



**PWYLLGOR DIWYLLIANT, POBL A DATBLYGU SEFYDLIADOL
PEOPLE, ORGANISATIONAL DEVELOPMENT & CULTURE COMMITTEE**

DYDDIAD Y CYFARFOD: DATE OF MEETING:	20 August 2024
TEITL YR ADRODDIAD: TITLE OF REPORT:	Employment Law Update – The Employment Bill
CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:	Lisa Gostling, Director of Workforce & Organisational Development
SWYDDOG ADRODD: REPORTING OFFICER:	Heather Hinkin, Head of Workforce

Pwrpas yr Adroddiad (dewiswch fel yn addas)

Purpose of the Report (select as appropriate)

Er Gwybodaeth/For Information

ADRODDIAD SCAA

SBAR REPORT

Sefyllfa / Situation

Following the recent election result, the new Labour Government's proposed Employment Bill was outlined in the King's Speech as being part of Labour's plans to Make Work Pay. It has been described as a significant shift in employment legislation, designed to enhance worker rights and improve working conditions across the UK.

The intention behind the Bill is to establish clearer guidelines and protections for workers – to ensure fair pay, job security, and a better work-life balance. Early indications are that this Bill is planned for implementation within the first 100 days of the new Government taking office. As this is core legislation it will equally impact all parts of the UK.

The purpose of this report is to bring to Committee's attention, at the earliest opportunity, to the potential impact this Bill could have on the NHS in Wales and more specifically, the Health Board should it become legislation; and the workstreams that may need to be implemented to ensure compliance. In short, this Bill may provide both challenges and opportunities for change.

Cefndir / Background

The Employment Bill has been modelled to create a fairer labour market by redefining the relationship between employers and workers, particularly for those in precarious employment. While full details of the Bill are yet to be revealed, it is likely to cover a number of the workers' rights pledges contained in Labour's pre-election manifesto:

- Day one rights for unfair dismissal (subject to a probation period)
- Making flexible working a default right from day one
- Enhanced redundancy protections on return from maternity leave
- A ban on fire and rehire on less favourable terms and conditions
- A ban on zero hours contracts (all jobs to provide a baseline level of security and predictability based on a 12-week reference period)
- Improvements to sick pay and the minimum wage (removal of age band for adult workers)

- Reform on collective redundancy consultation in how staff are counted
- Greater protection for whistleblowers (updating protections for those reporting sexual harassment)
- Repeal of the Strikes (Minimum Service Levels) Act (never enacted in Wales)
- Changes to trade union engagement, enabling secure electronic balloting

This Bill particularly focuses on addressing issues related to non-standard forms of employment, such as zero-hour contracts, which have been widely used in sectors requiring flexible staffing arrangements.

The NHS in Wales heavily relies on a flexible workforce via the Collaborative Bank Partnership hosted by the NHS Wales Shared Services Partnership (NWSSP) and individual Health Board's, including Hywel Dda, operate their own internal bank for various groups of staff including for example, nursing, health care support workers and facilities staff.

The Bill may potentially require a significant shift in how we workforce plan and contract staff going forward.

Asesiad / Assessment

Key aspects of the Bill that are potentially relevant to the NHS include:

- **Employment Status and Rights:** The Bill proposes clear definitions for different types of employment status, granting zero-hour contract workers more predictable working hours and rights similar to those of permanent employees and moving from a three tier of employee/worker/self-employed to a two-tier model as noted in the Taylor Review. This shift in emphasis was already in train under the Conservative Government via their Workers (Predictable Terms and Conditions) Act 2023 which came into effect in January 2024 and gave zero-hour workers the right to request predictable hours in their contract after six months. The Health Board will need to look closely at the application of this when more detail is released specifically in relation to its bank and locum workforce, with the latter often receiving higher salaries compared to our substantive workforce due to the reduced benefits package associated with such roles.
- **Fair Wages and Transparency:** Employers will need to comply with strengthened minimum wage laws and ensure pay transparency to address any disparities. The interim pay award for our Band 2 workers in April 2024 already reflects the revised minimum wage hourly rate of pay and this has resulted in concerns from Band 3 employees who now receive a comparable rate of pay but less than their Band 2 counterparts for enhancements. This has temporarily resulted in Band 2 employees effectively earning more for working the same hours and shift patterns as a Band 3. Whilst the financial impact may not have been considered fully for this short-term uplift, the ramifications have already been voiced by our staff and we sought advice from NHS Employers on how to respond to the concerns raised to ensure we could give a consistent message to our staff.
 - The administrative burden on managing and monitoring pay and hours worked going forward could also significantly increase as a result of the above.
- **Flexibility and Stability:** While the Bill encourages flexible working arrangements, in its current format it will require employers to provide more predictable working patterns and guaranteed minimum hours for workers, potentially increasing our established staffing costs and impacting on workforce planning and organisational structures. There are opportunities and risks in equal measures in this element of the Bill. We already have

an All Wales Flexible Working Policy which applies from day one of employment and the default position of *How do we make this happen?* is already clearly outlined in the policy and forms part of the non-pay elements of the Pay Deal for 2023/24.

- **Monitoring/Compliance with the new legislation:** It should be noted that when seeking to establish stricter regulation around employment rights, we often see an enhanced requirement for statutory reporting. This Bill seeks to enhance the Government's powers to monitor compliance with the new rules through enforcement mechanisms. Our statutory reporting may therefore need to evolve further to accommodate any revised reporting requirements, and this will need to be looked at in terms of the information we are able to extract from ESR. One example of this is an early reference to the Bill potentially including a requirement to publish ethnicity and disability pay gaps. However, the Health Board already publishes this data.

