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Survey report

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Employment *regulation* in the UK: burden or benefit?

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has more than 140,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Employment regulation in the UK: burden or benefit?

Survey report

Contents

Acknowledgements

This report is based on findings from a survey of 508 senior HR professionals and employers on their views and practices in relation to employment law, and was conducted in partnership with Lewis Silkin LLP. We would like to thank James Davies, Divisional Managing Partner, for his valuable input and support to help guide this research study.

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Foreword from the CIPD

Aiming beyond compliance now and after Brexit

Now that Article 50 has been triggered, it is inevitable that the debate about the role of employment regulation will rise sharply up the public policy agenda. Over the past decades, EU directives have affected workers' rights across the UK economy and a crucial question is, what should happen to the significant body of employment law that derives from Brussels?

Prime Minister Theresa May pledged in her Lancaster House speech in January 2017 to protect workers' rights after the UK has left the European Union (Gov.uk 2017). Around the same time, Chancellor Philip Hammond suggested that if Brexit negotiations failed to provide the UK with access to the single market, it might have to change to a low-tax, low-regulation economy to enable it to compete. This raises the prospect that the issue of employment regulation and workers' rights could yet become a factor in Brexit as negotiations progress.

Even without the UK's departure from the EU, there has long been a debate about the benefit or burden of regulation in this country.

The discourse about the pros and cons of employment law is often politicised and polarised, with a dominant theme focusing on the need for UK employers to be freed from the burden of 'red tape'. The risk is that this kind of rhetoric can mask the real impact of employment regulation in workplaces. With the formal Brexit process now under way, it is crucial that we add clarity and insight to the debate about the value of employment regulation; this is why, in winter 2016–17, the CIPD partnered with law firm Lewis Silkin to survey a representative sample of more than 500 employers about their views and experiences of implementing UK and EU employment law.

Complying with employment regulation is a necessary part of operating a business. However, the narrative should not focus on compliance alone, but on the responsibility of HR professionals and businesses to do the right thing. Many businesses espouse the value they place on their people in their company reports, but how often does the rhetoric match the reality? In today's modern workplace there is a compelling case to approach employment regulation in a more holistic way, in a more *human way*, which will encourage a potentially far greater return on investment from people in terms of their well-being, engagement, commitment and loyalty.

The findings from the research we present in this report hint at such an approach, with a majority (52%) of respondents reporting that their organisation goes beyond what is required when implementing employment law. This reflects the importance with which many employers view employment protection for employees, as well as the value they place on approaching regulation in a way that goes beyond the letter of the law. If most organisations are exceeding their statutory requirements, this does not suggest a climate whereby employers perceive regulation as a burdensome bind of red tape that impedes their day-to-day operations. A key focus of the debate going forward has to be on enhancing whatever strengthens good workplace practice and effective people management.

It's sometimes argued that employment regulation is fine for larger organisations with HR departments, which have the resources to deal with red tape, but is much more difficult for small and micro businesses to cope with. However, even this claim does not stand up to closer examination. Successive surveys of SMEs by the former Department for Business, Innovation and Skills (BIS) finds that employment regulation comes a long way down the list of issues that small businesses see as creating obstacles to success. In a recent study, just 13% of SMEs identified employment regulation as an obstacle to success (BIS 2016).

In the view of the CIPD, the UK's employment regulation framework provides sufficient flexibility for employers and appropriate employment protection for workers. However, Brexit should be viewed as an opportunity to enhance the quality of some aspects of EU-derived employment law, as well as consulting on reforms to improve the application of certain laws in practice. Both these aims can be achieved without undermining the level of protection these laws afford to people at work. We will be making this case to the Government as the debate about the UK's relationship with Europe develops.

Rachel Suff
CIPD Public Policy Adviser

Foreword from Lewis Silkin LLP

This comprehensive and rigorous study reveals a great deal about the state of workplace regulation in the UK at a time of unprecedented change. Lewis Silkin is very pleased to have worked with the CIPD in preparing this report, which we believe represents an important contribution to the debate around the priorities for future reform of employment law.

The rapidly evolving nature of the world of work is evident through technological, demographic and political change.

Dealing with the first of those, the extent to which technology increasingly permeates aspects of the workplace is pushing privacy and workplace data protection issues to the forefront of people's minds. After unfair dismissal, data protection is now regarded as the most necessary of all employment laws. It is also ranked as the law which best supports organisations' strategic HR and business goals. One does not need to be clairvoyant to predict employee privacy becoming even more significant in the years ahead.

Demographic change is resulting in an ageing working population, but at the same time Generation Y workers – the so-called 'millennials' – have different priorities and are pushing employers to adopt more flexible working practices and place greater focus on workplace reputation. Perhaps surprisingly, only 41% of survey respondents consider that age discrimination laws support their strategic HR and business goals, while only 35% say that about the right to request flexible working.

Bearing in mind the extent to which employment status has been under the spotlight lately, it seems even more surprising that only 19% of respondents regard the current legal categories as being 'not well drafted and difficult to apply'.

Political change has, in recent months, been even more profound than either technological or demographic progress. In the UK, the two major developments have been the referendum vote in favour of Brexit and Theresa May subsequently replacing David Cameron as prime minister.

Brexit promises to give the UK increased power to amend certain employment laws. The report highlights that revisiting aspects of the Agency Workers Regulations and Working Time Regulations would be popular with employers. Meanwhile, Theresa May's appointment as prime minister potentially heralds a different approach to employment regulation, with initial announcements suggesting a shift away from increased deregulation.

