

The Employment Rights Bill: an analysis

PROFESSOR LYDIA HAYES, IER VICE PRESIDENT
LIVERPOOL UNIVERSITY

TUESDAY 5 NOVEMBER 2024, JACK JONES HOUSE

 #ierELU

WiFi name: Unite Guest

www.ier.org.uk

Professor Lydia Hayes, 5th November 2025

Employment Rights Bill 2024

Bill in five sections – with much to come



Employment Rights Bill. Purpose



Purposive approach to statutory rights



Uber 2021

- The purpose of the provisions was to protect vulnerable workers, who were in a position of subordination and dependency in relation to a person or an organisation which exercised control over their work;



Agnew 2023

- To protect workers, some of whom may be vulnerable, from being paid too little [87] ... To give workers a measure of protection from exploitation [112]... To ensure that they take the holidays they need to maintain their health and wellbeing [138]



Mencap 2021

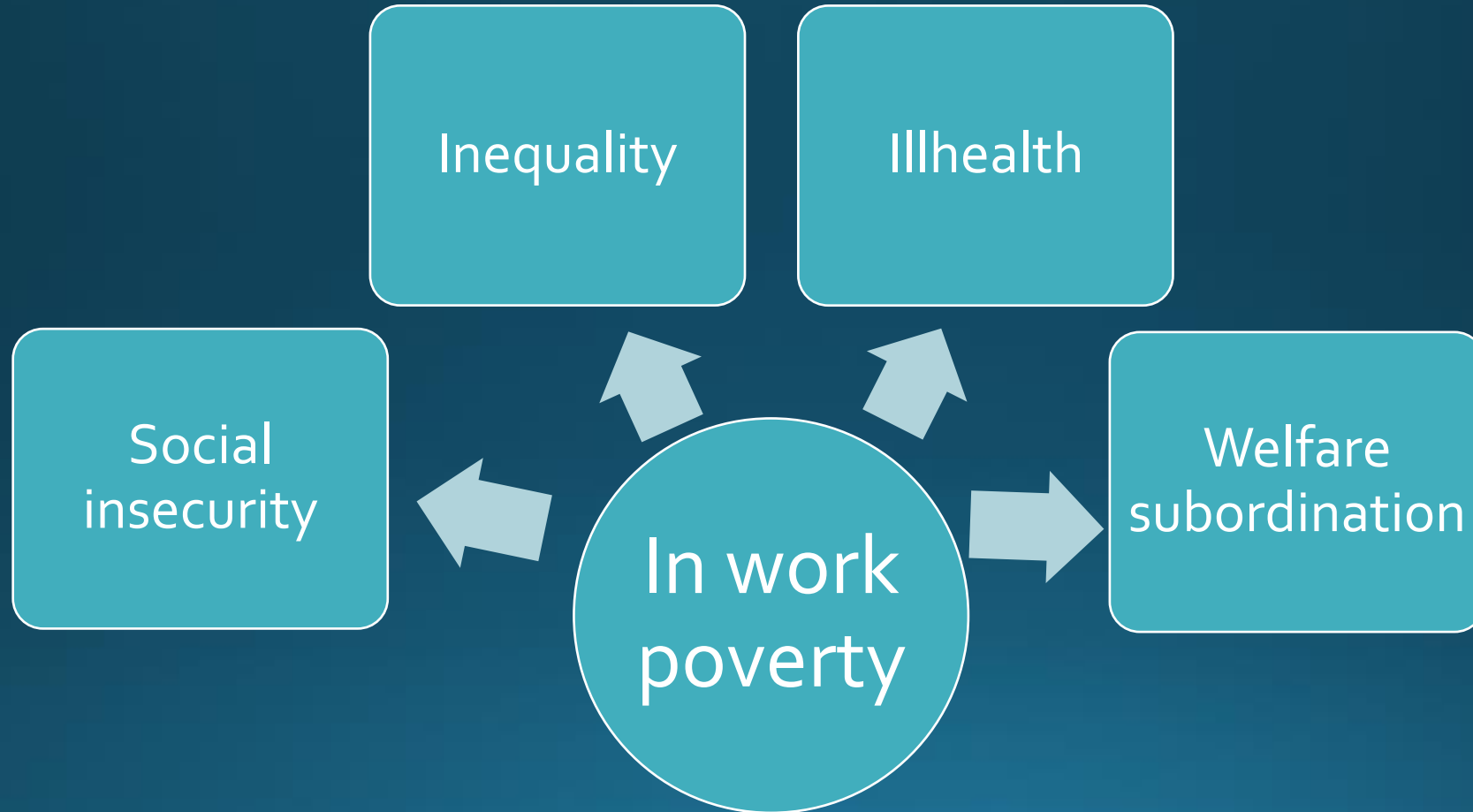
- The objectives of the NMW as a social and economic measure are no doubt complex. It clearly helps to redress the law of supply and demand where there may be market failure, and the worker is not able to obtain basic recompense for his labour, but there are no doubt other policy objectives which it serves.



