment law panellist response

Taxation laws are an issue and a number of businesses highlighted how the taxation system disincentivises business growth and in particular employment. Allowing businesses to make profits was seen as the way in which businesses would grow and to the majority of businesses this was more important than the risk of employment legislation.

“Youth unemployment is problematic but cannot be fixed by new employment law - there has to be the work to give to the youths - attitudes of the youth are a problem the lack of basic educational skills and not being employment ready are also factors.” Employment law panellist response

The issue of youth unemployment was felt to be mainly due to the economic circumstances and the fact that young people were felt to be less equipped for the world of work than other age groups. Others did see the benefits of the apprentice system in dealing with this issue and that some young people are ready for work however it takes time to get them up to speed, which is often something that business owners do not have.

“I do not see the relevance of any of this to employment law.” Employment law panellist response

A number of businesses felt that none of these factors were relevant to employment law and that the system needed changing irrespective of other issues. A number argued that we needed good, simple and

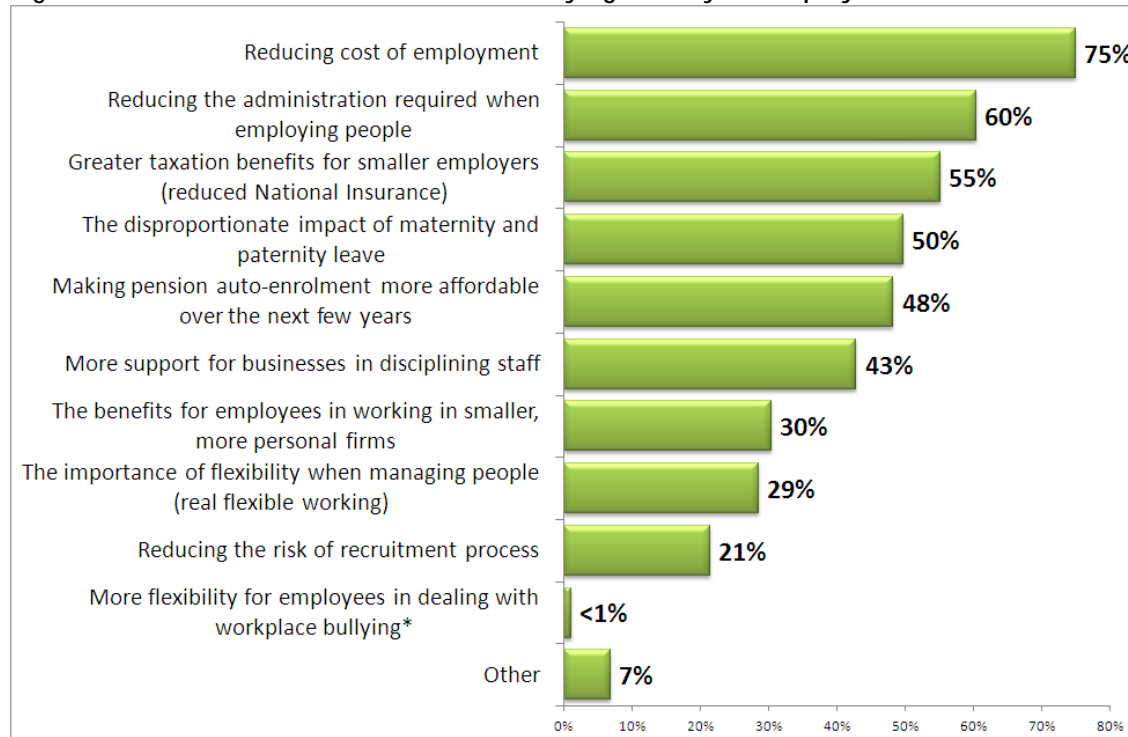
easily understandable employment law and that this should be kept separate from other areas as this overcomplicates things.

Focus for the Forum in the next 12 months

“Maternity leave in particular is a massive burden on a small business in terms of output, holding jobs open for them and recruiting similarly productive people.” Employment law panellist response

75% of panel members wanted the Forum to focus on reducing the cost of employment, 60% on reducing the administration required when employing people - although many business owners felt that this should be throughout the employee’s time at the business and not just the recruitment stage - and 55% wanted greater taxation benefits for smaller employers. A slight majority also wanted the Forum to highlight the disproportionate impact of maternity and paternity leave.