The study reinforces the view that employers are concerned less about there being too much or too little regulation of the workplace, and more about good regulation versus bad regulation. Over half of respondents believe that employment legislation is generally too complex.

Among the laws that respondents regard as most 'well drafted and easy to apply' are those covering the National Minimum Wage, redundancy and (surprisingly) holiday pay. At the opposite end of the spectrum, one finds the legislation on agency workers laws and TUPE – both of which are likely to be candidates for attention from the Government post-Brexit.

Interestingly, the National Minimum Wage and holiday pay appear alongside data protection at the top of the table of laws regarded as supporting organisations' strategic HR and business goals. Both of these attracted business opposition when first introduced, but now are widely regarded as uncontroversial.

It is also interesting to reflect upon employers' reactions to employment tribunal fees, which have led to a reduction in claims of around 70% since their introduction four years ago. Despite this, only about a third of respondents who were able to comment had seen a decrease. There is clearly concern about the impact of the fees on potential claimants, with around two-thirds of employers who expressed a view saying they should be abolished or reduced.

For employment lawyers, there is much on which to reflect. For example, only 27% of employers say they use employment lawyers to obtain advice on new legislation and how to meet any new obligations. This begs the question of what we can we do to reach the other 73%!

James Davies
Divisional Managing Partner, Lewis Silkin

Executive summary and conclusions

'All aspects of existing and proposed employment law need regular and careful scrutiny to assess whether or not they are fit for purpose.'

Attitude versus impact: is there a perception–reality gap?

All aspects of existing and proposed employment law need regular and careful scrutiny to assess whether or not they are fit for purpose. But any review needs to try to separate out employers' *attitudes* to employment law, which are shaped by many factors including the external narrative, from actual *impact* on organisational behaviour and performance.

In 2013, the former Department for Business, Innovation and Skills published a study examining employers' perceptions of the impact of employment regulation, based on qualitative interviews with around 40 businesses of different sizes (BIS 2013). The findings are informative.

The BIS study found that employers were not consciously aware of the impact of regulation on their practices but, when asked directly, employers tended to say that regulation was 'burdensome' and perceived as 'complex'. It identified evidence of a 'perception–reality gap', particularly apparent among small and micro employers, and noted that *'the perception of regulation being burdensome was influenced by anxiety and the belief that regulation was overly complex, rather than the actual legal obligations that employers had to meet'.*

This perspective is echoed in our own research set out in this report, which shows that employment regulation is not regarded by organisations as all 'good' or all 'bad'. Employers' attitudes are much more nuanced than is often recognised. The majority of the 508 organisations taking part in our survey agree that all 28 listed areas of employment law – ranging from unfair dismissal to agency workers and TUPE – are 'necessary', with at least three-quarters indicating that 20 of these are so.

However, less than half of respondents believe that more than a third of these employment law areas are well drafted and easy to apply in practice. Some pieces of legislation have a particularly high level of disparity between being viewed as necessary versus well drafted/easy to apply. Those relating to whistleblowing, modern slavery, agency workers, unfair dismissal and TUPE have the highest level of difference between how necessary they are compared with how well written they are and easy to implement.

These findings reveal that it is not the *quantity* but the *efficacy* of employment regulation that is the key question, both in terms of the quality of its drafting and how straightforward it is to apply in the workplace.

Our findings also underline the importance of rigorous and ongoing evaluation of the effectiveness of every aspect of our employment rights framework, to ensure that every piece of legislation is drafted to a high standard and does not place an unnecessary implementation burden on employers. This should

be based on an assessment of the risks and evidence, and there should be a robust process for testing and fine-tuning regulations before they come into force. Any outdated or unnecessary regulation should be updated or removed.

Regulation *can* be a force for good...

Our survey findings reveal a predominantly positive view of employment law, although implementing it is perceived as an administrative burden by just over a quarter (28%). Almost two-thirds (63%) agree that 'implementing employment law makes a positive contribution to employee relationships', and seven in ten (69%) agree that implementing employment law improves the quality of employees' working lives. New employment regulation is viewed as the joint-top driver of change in employment practice and behaviour in organisations, with more than one-third (35%) rating it in their top five, together with the need to improve business performance.

A significant proportion of employers also believe employment regulation can have a positive impact in supporting their strategic HR and/or business goals. At least 41% of all respondents report that the laws on the National Minimum Wage, data protection, holiday pay, parental rights at work, working time, age discrimination, and pregnancy and maternity discrimination make a positive contribution to the business.

Public sector employers are significantly more likely to identify most areas of regulation as contributing to their strategic and/or business goals compared with their private sector and voluntary sector counterparts. Conversely, small employers are least likely to identify most areas of regulation as contributing to their strategic and/or business goals compared with medium-sized and large employers, for example in relation to the National Minimum Wage laws.

The survey also explored employers' views on what they consider to be the best methods of translating employment into changes in employment practice and behaviour at work. The five methods ranked as most effective are:

- training for managers (38% of respondents)
- effective internal communication (37%)
- strong leadership (34%)
- training for staff (27%)
- identify risks of not complying and raise awareness at board level (26%).

...but what are the key barriers?

Employers told us that the three main barriers to implementing employment law are:

- a lack of resources (staff/budget/time) – ranked as a barrier by 44% of all respondents
- too much legislation – ranked as a barrier by 34% of all respondents
- a lack of awareness of changes to legislation – ranked as a barrier by 31% of all respondents.

