



# **REVIEW OF EMPLOYMENT PRACTICES IN THE MODERN ECONOMY**

## **USDAW SUBMISSION**

**May 2017**

## **Introduction**

The Union of Shop, Distributive and Allied Workers (Usdaw) is the UK's fourth largest Union, with more than 430,000 members. Our members work primarily in the retail sector, but we have significant membership in the road transport, warehouse, food manufacturing, home shopping and pharmaceutical sectors.

Usdaw has followed the Review of Employment Practices with interest, and we were pleased to take part in the events in Nottingham, Newcastle and Coventry. Usdaw is happy to facilitate a meeting for the review to discuss the issues of modern employment practices with a selection of our workplace representatives. Such a meeting would provide a worthwhile opportunity to expand on a number of the topics outlined below.

We appreciate having the opportunity to put forward some of the key issues around job security, hours of work and terms and conditions, which affect Usdaw members. Usdaw's formal submission to the review covers a range of issues experienced by our members. The issues outlined below have been raised by Usdaw members and Shop Stewards through regular surveys or motions raised at our Annual Delegate Meeting.

## **Job Security**

Secure employment is the most basic of employment rights, and one of the foundations on which a strong economy is built. Usdaw was extremely disappointed when the qualifying period for making an unfair dismissal claim was increased from one year to two years in 2012. The Government's own data at the time showed that young people, BAME workers, and female part-time workers would be most affected by the increase in the qualifying period.

The two year qualifying period needs to be reviewed. In our experience, many employers use a probationary period of six months, which shows that they consider this a reasonable period to assess someone's suitability for their role. It would be more logical and fair to use a qualifying period of six months for unfair dismissal claims.

Usdaw also believes that the law around redundancy consultation needs to be reformed. The reduction in the minimum consultation periods for large-scale redundancies that was implemented in 2013 was a real step backwards for employee relations. Meaningful, timely consultation can help businesses to look at alternatives to redundancy, to preserve jobs and to manage the change process by giving workers a chance to put their views forward.

The 90 day minimum period for consultation should be restored for 100 or more proposed redundancies, and all workers should have the right to be consulted over proposed redundancies, irrespective of the size of the establishment. The current threshold of 20 employees per establishment needs to be removed, or the definition of 'establishment' changed to reflect the fact that decisions are nearly always made at national level and not at site level. As we argued in the Woolworths and Ethel Austin cases, no single store has the autonomy to seriously review redundancies that have been decided at national level, so to consider them an 'establishment' for the purposes of collective redundancy consultation does not make any logical sense.

## **Security of Hours of Work**

Underemployment is a major issue in the UK, with 2.58 million people currently defined by ONS as underemployed. In a recent survey of Usdaw members, we found that almost one third of our members wanted to work more hours than they do currently. 40% of those who currently work fewer than 24 hours per week told us that they wanted to work more hours.

Zero-Hours Contracts continue to be a serious problem with around one million workers in the UK on Zero-Hours Contracts. This is particularly an issue in unorganised parts of the retail and distribution sectors. Often workers on Zero Hours Contracts are working regular hours each week. The overuse of Zero-Hours Contracts is not a legitimate response to fluctuating business demands. Instead, they are being used by employers to undermine the employment rights and security of the workforce. Usdaw believes that workers should have an employment right to contracts that reflect their normal working hours. This contract should be given in writing from day one of employment. This would go some way to tackling the problem of the exploitative use of Zero-Hours Contracts.

When Universal Credit is fully rolled out to those currently claiming tax credits, underemployment will become an even more significant issue for many Usdaw members. In order to avoid sanctions, most claimants will need to be earning, or seeking to earn, the equivalent of 35 hours at the National Living Wage. Where sufficient hours are not available in their current job, claimants may need to look for a second job. In the retail sector, where more than half of our members tell us that they do not work set hours, and one in five say that their hours change from one week to the next, this could prove difficult, or even impossible.

Many of our members regularly work more hours than they are contracted to work. In our 2014 survey on Zero-Hours and Short-Hours Contracts, we found that more than half of respondents regularly work more than their contracted hours. Short-Hours Contracts can make it difficult for workers to access credit, mortgages and rental agreements, as their guaranteed income does not reflect their actual earnings. It can also make planning childcare and family responsibilities extremely difficult. With the high cost of childcare, most low paid parents cannot afford to hold a childcare place that they may not always use or earn enough to cover; this can restrict their earning potential even further.