Whilst Labour has previously hinted at creating a single status of Worker that would cover everyone except the genuinely self-employed, any consultation on this is yet to be announced and did not feature in the King's Speech. Other legislative changes were also announced for example around data protection and digital information to strengthen the Regulator's powers post Brexit and an Arbitration Bill to modernise laws regarding dispute resolution.

There are clearly several implications for the Health Board to consider:

- **Cost pressures:** Potential for increased staffing costs due to higher rates of pay, guaranteed minimum hours and administration however, this may also present opportunities for better rostering and reduced high costs agency spend.
- **Operational:** We may need to re-evaluate our staffing models and contractual arrangements to ensure alignment with the new regulations. This could involve transitioning some zero-hour workers to fixed-term or permanent contracts to maintain compliance.
- **Recruitment and Retention:** While the Bill could improve job satisfaction and reduce turnover by providing workers with greater job security, it may also limit the flexibility that attracts some workers to zero-hour contracts in the first place, potentially affecting recruitment.
- **Legal:** Employers must navigate new legal requirements, which may increase the risk of non-compliance and associated penalties. This necessitates investment in training and systems to ensure adherence to the new rules.
- **Systems:** We may need to review existing system capability and ensure that we future proof our procurement of systems over the next few years as best we can.

To reduce or mitigate the challenges and leverage opportunities presented by the Employment Bill, the following work streams may assist employers including the Health Board:

- **Review of Workforce Strategies:** Conduct a thorough assessment of current workforce strategies, focusing on the use of zero-hour contracts. Explore alternative models that align with the Bill's requirements while maintaining operational flexibility.
- **Review HR Systems:** Review HR, payroll and rostering system capability to manage the increased complexity of compliance with any new pay and scheduling regulations.

- Engage with workers and trade unions: Foster open communication with our trade unions and zero-hour workers to understand preferences and concerns.
- Learning and Development: Ensure our career development pathways provide opportunities for our zero-hour workers to upskill or transition into roles with guaranteed hours. This not only aligns with the Bill's emphasis on skill development but also supports workforce stability.
- Policy: Collaborate with industry associations and government bodies to provide feedback on the Bill and advocate for any necessary adjustments to address the unique challenges faced by the healthcare sector, particularly in maintaining flexible staffing to meet patient care demands.

Whilst the above measures were outlined as part of the King's Speech or for implementation within Labour's first 100 days, other proposals have been put forward in terms of parental pay and rights, the right to switch off, bereavement and carers leave, etc. The next year is likely to see a wealth of employment law changes that will need effective and timely navigation and implementation.

In conclusion, while the Labour Government's Employment Bill presents challenges for employers with, for example a zero-hour workforce, it also offers an opportunity to enhance worker satisfaction and operational efficiency. By proactively adapting to the new regulations, the NHS in Wales can continue to deliver high-quality care while fostering a fairer work environment.

We will continue to monitor the Bill's progression and contribute to any statutory consultation that follows to ensure we take every opportunity to influence the Bill as it transitions into law so that we leverage the maximum benefits the Bill sets out to offer our workforce whilst being cognisant of the financial constraints under which we operate.

Argymhelliad / Recommendation

The Committee is requested to:

- **NOTE** this early assessment of the Employment Bill
- **ACKNOWLEDGE** the potential opportunities and challenges certain provisions of the Bill may afford the NHS in Wales and more specifically the Health Board, should it become statute.

Amcanion: (rhaid cwblhau)

Objectives: (must be completed)

Committee ToR Reference: Cyfeirnod Cylch Gorchwyl y Pwyllgor:	2.1 To provide assurance to the Board on compliance with legislation, guidance and best practice around the workforce and OD agenda
Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score:	Not Applicable
Parthau Ansawdd: Domains of Quality Quality and Engagement Act (sharepoint.com)	Not Applicable
Galluogwyr Ansawdd:	Not Applicable

Enablers of Quality: Quality and Engagement Act (sharepoint.com)	
Amcanion Strategol y BIP: UHB Strategic Objectives:	All Strategic Objectives are applicable
Amcanion Cynllunio Planning Objectives	1 Workforce Stabilisation
Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report 2021-2022	2. Develop a skilled and flexible workforce to meet the changing needs of the modern NHS 5. Offer a diverse range of employment opportunities which support people to fulfill their potential

Gwybodaeth Ychwanegol: Further Information:	
Ar sail tystiolaeth: Evidence Base:	Not Applicable
Rhestr Termiau: Glossary of Terms:	ESR – Electronic Staff Record
Partion / Pwyllgorau â ymgynhorwyd ymlaen llaw y Pwyllgor Diwylliant, Pobl a Datblygu Sefydliadol: Parties / Committees consulted prior to People, Organisational Development & Culture Committee:	Not Applicable

Effaith: (rhaid cwblhau) Impact: (must be completed)	
Ariannol / Gwerth am Arian: Financial / Service:	None arising directly from the report – for information only
Ansawdd / Gofal Claf: Quality / Patient Care:	Not Applicable
Gweithlu: Workforce:	None arising directly from the report – for information only
Risg: Risk:	None arising directly from the report – for information only
Cyfreithiol: Legal:	None arising directly from the report – for information pre-statute
Enw Da: Reputational:	Not Applicable

Gyfrinachedd: Privacy:	Not Applicable
Cydraddoldeb: Equality:	Not Applicable