However, the findings do not suggest a climate of negativity among organisations when it comes to meeting their statutory obligations, with just one in ten (10%) indicating that 'it's cheaper to be reactive and settle out of court and pay compensation.'

As might be expected, perceived barriers to effectively implementing employment law changes vary according to organisation size. For example, respondents based in small organisations (fewer than 50 employees) are significantly more likely than those working in large organisations (250 employees or more) to report that 'too much legislation' (45% versus 28%) and a 'lack of awareness of changes to legislation' (41% versus 27%) are significant obstacles.

Embedding regulatory change and keeping up to date

Training and communicating employment law changes should be an essential part of implementing new regulatory provision and encouraging understanding and compliance among managers and the wider workforce. However, among our survey of 508 organisations, nearly a quarter (23%) do not train line managers in employment law to help ensure they are competent to manage people. This proportion rises to 50% in the case of small organisations (2–49 employees).

Among the 353 organisations that do provide training, the top regulatory areas where they train line managers are health and safety laws (71% of organisations) and discipline and grievance (67%).

Overall, respondents think that their HR function is more effective in promoting the importance of compliance with employment law to senior managers than to line managers – 58% of respondents compared with 45%, respectively.

There is a mixed picture in terms of how HR promotes compliance, with the top compliance approach being 'a necessary obligation' (54% of organisations with an HR function) followed by HR promoting compliance as 'a way to encourage line managers to adopt good practice' (41%).

'Government statistics reveal that employment tribunal fees have resulted in a reduction of over 70% in the number of claims being made since fees were introduced in July 2013.'

The majority of employers have at least one mechanism in place to obtain advice on new employment legislation and how to meet any obligations arising from it. Some organisations rely on an in-house resource, with one-third (33%) drawing on the expertise of their own HR department. This approach tops the table in terms of the most popular information source from the list we provided to respondents.

Employers depend on a diverse range of external information sources to keep abreast of regulatory changes, the top one being government departments' websites and/or publications (30% of respondents), followed by an employment law firm (27%), Acas (25%), HR consultants (23%), courses or conferences (21%) and the CIPD (19%). Overall, there is little discrepancy between the level of employers' reliance on a particular information source and its perceived effectiveness when respondents were asked to rank their most important information source.

Reform of the employment tribunal system

The nature of employment tribunals (ET) in the UK has changed significantly over the decades: far from being speedy and informal as originally intended, they have become increasingly legalistic and now deal with over 70 types of employment claim. Therefore, it's not surprising that the ET system is the focus of significant ongoing reform by the Government. The most recent consultation centres on the fees regime (Ministry of Justice 2017).

Government statistics reveal that employment tribunal fees have resulted in a reduction of over 70% in the number of claims being made since fees were introduced in July 2013. Whether or not the fee regime has adversely affected employees' access to justice has resulted in intense debate.

In March 2017, the CIPD responded to the Government, noting that its consultation focuses only on the structure of the fee remission scheme and not on the level of fees themselves (CIPD 2017a). We registered our concern that the key proposal, to raise the gross monthly income threshold for fee remission from £1,085 to £1,250, will not be enough to enable individuals with a genuine case to access the employment tribunal system.

According to our survey findings, one organisation in five (19%) has seen a decrease in tribunal claims since the fees were introduced, with a further 37% saying they have stayed the same, 17% saying the question is not applicable (perhaps because the organisation has not experienced any claims to compare a before/after scenario), 24% don't know and just 3% say that they have increased.

We asked respondents how they think the Government should respond to the 70% reduction in claims since the introduction of ET fees in 2013. The majority of respondents are in favour of a fundamental change to the current system, with 15% indicating that ET fees should be abolished, 11% agreeing that they should be reduced substantially, and 19% indicating that a single £50 fee should apply to all claims. A further third (34% of organisations) think that the present fee system should be left as it is, while just 5% think that making the system of remission more generous is an effective solution, despite this being the main course of action following the Government's review.

Our findings also suggest that the huge fall in the number of

claims has had a major influence on the behaviour and attitudes of employers and managers, as well as on employees. We compared the findings from our current research with those from our 2005 survey on employment regulation, when there was no fee system in place. Although not directly comparable as the sample is different and there could be other variables that come into play, it's interesting to note that, in our current survey, just 16% reported that the risk of employment tribunal claims has a strong influence on management behaviour; this compares with 51% of employers who reported a strong influence in 2005.

This points to a significant shift in the balance of the employment relationship in many workplaces and we cannot assume that, just because far fewer individuals are seeking formal redress following a dispute, that the level and impact of conflict has improved. Of course, the ideal approach is for the greater use of informal conflict resolution techniques to nip conflict in the bud, which the CIPD strongly advocates to its members. However, if not resolved, there is the potential for the conflict arising from individual disputes that are not dealt with via a formal route to fester and adversely affect the wider employment relations climate.

Brexit and the future of EU law

Will a renegotiation of the UK's relationship with the EU spell far-reaching changes for the employment relationship and many of the laws that govern it? Many HR professionals and employers must be wondering how the workplace will be affected now that Article 50 has been triggered and formal negotiations will structure a new relationship with the EU. Following Brexit, in theory the field could be open for the Government to amend aspects of EU employment law if it could gain parliamentary approval.

The Government's planned Great Repeal Bill will replace the European Communities Act 1972, the legal instrument which gives supremacy to EU law in those areas where the EU has the right to set law for all member states. This will ensure that existing employment protections are maintained in the short term.

