Workforce Development GROUP | 21.11.24 | 13:00 – 14:00

Actions from last meeting	Actions from this meeting
• **Members** to submit any specific questions or topics in advance for a more tailored discussion, email any specific queries about the Employment Rights Bill to Lauren Hague (lhague@careengland.org.uk). • **Members** to redeem 3-for-2 ticket offer for the Care England Conference in March 2025 for new bookings. Members interested in claiming the discount can email conference@careengland.org.uk.	• **Members** to sign petition, as well as staff, family and friends - https://petition.parliament.uk/petitions/700080 • If **members** have experience of learning development costs, please contact Lauren, lhague@careengland.org.uk if you are interested in getting involved. • **Members** to answer the below questions and send responses to Richard, rayres@careengland.org.uk 1. How do you make sure you are using the most current updated content and giving your staff the best learning and development? 2. eLearning courses should be user-friendly, with every ability being able to understand the course with subtitles, voiceovers, dyslexic-friendly backgrounds, animation etc. and ultimately the courses should not allow to run in the background or be skipped to ensure the course is fully completed. The question is how are you quality assuring your learners have understood and fully engaged with the training? 3. How do you ensure you are purchasing good value for courses and not procuring just the lowest cost solution? 4. How do you track costs concerning training? • **Members** to share thoughts on Employment Rights Bill, how it will impact your businesses with either Lauren, lhague@careengland.org.uk or the wider policy team, policyteam@careengland.org.uk –

Attendees

Lauren Hague **(LH)** – Senior Policy Officer, Care England

Supported By:

- Richard Ayres **(RA)** – Social Care Advisor, Care England
- Tom Pisani **(TP)** – Policy Officer, Care England
- Ellie Johnson **(EJ)** - Policy Officer, Care England
- Hannah Bollard **(HB)** – Associate, Anthony Collins LLP

Meeting Notes

Employment Rights Bill 2024

HB discussed the new Employment Rights Bill, focusing on the changes which have been announced and steps providers should take to prepare.

Unfair dismissal qualifying period:

Currently, employees need to have two years' service to raise an unfair dismissal claim. The Employment Rights Bill removes the qualifying period, so unfair dismissal claims become a day 1 right. Providers are recommended to introduce an 'initial period of employment' – could work as a statutory probationary period – during this period, it will be easier for an employer to fairly dismiss an employee, and there will be a light touch procedure that will apply.

No indication to the duration of the statutory probationary period – the government have indicated a preference of 9 months.

There will be no changes before Autumn 2026, and there will be consultations on the duration of the statutory probationary period and what the 'light touch' procedure will be.

Important to note – the current qualifying period of 2 years will remain in place.

Zero Hours Contracts:

There has been no ban on zero hours contracts, zero hours contracts are still lawful. Rather, the ERB will introduce a duty on employers to offer zero hours workers and low hours workers a more predictable contract if during a certain reference period of time, certain conditions are met.

Unsure of what the reference period is, however, the government has indicated 12 weeks is likely – potentially could be in a situation where employers every 12 weeks need to look at the hours that their zero hours workers have done, and then decide every 12 weeks whether that duty to offer guaranteed hours has been triggered.

Member questioned 'what about where an employee refuses flexibility and, eg refuses evenings or weekends, which are general requirements shared out in social care, will the offer of contract be required if the person is telling us their availability is say, school hours only'?

HB explained that there will be an obligation to offer a guaranteed hours contract reflecting the number of hours that they have worked over the 12 week period; however, there will likely be no requirement to guarantee the specific times of these hours.

Member outlined 'we've got a couple of staff that clean after school during the term time so can only do morning domiciliary care; but it's great for us as she wants more work (which she gets) during school holidays when other staff want their own holiday. But we haven't given her a morning only contract; she's on zero hours, her choice'.

HB outlined that there will only be a legal obligation to offer the guaranteed hours, it doesn't mean that employers have to accept it.

RA asked if there was a protection for employers around employees asking for the same terms and conditions, to protect from having too many staff and not enough hours.

HB responded that each individual request for addition hours, if employee wants to move from zero hours contract to a guaranteed hours contract, that request will need to be considered on its own merit. If you have good justification for saying no, provided employees are being paid the same hourly rate and there isn't an equal pay claim risk.