Workers should be entitled to a contract that reflects their normal hours of work. We believe that a reference period of 12 weeks, in line with the period used under the Employment Rights Act to calculate an average week's pay, would be the appropriate timescale to calculate 'normal hours' for this purpose. This right would provide workers with more stability, and discourage employers from overusing Short-Hours Contracts.

Udaw believes that the idea of requiring employers to pay a higher statutory rate if they require staff to work more hours than they are contracted for is worth exploring. This would encourage employers to offer employees contracts that would more accurately reflect the number of contractual hours that they are likely to be working. It would encourage employers to plan for more consistent working patterns and would tackle the problem of people being offered Short-Hours Contracts when the expectation of both the employer and employee is that they will be regularly working longer hours.

### **Agency Workers**

Agency work has grown enormously in the UK. Recent research estimates there are 865,000 agency workers in the UK. This represents a 30% increase since 2011. The number of agency workers is set to reach one million by 2020 if current growth trends continue.

Agency labour should be used to deal with fluctuations in demand, or to cover short-term absences, and not as part of a strategy to drive down terms and conditions. The aim of the Agency Worker Regulations was to ensure fair treatment for agency workers and prevent employers from using agency workers to undercut the terms and conditions of the existing permanent workforce. However, a loophole in the regulations, known as the Swedish Derogation, has allowed agencies to continue paying agency workers less than other workers. This loophole in the regulations needs to be closed.

The Agency Workers Regulations currently provide for equal treatment for agency workers after 12 weeks. However, if equal treatment is to be achieved, and the exploitation of agency workers to undercut existing pay rates is to be avoided, then agency workers should be entitled to equal treatment from day one.

### **Employment Status**

Usdaw believes that basic employment rights should be extended beyond employees, to cover all workers unless their employer can demonstrate that they are genuinely self-employed and running a business on their own account. The difficulty in establishing employed status allows too many unscrupulous businesses to falsely claim that workers are self-employed. This needs to be addressed as it would discourage the use of bogus self-employment and provide more certainty for workers.

### **Exercising Employment Rights**

Strengthening employment rights will be of limited use to workers if they do not have a route to enforce them. The introduction of employment tribunal fees is a barrier to justice for many workers. The TUC's analysis of Ministry of Justice statistics showed that the number of working people taking out tribunal applications against discrimination or unfair treatment at work has fallen by 9,000 a month since fees were introduced. Usdaw believes that the tribunal fee system needs to be removed, to provide workers with greater access to justice.

### **Employee Voice – Trade Union Recognition**

In order to redress the imbalance of power in the employment relationship that has grown over recent decades, workers need an independent, collective voice in the workplace. The current legislation on statutory recognition makes it extremely difficult for unions to provide a voice to workers in large, unorganised workplaces. Currently, trade unions can request a ballot on statutory recognition if at least 10% of the workforce joins the union and we can show that a majority of the workforce is likely to support recognition. When it comes to the recognition ballot, the trade union must win a majority and at least 40% of the total workforce must vote in favour of recognition.

Usdaw believes that the threshold to trigger a ballot on trade union recognition should be amended to '10% or 100 employees'. The '10% or 100 employees' threshold still requires trade unions to show they have significant membership in the workplace before triggering a ballot, but this would be a realistic target in large businesses. The second proposed change relates to the ballot threshold. Unions should be required to win a majority of those voting in the ballot to win recognition, rather than the current 40%, which is unreasonable for large businesses.

Employees should have a choice over whether they want a trade union recognised in their workplace. The ballot on trade union recognition allows the workforce to decide on whether they want a trade union to represent them in negotiation with the employer. But the current 10% threshold is too high a hurdle and, in effect, prevents employees in large bargaining groups from having that choice. The thresholds to triggering a ballot need to be reviewed to ensure that all workers are able to access the right to have the option of trade union recognition in their workplace.

Furthermore, Usdaw believes that the Government should restore Acas duty to promote collective bargaining.

## **Employee Voice – Information and Consultation**

The Information and Consultation of Employees (ICE) Regulations were designed to provide a framework for businesses to inform and consult with employees. Unfortunately, these regulations have had limited impact and many workplaces do not have any formal process for information and consultation.

When implemented, the regulations were based on the sound idea that employees should be informed and consulted about key developments in their business. A well informed and fully consulted workforce is likely to be more engaged and productive. As a trade union, we welcome all-employee information and consultation. Usdaw has worked with employers to establish and support all-employee information and consultation in a number of major businesses.