In the longer term, there are differing views on the extent to which EU-derived employment law will change. The Government has indicated that it's not intent on eroding workers' rights and it's highly unlikely that we will see a 'bonfire of employment rights', as has been suggested in some quarters. *'Indeed, under my leadership, not only will the Government protect the rights of workers set out in European legislation, we will build on them,'* said the prime minister in her January speech at Lancaster House (Gov.uk 2017). Further, the direction of travel in terms of UK employment regulation has been quite interventionist in recent times, with policies such as the apprenticeship levy, National Living Wage and family-friendly rights very much being driven by the Government.

The legal framework under which EU-derived employment law is transposed into UK law is complex and will not be straightforward to dismantle, even if there is the political will to do so. This does not mean there is not scope to improve certain aspects of EU or UK law if it could be improved following consultation with employers. We asked organisations taking part in our research about the effectiveness of key elements of EU regulation and the potential for future reform, including the Agency Workers Regulations and the Working Time Regulations.

The Agency Workers Regulations

The Agency Workers Regulations (AWRs) are one of the key areas of EU-derived employment regulation that are widely predicted to be under review following the UK's departure from the EU. There's no doubt that the AWRs and the rights they afford to temporary agency workers can give rise to confusion for all parties – agency, hirer and individual. Some of this confusion is attributable to the nature of the triangular relationships that are inherent in the contractual arrangements for hiring temporary staff via an agency.

Our findings show that employers have mixed views about the AWRs, but three-quarters (75%) think that these laws are necessary. We also asked respondents whether or not they think it's right that temporary agency workers are entitled to the same basic conditions of employment as comparable employees after a 12-week qualifying period. The majority view is that it's the right approach, with 44% of respondents agreeing and 19% disagreeing (a further 23% neither agreed nor disagreed). However, agency worker laws are considered one of the most poorly drafted pieces of legislation, ranked 26 out of 28 in terms of being 'well drafted and easy to implement'.

Further, the majority of respondents (56%) taking part in our research agree that the Regulations should be reviewed to assess their effectiveness, but just a quarter (24%) agreed that they should be repealed.

We conclude that the laws concerning agency workers can give rise to confusion for all those involved and are ripe for

'The majority response from our respondents is that the WTRs have had a negligible influence on their organisation.'

review. Following our research, and as set out in the CIPD's response to the recent Business, Energy and Industrial Strategy Committee's inquiry into the future world of work (CIPD 2017b), we recommend:

- The Government should conduct a review of the statutory framework affecting agency workers, including the 12-week qualifying period. While agency workers' rights must continue to be protected, the current regulations are not having the desired impact, are perceived as being poorly drafted and complex to implement.
- The Government should develop stronger guidance outlining employment status and associated rights. It should also raise awareness of the compliance obligations that employers are under, using new and existing communication channels to reach those operating at the margins of the labour market.
- There is an argument for agency workers on zero-hour contracts to be given the right to request regular hours after 12 months working for one organisation in which they have been working a consistent pattern of hours each week.
- The Government should develop and implement a more comprehensive enforcement framework. We welcome the proposals set out in the 2015 BIS consultation on tackling exploitation in the labour market and the new cross-government approach to labour market enforcement. However, we are keen to hear what resources will be made available to these new initiatives, including to the new Director of Labour Market Enforcement and the new Gangmasters and Labour Abuse Authority (GLAA).

The Working Time Regulations

The Working Time Regulations (WTRs) are one of the most high-profile elements of EU-derived law affecting employment. The relevant EU Directive ensured that all workers should be entitled to at least 20 days' paid annual holiday, but the UK Government increased this entitlement to 28 days, including bank holidays. This is a perfect example of how the UK Government has chosen to 'gold-plate' some aspects of EU law, providing more generous provision for UK workers.

One of the other main, and most contentious, provisions of the WTRs – that a worker's working week should be limited to 48 hours – is already subject to an opt-out in the UK. This Directive alone illustrates the complexity of how the UK transposes different aspects of EU law and how the wider domestic context influences its interpretation. For instance, successive UK governments have promoted family-friendly provision in workplaces and it's hard to imagine a policy shift that aims to undermine this direction of travel in relation to EU-derived regulation.

The majority response from our respondents is that the WTRs have had a negligible influence on their organisation. A firm majority of respondents also agree that they are necessary to protect the health and safety of workers, although responses were more mixed in terms of whether or not they have a negative impact on the cost of running a business.

More than a third (35%) of respondents report that no one in their workforce has opted out of the right to limit their average weekly working time to 48 hours, but this rises to 71% of small employers. Our survey

finds that employers are in favour of retaining the UK's opt-out agreement, with 46% agreeing with the statement that 'it's crucial for our business that the UK retains its "opt-out" from the average 48-hour working week' and 21% disagreeing.

Just over half (53%) think the WTRs are 'well drafted and easy to apply'. Thirty-nine per cent of respondents agree that the Regulations 'are too prescriptive and impede flexibility in the workplace' compared with 20% who disagreed with the statement. This suggests that, almost two decades after their implementation in the UK – during which time there has been enormous change in the world of work – there is definite scope to review whether or not the range of provisions within the Regulations remain fit for purpose.

Balancing protection with flexibility

The UK already has more flexibility than is sometimes realised over employment law. This degree of flexibility has enabled the UK to maintain one of the most lightly regulated labour markets in the OECD in terms of employment protection legislation. On this measure, only the United States and Canada have lighter-touch employment regulation than the UK, although this does not mean that the UK labour market can be described as a whole as deregulated (CIPD 2015).