Adult Social Care Negotiating Body:

The government wants to improve pay and conditions for staff in the adult social care sector, through a fair pay agreement. The bill will enable the Secretary of State to establish an Adult Social Care Negotiating Body for people in the sector. The government has said that this will empower workers, trade unions and employers to negotiate fair pay, terms and conditions and training standards.

There is no immediate change, there will be a consultation – no expectation that agreements will be in place until at least Autumn 2026.

Member raised a good impact assessment on the Department for Business and Trade website, outlining funding which is useful.

RA raised that Care England is part of panels, task and finish groups on all of these different strands of the Employment Rights Bill. Care England is starting to have conversations with UNISON and GMB specifically – helping get the sector up to speed with this. Some of our membership who are unionised have been asked to consult with the government and share their experiences at how unions have been positive.

Member raised that the sector is under-unionised. Member had a situation where the son of a registered nurse was working with the RCN, wasn't a member, but got some representation from the RCN when he was on a disciplinary for abuse, which was evidenced. Raised concerns that if you do not have evidence, unions will walk all over you. **Member** also raised that unions were helpful in negotiating pay.

Member raised that 'a significant proportion of our revenue is driven by LA fees which are already unfunded but based on national Minimum Wage , how can we have any negotiations?'. **RA** raised that there is a discussion on where the LGA and ADASS function. There will be a negotiating body representing the care providers, there will be unions representing individuals and it will up to them to negotiate and then go to government to raise funding. Although it has to go through the filter of Local Authorities and NHS, so LGA and ADASS need to be included in some way.

Collective Redundancy:

The Employment Rights bill will impose greater restrictions on the number of redundancies that can be made without consultation. Currently, if an employer is wanting to make redundancies across the organisation, the duty to carry out collective consultation will be triggered when the employer is seeking to make 20+ staff redundant *within one establishment*. The Employment Rights Bill removes the establishment limit, so that if you are a larger organisation, you have to consider making redundancies at any one time, even if those redundancies are happening/proposed to happen in different areas of the business, or geographical location, they could be linked together as one group of 20+ to mean that those collective consultation obligations are triggered. There is a minimum period of time that you have to engage in the consultation process before dismissals can take effect, of either 30 or 45 days, depending on the number of people proposed to be made redundant, also adds cost administration burden.

This has not become law yet.

Trade Unions:

Currently, employees are able to join a trade union, however, the Employment Rights Bill will make it easier for trade unions to have access to the workplace, and make statutory recognition easier to obtain. There will be a requirement that workers are informed of their rights to join a union, in their statement of terms and conditions. There will be a lowering of the membership thresholds, and support requirements for industrial action. The union related reforms are going to come into force 2 months after the act is passed, although it may not get through parliament very quickly. Providers are advised to think about approaches to seek statute recognition, and to potentially think about ways to engage with a sort of 'voluntary' agreement before getting to statutory recognition process.

Fire and Rehire:

The bill will introduce an abolition of fire and rehire processes. This is a significant change – the Bill says that it will be automatically unfair to dismiss an employee, if reason for dismissal is that employee has refused to change terms and conditions. One limited exception – if the employer can show that the business was in financial distress. Awaiting further regulation as to what 'financial distress' means. This isn't an immediate change – consultation has been promised, and there will no changes for at least 12-18 months.

Member asked if this would still apply if the change in Terms and Conditions are being changed in order to meet changed regulatory requirements. HB explained that there is no indication from government, and there is nothing in the Bill about what if changes and conditions are required to be changed to meet regulated requirements. Only

exception to be automatically unfair is 'financial distress' in the organisation, but it doesn't mentioned any other requirements.

Duty to prevent sexual harassment:

Not directly linked to the Employment Rights Bill – this came into force on 26 October - Worker Protection, Amendment of Equality Act 2023. There is a new mandatory duty on employers to take reasonable steps to prevent sexual harassment in the workplace.

HB outlined that taking reasonable steps to prevent sexual harassment occurring includes taking reasonable steps to prevent sexual harassment occurring by third parties that your employees might come into contact with – therefore, it should be covered in risk assessments. In the Employment Rights Bill, it outlines that employers will be liable for all harassment committed by third parties, unless the employer can demonstrate they took reasonable steps to prevent it happening. These changes won't come in for around 12 to 18 months.