Deliveroo 2023

- emphasise the need to focus on the reality of the situation ...There are many situations in which persons are in a position of unequal bargaining power and are offered contractual terms on a take it or leave it basis. However, that does not mean that they are entitled to band together and require the counterparty to negotiate with them collectively [63].

Context



A person is sitting on a blue background, next to a large stack of coins. The person is wearing a blue shirt and has their hands clasped in front of them. The coins are stacked in a way that they form a large, irregular shape. The text "Hours of work" is written in white, sans-serif font across the middle of the image.

Hours of work

Flexible hours

Not a by default right. Yet may refuse an application ONLY if

- Employer considers application should be refused on listed grounds AND it is reasonable for the employer to refuse on those grounds.
 - Burden of additional costs
 - Detrimental effect on ability to meet customer demand
 - Inability to re-organise work among existing staff
 - Inability to recruit additional staff
 - Detrimental impact on quality or performance
 - Insufficiency of work during periods employee proposes
 - Planned structural changes
 - Any other grounds by SoS in regulations

Zero hours contracts (and similar)

- Approach to zero hours contracts mellowed in the run up to election.
- Reasonable notice and cancellation compensation cancelled, moved and curtailed shifts. Impacts in retail and hospitality most likely.
- If working under a ZHC or a contract of specified description that does not provide which days or times work is to be done
- Impact assessment rates cost to employers as high
- Repeal of Workers (Predictable ts & c's) Act 2023, which was a right to request

Zero hours contracts (and similar)

- New head for part 2A ERA 1996
- New right to guaranteed hours contract after reference period (12 weeks?)
- Working under one or more 'worker's contracts' in period (non-continuous) if under a zero hours contract or contract specifying work to be made available for a minimum of hours not exceeding a specified number of hours ... and the hours worked more than the minimum
- New contract offer must not be a limited-term contract unless it is REASONABLE as such
- New contract must propose Ts & cs that, taken as a whole, are no less favourable than previously

Zero hours contracts (and similar)

- Reasonability of replacement with limited hours contract
 - If worker only needed for specific task and contract provides for termination when task performed
 - If only needed until the occurrence of an event and the contract provide for termination accordingly
 - There is only a temporary need of another specified description for the worker to do work and contract is to expire at a time when it is reasonable for the employer to consider that the temporary need will come to an end.
- Exceptions to duty, termination of employment
 - 27BD(3)(b) employer terminates and reason is a qualifying reason and, in the circumstances (including employer size and resource) the employer acts reasonably in treating the reason as a sufficient reason for termination
 - 27BD(3)(c the workers contract terminates by virtue of a limiting event and it was reasonable for the contract to be entered into as a limited-term contract

A row of wooden blocks, some standing upright and some falling over, with a person silhouette in the background.

Dismissal

Unfair dismissal

- Removes qualifying period
- Light touch regime during probation (initial period) (9 months)
- Need a fair reason for dismissal that relates to the employee
- Reason needs to be about individual: capability, conduct, SOSR
- Lighter procedures? Reduced compensation?
- 2 year qualifying for redundancy maintained
- Wont come in until Autumn 2026
- Impact assessment – 9 million currently without unfair dismissal rights, mainly young people
- 3,500 additional UFD in tribunals – currently 20,000 a year
- Whole labour market impacts

Hire and Fire

- Amends ERA 104l. Protection from dismissal – automatically unfair dismissal if principal reason for dismissal is
 - variation of contract employee did not agree
 - to employ another or re-engage under new contract for similar duties
- Unless reason was
 - for financial difficulties affecting/likely to affect immediate business future
 - in all the circumstances could not reasonably avoid to need for the variation

Then matters of fair/unfair include consideration of whether:

Consultation carried out with employee / trade union / any other representative / anything offered to employee in return for agreeing variation / other matters by regulation.