However, there remains significant scope for improving the quality and impact of the existing regulatory framework affecting UK workplaces. We therefore welcome the recent and ongoing scrutiny by Parliament and the Government into the future world of work, including the so-called 'gig economy'.

The CIPD's submission to the Business, Energy and Industrial Strategy Committee makes a number of recommendations aimed at ensuring people receive the workplace rights to which they are entitled as well as improving certain elements of existing laws to make certain they remain fit for purpose (CIPD 2017b). For example, we recommended that there should be an amendment to the Employment Rights Act 1996, requiring employers to provide all workers with a written copy of their terms and conditions after two months of employment. We also called on the Government to develop and implement a more comprehensive enforcement framework to investigate potential breaches of workers' rights.

In our view, the UK is very unlikely to get much benefit from either further deregulation or significant re-regulation (CIPD 2015). Our research shows that, in the UK, what actually happens on the ground in workplaces matters much more for the quality and efficiency of work than legislation setting down employment rights.

1 Attitudes to employment law

Are employment laws necessary, well drafted and easy to apply?

Most respondents regard every single area of employment law listed in the survey as 'necessary', with marginal variation according to broad sector (See Table 1). A very high proportion of employers view a large number of laws in this way, with at least 90% of respondents indicating that this is the case for laws relating to unfair dismissal, data protection, redundancy, holiday pay and disability discrimination.

> *'The right to ask for flexible working hours has benefited many members of staff at all levels.'*
>
> Middle manager, large employer, south-east of England

Rated somewhat lower, although still viewed as necessary by a majority of respondents, are laws related to statutory union recognition, religion and belief, and gender reassignment (55%, 61% and 64%, respectively).

> *'I feel that all inclusion- and diversity-based laws have helped support a strongly inclusive environment.'*
>
> Board member, large national organisation

> *'Employment law generally imposes too many unnecessary and inappropriate costs and restrictions on business.'*
>
> Senior manager, medium-sized organisation, East Midlands

Whether or not specific laws are necessary is a fundamental consideration, but another important criterion to help determine their effectiveness is whether or not they are well drafted and easy to apply. The majority of employment laws score less highly in this regard, with transfer of undertakings (TUPE) laws – often criticised for their complexity – rated bottom in the table, with just a third (32%) of employers regarding TUPE laws as well drafted and easy to apply (see Table 2). Gender reassignment and agency workers laws also score relatively poorly (33% and 36%, respectively).

For 11 of the 28 pieces of employment law on which we sought views, less than half of respondents believe they are well drafted and easy to apply. This suggests that the poor drafting of some areas of legislation, as well as perhaps a lack of adequate and clear guidance to support their implementation, could be responsible for at least some employers' concerns with 'red tape'.

> *'Flexible working has enabled workers to have flexibility, which promotes staff retention.'*
>
> Board member, medium-sized organisation, south-west of England

The laws considered most highly in terms of being well drafted and easy to apply are those relating to the National Minimum Wage (69% of respondents), redundancy (64%), holiday pay (60%), sex discrimination (60%), data protection (59%), pregnancy and maternity discrimination (59%) and race discrimination (59%). It should be noted that a significant minority of respondents indicated that they didn't know whether or not certain laws are well drafted and easy to apply, which is understandable if they have not been directly involved in implementing specific pieces of regulation in their organisation.

Table 3 ranks the different employment laws according to the level of difference between how necessary they are compared with how well written they are and easy to implement, in the view of respondents. Whistleblowing laws top the table by having the highest difference between being seen as necessary and being well drafted and easy to apply. The other main laws with the highest disparity, and seen as necessary but not well written, relate to modern slavery, agency workers, unfair dismissal and TUPE.

Table 1: Employers (%) regarding the specified areas of employment law as 'necessary'

	All employers	Private sector	Public sector	Voluntary sector
Unfair dismissal laws	93	91	100	93
Data protection laws	92	91	95	90
Redundancy laws	92	91	94	95
Holiday pay laws	91	88	97	97
Disability discrimination laws	90	89	96	91
Equal pay laws	88	85	96	96
Race discrimination laws	88	87	90	90
National Minimum Wage laws	87	86	89	85
Sex discrimination laws	86	84	92	92
Age discrimination laws	85	84	85	92
Part-time workers laws	85	83	93	81
Pregnancy and maternity discrimination laws	85	83	92	90
Whistleblowing laws	83	80	91	89
Employment status laws	82	81	89	81
Parental rights at work	82	79	92	83
Modern slavery laws	81	81	82	85
Sexual orientation discrimination laws	77	74	86	81
Information and consultation of employees laws	76	74	85	75
Agency workers laws	75	73	80	83
Fixed-term employees laws	75	73	85	67
Deduction from wages laws	74	74	70	79
Working Time Regulations	74	68	92	73
Marriage and civil partnership discrimination laws	68	63	78	85
Transfer of undertakings laws	67	68	64	69
Right to request flexible working laws	67	65	69	78
Gender reassignment discrimination laws	64	60	75	73
Religion and belief laws	61	56	75	74
Statutory union recognition laws	55	51	69	65

Base: all: 508; private sector: 359; public sector: 83; voluntary sector: 66.