Providers are advised to read the guidance and look to implement it in workplaces as a tribunal will look at the guidance and assess whether organisations have complied with it, which is further outlined in the link – https://www.equalityhumanrights.com/guidance/sexual-harassment-and-harassment-work-technical-guidance

Member asked if liability for third party harassment tested in tribunal or does it become personal injury claim? **HB** responded, an employee who suffers harassment from a third party, wouldn't be able to make a tribunal claim against their employer. Only when this bill comes into force that this would be a possibility.

National Minimum Wage and National Insurance Increase:

From April 2025, national living wage will increase 6.7% to £12.21 per hour, and the national minimum wage for 18–20-year-olds will increase 16.3% to £10 per hour. The government also confirmed its intention to move toward a single adult wage rate.

The Chancellor also confirmed that employer national insurance contributions will increase from 13.8% to 15% from 6 April 2025, with the per-employee threshold at which employers start to pay National Insurance reduced from £9,100 to £5,000 per year. This will increase the number of small businesses that will not be liable to pay Employers National Insurance at all. The Chancellor stated in her speech that business should be able to employ four full-time workers on the NLW without paying any National Insurance.

Employment Allowance will increase from £5,000 to £10,500, while the £100,000 threshold for eligibility will be removed and expanded to all eligible employers with employer National Insurance contribution bills from April 2025. The decrease in the Employment Allowance threshold to £5,000 means that employers will be liable to pay NI for employees earning as little as £100 per week approximately. This will capture many casual and low-hours workers.

For more information on this, please click below:

National Minimum Wage and National Living Wage rates - GOV.UK

National insurance explainer (Budget October 2024 update)

Implications for Social Care:

With a 6.7% increase in the National Living Wage (NLW) alongside a 1.2% rise in Employer National Insurance contributions and a cut to the Secondary Threshold to £5,000, the sector faces an additional circa £2.4 billion funding hole to plug. This is no small burden for a workforce of 1.59 million full time equivalents, and a sector which relies on 50% of those cared for to be funding via local authorities who have been provided only £600 million in new grant funding for social care, shared across both adult and children's services.

The announced new £600 million grant fails to come close to bridging the gap, especially with a shortfall of a £4 billion deficit identified in the Market Sustainability and Improvement Fund (MSIF) analyses' conducted by Care England and the Homecare Association in October.

RA outlined that Care England have sent around 200 letters to local authorities, ICBs, and the government. There is the national campaign to exempt all social care providers form the employer NIC increase.

Action: Members to sign petition, as well as staff, family and friends - https://petition.parliament.uk/petitions/700080

Learning and Development:

SCIE have been asked by the Department for Health and Social Care to conduct a report on learning and development for adult social care. They would like a petition, scope around the availability of training development, what organisations are spending on training and development. They will want to speak to around 10 different care providers,

Action: if members have experience of learning development costs, please contact Lauren, lhague@careengland.org.uk if you are interested in getting involved.

There are a range of e-learning platforms and hundreds of training organisations continually knocking on the doors of care providers which can affect, carer knowledge, increase administration time and impact learning and development outcomes.

Action: Members to answer the below questions and send responses to Richard, rayres@careengland.org.uk

1. How do you make sure you are using the most current updated content and giving your staff the best learning and development?
2. eLearning courses should be user-friendly, with every ability being able to understand the course with subtitles, voiceovers, dyslexic-friendly backgrounds, animation etc. and ultimately the courses should not allow to run in the background or be skipped to ensure the course is fully completed. The question is how are you quality assuring your learners have understood and fully engaged with the training?
3. How do you ensure you are purchasing good value for courses and not procuring just the lowest cost solution?
4. How do you track costs concerning training?

EVisas:

There is a requirement by the 31st December 2024, that care staff on former visas, have got to apply themselves for a new EVisa. There is no cost, however, a lot of individuals do no have access to technology or information.

https://www.careengland.org.uk/wp-content/uploads/2024/11/eVisa-employer-toolkit-August-2024.docx

https://www.careengland.org.uk/wp-content/uploads/2024/11/eVisa-checker-factsheet-August-2024.pdf

AOBS

Action: Members to share thoughts on Employment Rights Bill, how it will impact your businesses with either Lauren, lhague@careengland.org.uk or the wider policy team, policyteam@careengland.org.uk – as it will help us draft our consultations.

END.