Worker-carers

Worker – Employee key distinctions maintained – awaiting consultation on single worker status

- Removal of qualifying (26 weeks) period for paternity leave and adoption leave by removing power of SoS in ERA to make regulations for a qualifying period (no change on 26 weeks eligibility period for pay)
- Removal of 1 year qualifying period for unpaid parental leave – ie immediate access to 18 weeks up to 18 years old
- Next steps proposal to make it unlawful to dismiss pregnant woman or woman returning from maternity leave within 6 months, or those taking any other statutory family leave.
- No news on shared parental leave, complexity remains

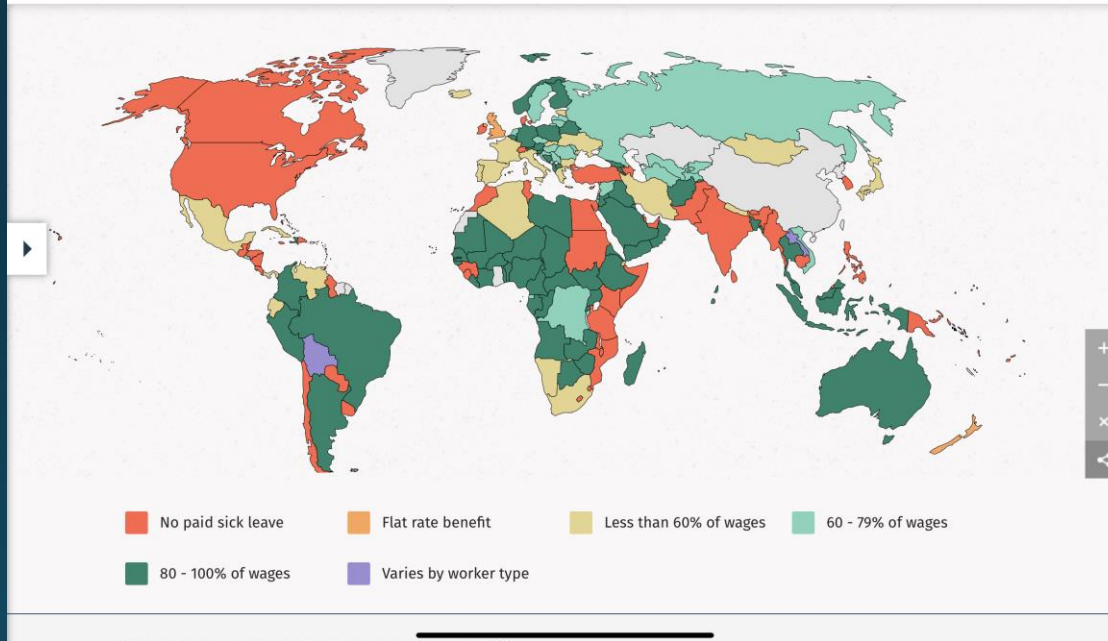
Bereavement leave	Statutory parental bereavement leave entitles eligible parents (those who lose a child under 18 or suffer a stillbirth after 24 weeks) to two weeks' paid leave. This is a day one right, although employees must have 26 weeks' service to be eligible for statutory parental bereavement pay.	One week's unpaid bereavement leave will be available to all employees. The government will set out the relationships covered in secondary legislation. Parents will still be eligible for two weeks' paid leave if a child under 18 dies.
Paternity leave	Employees must have 26 weeks' continuous service to qualify for paternity leave and cannot take paternity leave after a period of shared parental leave.	Employees will be eligible for statutory paternity leave from day one of employment and will be able to take paternity leave after taking shared parental leave.
Parental leave	Statutory parental leave is available after one year's service, allowing up to 18 weeks' unpaid leave for each child up to their 18th birthday.	Employees will be eligible for statutory parental leave from day one of employment.
Maternity and statutory family leave protection	Pregnant workers and those on maternity leave (or other statutory family leave) have priority rights to a suitable alternative vacancy in a redundancy situation. This priority right also applies after return from statutory family leave.	Subject to secondary legislation, it will be unlawful to dismiss employees during pregnancy and within six months of their return from statutory family leave.