Employees should have a 'right' to information and consultation. But the way the regulations were implemented means that this right can only be accessed if triggered by a petition of at least 10% of the workforce. (The 10% trigger has a lower limit of 15 and an upper limit of 2,500, ie if the business has more than 25,000 employees then a petition of 2,500 employees will trigger the processes outlined in the ICE Regulations.)

Employee rights to information and consultation should not depend on a threshold being triggered. Usdaw believes that information and consultation should be automatic and a basic requirement in any businesses with 50 or more employees.

## **Minimum Rates of Pay**

Over the past year, the Government's so-called 'National Living Wage' has provided a pay rise for many low paid workers. Unfortunately, the introduction of an additional age band has meant that a significant section of the workforce, those aged under 25, have missed out on the benefits of this increase. Usdaw has consistently campaigned for the full-rate of pay from the age of 18, a goal which has been reached in all of our major agreements including a range of household names such as Tesco, Sainsbury's, Morrisons and Primark.

It is clear that an individual's outgoings are unlikely to vary significantly between the ages of 24 and 25, people either side of this banding are equally likely to want to move out of the family home, start a family or even do something as simple as enter a mobile phone contract. The new age restriction is frequently stopping this from happening. Furthermore, the fact that employers are required to provide a 6.38% pay rise as a worker hits the age of 25 is creating an incentive for unscrupulous employers to dismiss young workers on spurious grounds. It is well established that young workers are unlikely to have knowledge of their rights at work and/or the ability to enforce them. As such, the 'National Living Wage' age banding is creating additional failure within the employment market and should be removed.

Udaw also believes that the UK statutory minimum wage rate should be increased to £10 per hour. Such a rate would provide all workers with a wage rate which provides them with enough income to afford a decent living as well as ensuring a fairer distribution of national income, hopefully starting a return to levels which have previously been enjoyed within the UK economy.

## Rights for Working Parents

The continued presence of a gender pay gap in part shows that women are still financially being penalised at work for wanting to have children. Whilst longstanding, even many recent issues with family friendly entitlements in the workplace may not garner the same headlines as issues such as Zero-Hours Contracts and bogus self-employment; family friendly entitlements do place significant limitations on working parents across the workforce. Usdaw believes that the Government needs to undertake a comprehensive review of current employment rights and protections for working parents with a clear aim to eradicate the range of detriments currently suffered. Below we have outlined a small number of the issues currently prevalent in the employment market and we would be happy to elaborate on these issues in the future. Usdaw's long-standing Parents and Carers Campaign has provided us with a vehicle to develop an in-depth knowledge of the issues that are holding working parents, and even grandparents, back from participating in the workforce to their full potential.

One of the first actions that the Government needs to take is to extend the right for new mothers to return to work to exactly the same job to include women returning to work after Additional Maternity Leave. At the moment, the lack of such a right acts as either a disincentive for women to take the full amount of maternity leave or means that those who do are open to penalty.

There are many other ways in which women are financially penalised when having a child. In recent years, we have seen the level of Statutory Maternity, Paternity and Adoption pay completely fail to keep up with wages. Whilst the Government's so-called 'National Living Wage' has brought about long overdue substantial increases to statutory minimum rates of hourly pay, these improvements have not flowed through to other statutory payments. As such, whereas in 2007, the rate of Statutory Maternity Pay (SMP) represented over 60% of an individual's normal earnings, if they were employed on the statutory minimum for 35 hours a week, this has now dropped to around 53% of earnings. It was clearly detrimental that even the lowest paid women were having to suffer even a 40% drop in earnings, however this problem has been exacerbated in recent years. Indeed, the calculation above does not take into account the impact of cuts to in-work benefits and tax credits. In their analysis of the NLW and other changes, the Institute for Fiscal Studies predicted that for those people previously paid less than the NLW, 'most of the earnings are lost in withdrawn benefits and tax credits.'<sup>1</sup> Therefore, the drop is likely to be much greater.

Usdaw believes there is a clear need for the Government to implement substantial increases to statutory pay rates; ensuring they make up for, and overtake, lost ground. In line with policy raised and agreed by delegates at the 2017 ADM, Usdaw also believes that the Government needs to increase the length of time by which SMP is calculated in reference to an individual's average weekly earnings. This increase should be a step towards an eventual goal of providing 39 weeks of maternity pay at 90% of average earnings.