Table 2: Areas of employment law 'well drafted and easy to apply' or not (% of all employers)

	Well drafted and easy to apply	Not well drafted and difficult to apply	Don't know
National Minimum Wage laws	69	11	20
Redundancy laws	64	14	22
Holiday pay laws	60	20	20
Sex discrimination laws	60	15	24
Data protection laws	59	21	20
Pregnancy and maternity discrimination laws	59	19	22
Race discrimination laws	59	18	23
Disability discrimination laws	58	22	20
Age discrimination laws	57	20	23
Unfair dismissal laws	57	21	21
Equal pay laws	54	22	24
Employment status laws	53	19	28
Part-time workers laws	53	21	26
Working Time Regulations	53	26	21
Deduction from wages laws	50	18	33
Fixed-term employees laws	50	18	32
Parental rights at work laws	50	29	21
Marriage and civil partnership discrimination laws	47	19	34
Sexual orientation discrimination laws	47	20	33
Right to request flexible working laws	46	31	24
Information and consultation of employees laws	43	28	30
Statutory union recognition laws	41	22	37
Whistleblowing laws	41	30	30
Modern slavery laws	40	19	41
Religion and belief laws	39	28	33
Agency workers laws	36	31	34
Gender reassignment discrimination laws	33	23	44
Transfer of undertakings laws	32	29	39

Base: all: 508. Percentages may not sum to 100 because of rounding.

Table 3: Employers regarding areas of employment law as 'necessary' compared with 'well drafted and easy to apply' (%)

	Necessary	Well drafted and easy to apply
Whistleblowing laws	83	41
Modern slavery laws	81	40
Agency workers laws	75	36
Unfair dismissal laws	93	57
Transfer of undertakings laws	67	32
Equal pay laws	88	54
Information and consultation of employees laws	76	43
Data protection laws	92	59
Disability discrimination laws	90	58
Parental rights at work laws	82	50
Part-time workers laws	85	53
Gender reassignment discrimination laws	64	33
Sexual orientation discrimination laws	77	47
Holiday pay laws	91	60
Employment status laws	82	53
Race discrimination laws	88	59
Redundancy laws	92	64
Age discrimination laws	85	57
Pregnancy and maternity discrimination laws	85	59
Sex discrimination laws	86	60
Fixed-term employees laws	75	50
Deduction from wages laws	74	50
Religion and belief laws	61	39
Right to request flexible working laws	67	46
Marriage and civil partnership discrimination laws	68	47
Working Time Regulations	74	53
National Minimum Wage laws	87	69
Statutory union recognition laws	55	41

Base: all: 508.

Impact of regulation on the business

A significant proportion of employers believe employment regulation can have a positive impact in supporting their strategic HR and/or business goals (see Table 4).

At least 41% of all respondents report that the laws on the National Minimum Wage (47%), data protection (46%), holiday pay (43%), parental rights at work (42%), working time (42%), age discrimination (41%) and pregnancy and maternity discrimination (41%) make a positive contribution to the business.

> *'The Equality Act/discrimination laws have greatly improved how fair people are treated, which benefits us through diversity of ideas and contributions and open to more talent, therefore making us a better organisation. Plus it's just the right thing to do to treat people fairly.'*
>
> Middle manager, large public sector organisation

> *'Age discrimination law has enabled us to retain experience in the organisation.'*
>
> Senior manager, large national public sector organisation

The four areas of employment law least likely to be viewed as having a positive impact are modern slavery (18%), statutory union recognition (19%), gender reassignment discrimination (20%) and marriage and civil partnership discrimination (23%). It is worth noting that respondents' attitudes could be influenced by how significant an area of regulation is for a particular organisation, rather than an essentially negative view on that particular law. For example, union recognition is higher in the public sector, as is the percentage of respondents based in this sector who regard this area of law as having a positive contribution: 41% of respondents in the public sector view this employment law area as supporting their strategic HR and/or business goals compared with 13% of private sector organisations.

> *'Statutory pension auto-enrolment will result in more than half of the staff who do not currently have pensions getting a pension.'*
>
> Partner in small private sector firm

> *'Shared parental leave has allowed us to put flexible working on the map and use as an attraction tool.'*
>
> Middle manager, large public sector organisation, London

Public sector employers are significantly more likely to identify most areas of regulation as contributing to their strategic and/or business goals compared with their private sector and voluntary sector counterparts. For example, more than six respondents in ten (62%) of such organisations view the Working Time Regulations as supporting their organisation's strategic HR and/or business goals, compared with 37% of private sector and 36% of voluntary sector organisations.

Conversely, small employers are least likely to identify most areas of regulation as contributing to their strategic and/or business goals compared with medium-sized and large employers. For example, one-third (35%) of respondents based in small organisations report that the National Minimum Wage laws make a positive contribution, compared with 56% of those working in medium-sized, and 52% of those based in large, organisations.

> *'We recently conducted workstation assessments for all staff, partly because there is a legal duty. It has improved the effectiveness of at least 50% of staff.'*
>
> Chief executive, small organisation, Scotland

> *'The introduction of the National Living Wage gave us an opportunity to discuss the true cost of living and working in London, and helped us to set our wage policy for 2016/17 (despite not being impacted by the NLW itself).'*
>
> Partner, small organisation, London

This trend chimes with the 2013 BIS research that identified a perception–reality gap about employment regulation, in particular concerning small and micro employers. It describes the response to regulation by micro and small businesses as *'either confident ignorance or anxiety about risk'*, with most of their anxiety *'about employment tribunals rather than the impact of regulation on day-to-day practices'.*

Employment law is viewed as the joint-top driver of change in employment practice and behaviour in organisations, with more than one-third (35%) rating it in their top five, together with the need to improve business performance (see Figure 1).