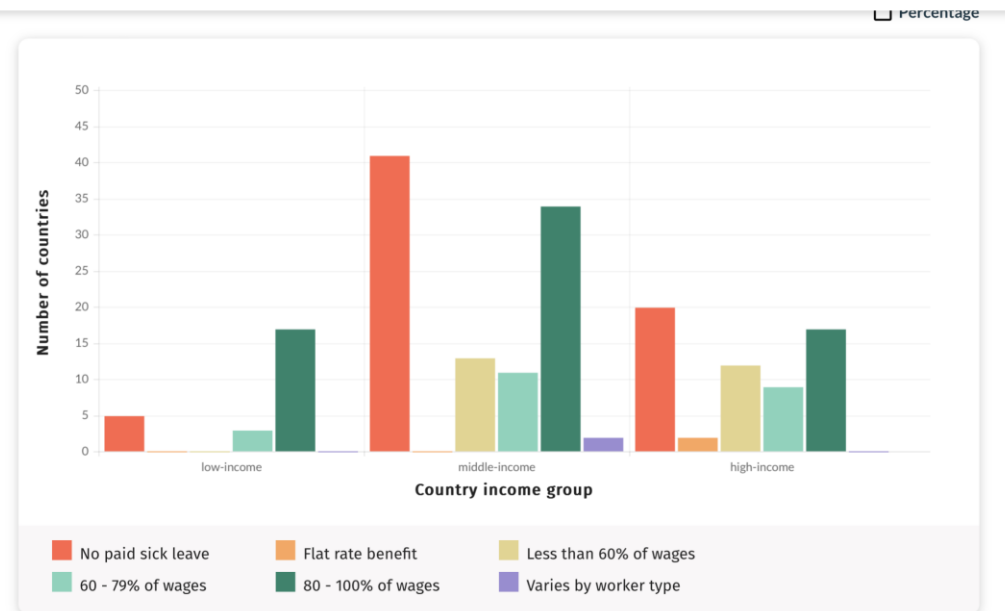
Sick pay

- Employers bound by Social Security Contributions and Benefits Act 1992 to make a payment when worker meets conditions
- Conditions changed to include a period of one day of incapacity or two or more consecutive days – ie removal of waiting period
- Retains definition of a single period of incapacity where 2 periods of incapacity are separated by less than 8 weeks (s152 SSCB)
- Removal of lower earnings limit
- Replaced it with 'a prescribed percentage of the employee's normal weekly earnings' for SoS to make by Order
- Is accessible to all from day 1 of work and day 1 of sickness.

What is the wage replacement rate of paid sick leave in week 1 for workers with 1 month tenure?



What is the wage replacement rate of paid sick leave in week 1 for workers with 1 month tenure?



Disability and sickness

- Sick pay day 1
- LEL, evidence France? Impacts of measure 2 greatest
- Impact on long term sickness?
- Right to request flexible working
- Bereavement leave, massive mental health impact
- Care sector viability

Sectoral pay and conditions

- Reinstating school support staff negotiating body
- Establishing new Negotiating Body for Adult Social Care
 - Regulations on appointment to body, and APPOINTMENT of chair
 - Members must include:
 - officials of one or more Tus that represent the interests of trade unions
 - persons representing the interests of employers of social care workers
 - Regulations may provide for other descriptions of persons
 - Matters: remuneration, Ts&cs
 - Definition: social care worker adult social care, personal care or other practical assistance by reason of age, illness, disability, pregnancy, childbirth, substance dependence, who are in need of care or assistance
 - Machinery of National Minimum Wage Act for enforcement of pay agreements
 - Contractual enforcement of other matters

Employer conduct

- Duty to consult on redundancy: collective redundancy – number of employees at risk no longer bound by 'one establishment' rule
- Public sector outsourcing – no less favourable treatment
- Duty to create equality action plans: gender pay gap, support during menopause
- Duty to take all reasonable steps to prevent sexual harassment (unwanted conduct of a sexual nature)
- Regulations to specify the reasonable steps
 - Including carrying out assessments
 - Publishing plans or policies
 - Addressing reports of SH
 - Handling of complaints
 - Protected disclosure protect to include disclosure that SH has occurred, is occurring or is likely to occur
- Duty to prevent harassment of an employee by a third party