Usdaw has been required to assist and help advise many of our members who have suffered a detriment as a result of the method of calculating average weekly earnings for SMP. Currently, SMP entitlement is calculated based on an eight week calculation period ending with the last payslip before the qualifying period. This short reference period means that the calculation can be heavily affected by an individual taking time off work due to sickness, a common occurrence during the early stages of pregnancy. Furthermore, in many sectors where an individual does not have regular hours of work, the reference period can be heavily affected by the peaks and troughs of trade. Usdaw believes that the reference period should be extended to ensure that it more accurately reflects an individual's normal earnings and that a provision is included to disregard any weeks in which sickness absence occurs.

<sup>1</sup> <https://www.ifs.org.uk/uploads/publications/comms/R111.pdf>

Usdaw further believes that modern employment practices need to move away from entrenched gender roles/norms around the care for young children. This could be done through working to ensure that fathers and partners play an equal role in raising children through extending and improving paternity pay. A provision of a 'use it or lose it' separate paid entitlement for fathers and partners will be an effective way of promoting the cultural change required in the modern workplace. The UK's current leave and pay provisions continually reinforce the assumption that women are responsible for the care of young children.

As outlined above, workers face many barriers when taking maternity leave, however these do not stop when the individual is ready to come back to work. Usdaw firmly believes that workers need to have enhanced statutory protections to enable them to return to work on a flexible basis, including:

- Making the right to request flexible working a day one right.
- Reintroducing the statutory procedure including the timeframes, the right to a meeting and to be accompanied at that meeting, the right to a written decision and an appeal.
- Making it more difficult for employers to reject requests by requiring them to issue a specific and detailed explanation as to why a request cannot be accommodated.
- Extending the right to workers (currently restricted to employees).
- Reframing legislation to make it clear that the right can be used to 'restrict' employer demands for 'flexibility', ie to request predictable working hours or an increase in hours.

Usdaw's current Parents and Carers Campaign is also highlighting the vital role that grandparents play in providing childcare. As many workers have been priced out of full-time formal childcare arrangements, nearly two-thirds of all grandparents are regularly looking after grandchildren aged under 16. Employment provisions in the UK have entirely failed to keep up with this development. Most grandparents have very few, if any, rights at work when they need time off to care for their grandchildren. The charity Grandparents Plus estimates that nearly two million parents have reduced their hours, given up a job, or taken time off to care for a grandchild. Usdaw believes that the vital role that grandparents play in modern society needs to be reflected within employment law. As such, Usdaw is calling for better rights at work for grandparents in particular a right to:

- Have their caring commitments taken into consideration when hours of work are being changed.
- Adjustment leave to give working grandparents time to deal with a family crisis without losing their job.
- A period of grandparent leave that can be taken flexibly, for instance, after the birth of a new baby or when a grandchild is sick.

## **Working Carers**

Usdaw's Supporting Parents and Carers Campaign has also highlighted the issues faced by working carers across the UK. Demographic changes, along with social care provisions failing to keep up with ever increasing demand, has led to more and more employers taking on caring responsibilities outside of the workplace. Every day 6,000 people become carers, looking after a loved one who is older, disabled or ill. Over half of these carers have to combine caring with going out to work. The contribution made by carers is worth £132 billion a year, which amounts to one-fifth of UK Government spending. Again, Usdaw has outlined a number of areas below where improvements in modern employment practices are required to reflect the current workforce. We would be happy to elaborate on these recommendations and offer to review the benefit of our evidence built up over the course of our Supporting Parents and Carers Campaign:

- The introduction of a legal right to a period of adjustment leave when someone first becomes a carer to help them deal with immediate caring crises and allow time to adjust to a new caring role.
- A right for carers to temporarily reduce hours of work while smoothing loss of pay over a longer period.
- Encouraging employers to support carers including flexibility to allow for changes in working patterns and hours.
- Requiring employers to provide better training and support for line managers so that they understand the benefits of supporting carers and are encouraged to do so.
- Collective bargaining has an important role in promoting better rights for carers and should be promoted. The Government should stop trying to reduce trade union rights and focus on encouraging employers and unions to work together to address the challenges of an ageing population.
- The introduction of a new national carers strategy to include a commitment to offering carers a break from caring in a range of settings, a personal health and wellbeing check and much easier access to support through GPs and hospitals.

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