Corporate image/reputation and customer expectations are seen as the next most significant drivers of change in employment practice (26% and 25%, respectively). 'Skills shortages/the need to become an employer of choice' is also ranked quite highly, by 24% of respondents. The relatively high rankings of these three drivers

Table 4: Employers (%) regarding the specified areas of employment law as supporting the organisation's strategic HR and/or business goals

	All employers	Private sector	Public sector	Voluntary sector	Small	Medium	Large
National Minimum Wage laws	47	47	50	41	35	56	52
Data protection laws	46	43	53	54	39	44	49
Holiday pay laws	43	41	49	46	38	43	45
Parental rights at work laws	42	37	59	45	27	43	49
Working Time Regulations	42	37	62	36	25	37	52
Age discrimination laws	41	37	54	42	28	40	47
Pregnancy and maternity discrimination laws	41	35	58	44	24	40	48
Part-time workers laws	39	36	51	38	26	36	46
Disability discrimination laws	38	33	53	38	22	37	45
Equal pay laws	38	32	56	43	24	42	43
Unfair dismissal laws	38	34	48	47	29	40	41
Employment status laws	36	33	48	34	24	41	41
Sex discrimination laws	36	33	44	45	21	33	44
Race discrimination laws	35	33	41	41	24	41	40
Redundancy laws	35	31	45	42	26	38	38
Right to request flexible working laws	35	30	53	38	22	38	41
Sexual orientation discrimination laws	31	29	39	27	17	21	39
Whistleblowing laws	31	27	44	42	17	30	38
Fixed-term employees laws	30	25	49	26	15	29	37
Information and consultation of employees laws	30	27	38	40	23	26	35
Religion and belief laws	27	23	38	39	15	21	34
Agency workers laws	26	24	37	17	10	27	33
Transfer of undertakings laws	25	22	37	20	12	28	30
Deduction from wages laws	24	23	31	21	17	31	26
Marriage and civil partnership discrimination laws	23	19	37	29	14	18	29
Gender reassignment discrimination laws	20	16	33	23	11	9	27
Statutory union recognition laws	19	13	41	15	7	15	25
Modern slavery laws	18	17	20	22	15	14	20
Don't know	15	15	12	18	15	15	15
None of the above	12	13	6	10	22	11	7

Base: all: 508; private sector: 359; public sector: 83; voluntary sector: 66; small (2–49): 230; medium (50–249): 90; large (250+): 188.

of change demonstrate the importance that organisations place on how they are perceived externally among investors, employees and customers. One-fifth of respondents (20%) also view the corporate social responsibility agenda as a key driver of change, further reinforcing this perspective.

The threat of legal costs for non-compliance emerges as a less significant driver of change in employment practice compared with employment regulation, indicated as a top five driver by 21% of organisations.

The three areas deemed least significant by respondents in driving change in employment practice and behaviour are trade unions (9% of employers), national standards awards (7%) and staff councils/forums (6%).

Trade unions are significantly more likely to drive change in employment practice for public sector organisations than private sector organisations (16% versus 7%).

Larger organisations are significantly more likely than small organisations to rank labour market demographics within their top five drivers of change in employment practice and behaviour (19% versus 9%).

General perceptions of employment law

> *'There are clear expectations for staff and managers. As a recruitment business we are dealing with employment law on a daily basis.'*
>
> Middle manager, medium-sized organisation, East Midlands

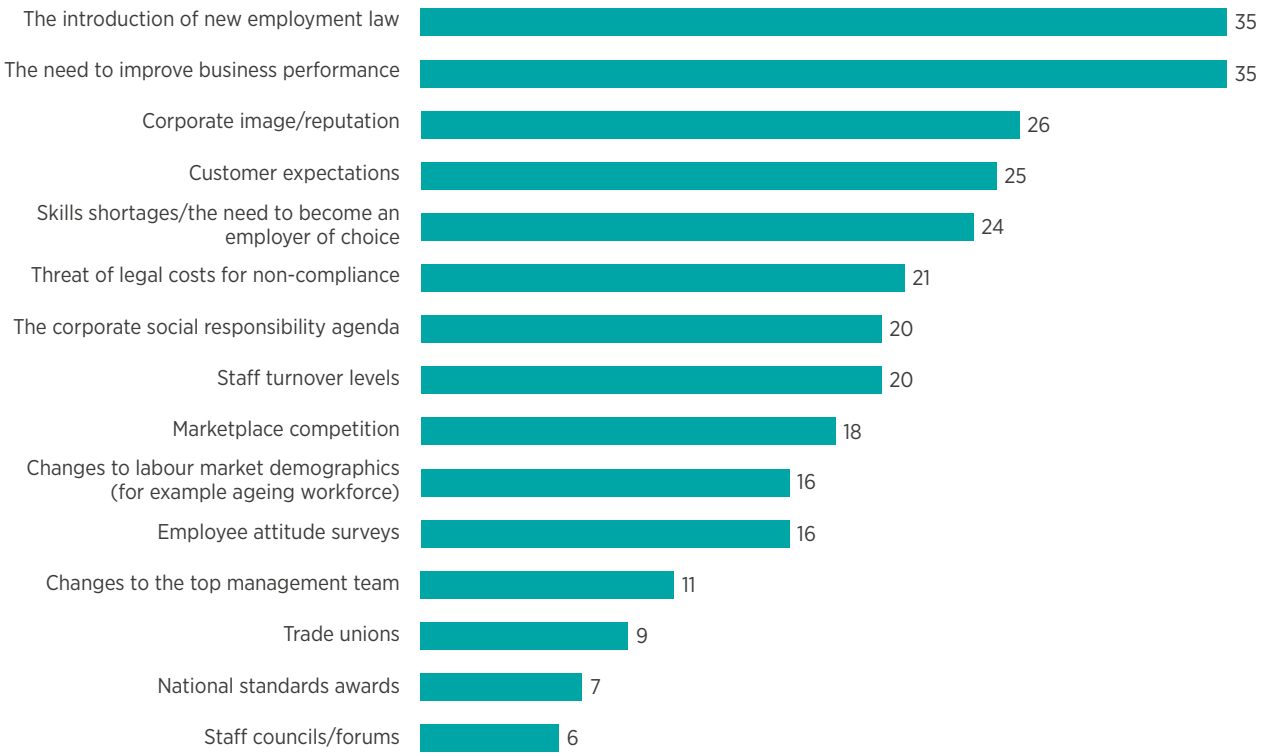
The survey asked respondents to rank a number of statements in order of importance to gauge how employment law is regarded within their organisation. The results are broadly positive, although they reveal some areas of concern for employers.