Inequality and exclusion from protective scope of labour law

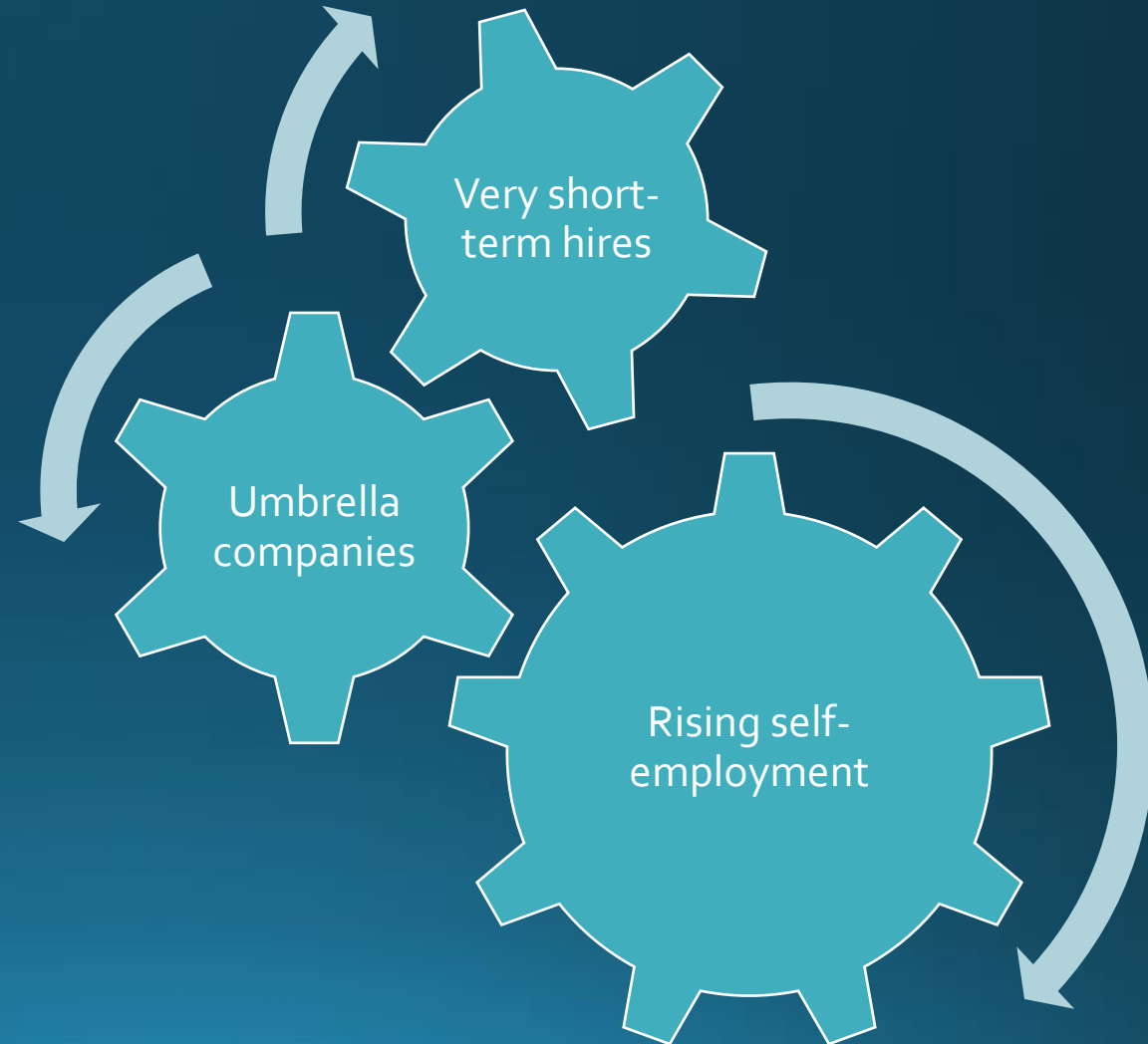
Zero hours contracts – complexity of guaranteed hours offer and compensation for shift changes