Figure 8: Focus for the Forum in future lobbying activity on employment law and related topics



*Should have read more flexibility for employers in dealing with workplace bullying

A mistake in the questionnaire indicating more flexibility for employees rather than employers in dealing with workplace bullying meant that this was not mentioned as frequently as it should have been.

Other included:

- Simplify employment tribunals
- Make no-win, no-fee solicitors (not their insurers) pay for bringing weak cases
- Tribunal courts being asked to award costs to the employer not just in exceptional cases
- Simplification of the disciplinary process
- Be able to pursue staff who steal confidential data beyond the workplace
- Focus on employee responsibility especially in health and safety issue and use of social media
- Stop the idea that employees have shareholder rights
- Minimise holiday pay increases
- Sort out schools to provide skills and the benefits of working
- More support for businesses when dealing with government departments
- Improve short-term lending and debt-based finance
- Reduce rates increases

This indicates that work still needs to be done on employment tribunals and on employee responsibility in terms of discipline, criminal proceedings and attitude.

“Bad employers have bad businesses, good employers have good businesses. Government should publish good employers, then everybody would want to work for them.” Employment law panellist response

Around 30% wanted to focus on the positive aspects of working for an SME, either in terms of a more personal management style or the ability of business owners to manage more flexibly, using common sense rather than rigid guidelines. Currently there are lists of good employers but these are effectively marketing exercises based on employee feedback which are focused on large employers rather than good ones.

- (1) University of Nottingham (2009), *Analysis of Small and Medium-sized Enterprise (SME) Statistics for the UK and Regions 2008 (SME Statistics)*
- (2) Department for Business, Innovation and Skills (2013), *Employment law: Progress on Reform* (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/184892/13-P136-employment-law-2013-progress-on-reform2.pdf),
- (3) Department for Business, Innovation and Skills (2010), *Survey of Employment Tribunal Applications 2008*
- (4) (www.gov.uk/government/uploads/system/uploads/attachment_data/file/142030/bis-10-756-findings-from-seta-2008.pdf)

Appendix 1

List of policies and their categorisation in the BIS report on Coalition progress.

Government policies to encourage businesses to take people on:

- Consolidate and improve national minimum wage regulations (this will be an increase of 1% in October 2013)
- Remove gold-plating in the *Transfer of Undertakings (Protection of Employment)* regulations to be introduced in October 2013 and reduce regulations on the recruitment industry
- Review of the *Agency Workers Regulations* (this is due to begin shortly)
- Making it easier to check that employees are entitled to work legally in the UK (through the UKBA biometric passport initiative) and the introduction of a portable Disclosure and Barring Service check (previously the CRB)
- The Employer Shareholder Scheme
- Information, checklists and guidance including the Employers' Charter, an improved Gov.UK and Acas documentation

List of the government's policies to encourage businesses on managing people:

- Creating the new right of shared parental leave (to be introduced in 2015)
- Reform of the whistle-blowing laws and introducing vicarious liability to protect individuals from the actions of their co-workers
- Extending the right to request flexible working to all employees (in 2014)
- Repeal of the third party harassment provisions of the Equality Act
- Limiting the application of the working time directive (ongoing)
- Abolishing sick pay record keeping obligations (over the next year)
- Improve management resources through tools on absence management, a health and work assessment and advisory service (2014) and abolishing the percentage threshold scheme

List of the government's policies to encourage businesses on letting people go:

- Increased in the qualifying period from one to two years for unfair dismissal (April 2012)
- Introduce a pay cap on awards for unfair dismissal but give tribunals the power to levy financial penalties where employers have breached employment rights
- Enabling the increased use of settlement agreements
- Providing early conciliations and training of Workplace Mediation Services (training in pilot stage)
- Making parties better informed and the introduction of tribunal fees
- Introduce a power to enable secondary legislation to be made on mandatory equal pay audits, where employers have discriminated on gender
- Introduce revised tribunal rules and undertake a remissions system review
- New guidance and tools from Acas in 2013 to help small businesses

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