Minimum wage rise to COL and erosion of age differentials. REGIONAL and SECTORAL

Day one entitlements

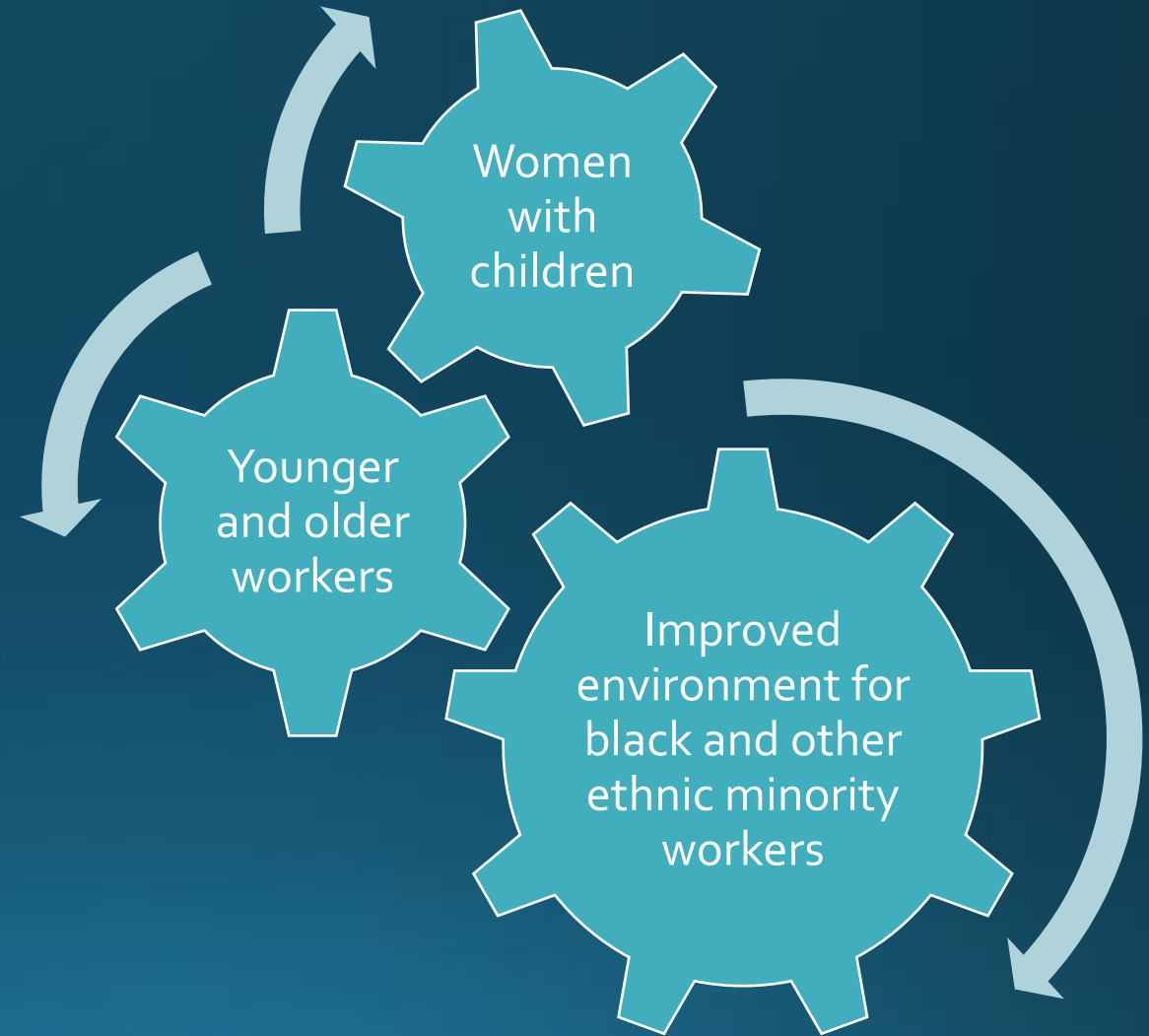
Employer's national insurance rise

'Deliveroo case' – Independent Workers Union GB v CAC



Equality and inclusion within protective scope of labour law

- Short service dismissals, +20% workers
- Young workers, Black and other EM workers, women, 10% of workers never have a qualifying job
- Pregnant worker protections
- Workers with disability
- Requesting flexible working
- Allocation of tips consultation
- Removal of wait periods for parental and paternity leave
- Sexual harassment measures
- Dismissal during and after pregnancy



Fair Work Agency

- Existing state enforcement functions plus holiday pay and sick pay
- Plan to enforce in future a wider range of employment rights.
- Strong powers to investigate and take action against businesses that flout the law, to level the playing field for compliant businesses
- The Resolution Foundation found that 14 per cent of the lowest-paid workers report that they receive no paid holiday, and 11 per cent of low-paid workers say they do not have a payslip,