> *'Flexible working has had a positive impact on well-being.'*
>
> Middle manager, large public sector organisation

More than four in ten (45%) respondents identify employment law as an essential standard in their top three (see Table 5). Almost the same proportion (43%) ranked the statement 'employment law drives good employment practice' in their top three choices, followed by 'employment legislation requires a lot of administration' (27%). These findings reveal a predominantly positive view of employment law among survey respondents, although implementing it is

Figure 1: What are the main drivers of change in employment practice/behaviour in your organisation?

Employers (%) ranking this as a top five driver of change



Base: all: 457.

perceived as an administrative burden by just over a quarter.

A minority of respondents regard employment law as getting in the way (12% ranking this statement in their top three) or detracting from the real issues (just 9% of respondents).

A criticism that is often levelled at the UK Government, in relation to its record on transposing EU-derived employment law, is that employment law is 'gold-plated' and goes further than the statutory minimum. This statement features halfway down the table, with 18% of respondents ranking it in their top three. However, just 6% rank the statement 'we have "light-touch" employment law in the UK' in their top three, not quite reflecting the fact that the UK is one of the least-regulated labour markets in the OECD – perhaps another reflection of perceptions not always matching reality when it comes to employment regulation.

> *'None. Employment laws tend to favour the employee over the organisation every time.'*
>
> Senior manager, small private sector organisation, East Midlands

Respondents were positive when asked about their level of agreement in relation to a number of statements about the impact of employment law.

> *'Age discrimination law has enabled people to choose their own time to retire, rather than being forced to when they reach 65.'*
>
> Middle manager, large employer, north-west of England

As Figure 2 shows, almost two-thirds of respondents (63%) agree with the statement that 'implementing employment law makes a positive contribution to employee relationships' (just 9% disagree). More than two-thirds (68%) agree that implementing employment law increases employees' sense of fairness and trust in the employer (just 10% disagree; see Figure 3), and 69% agree that implementing employment law improves the quality of employees' working lives (just 7% disagree; see Figure 4).

> *'When staff are treated with respect, you get respect in return.'*
>
> Senior manager, small organisation, north-west of England

The findings are more ambiguous in respect of whether employment regulation increases or decreases the number of formal disciplinary and grievance cases. Almost half (46%) agree that 'implementing employment law helps reduce the number of formal disciplinary and grievance cases', with one-fifth (21%) disagreeing (see Figure 5). Meanwhile, 32% agree that implementing employment law helps to increase the number of formal disciplinary and grievance cases, with almost the same proportion (33%) disagreeing (see Figure 6).

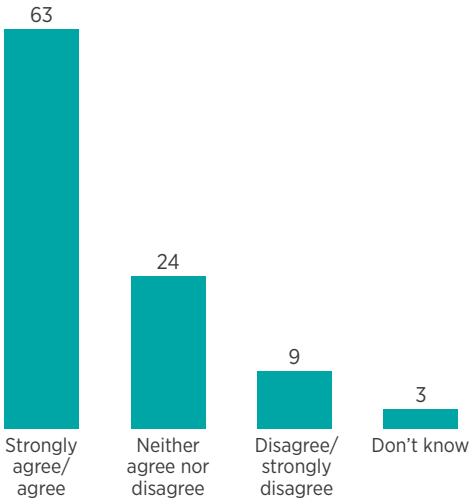
This apparent contradiction is likely to reflect uncertainty over whether the law acts as a deterrent to unacceptable behaviour at work or whether the standards established by law mean that a breach of policies and procedures is more likely. It is also a challenging issue to assess, reflected in the relatively high number of respondents who indicated that they neither agreed nor disagreed in relation to both statements.

Table 5: Statements ranked to show how employers regard employment law

	Respondents (%) ranking statement at number one	Respondents (%) ranking statement in top three[1]
Employment law is an essential standard	42	45
Employment law drives good employment practice	30	43
Employment legislation requires a lot of administration	28	27
Employment law provides a helpful reference	22	25
Employment law is 'gold-plated' (we do more than we need to)	42	18
The existence of employment law helps to start change by getting buy-in at the highest level	25	14
Employment regulation gets in the way	29	12
Employment law detracts from the real issues	17	9
We have 'light-touch' employment law in the UK	21	6

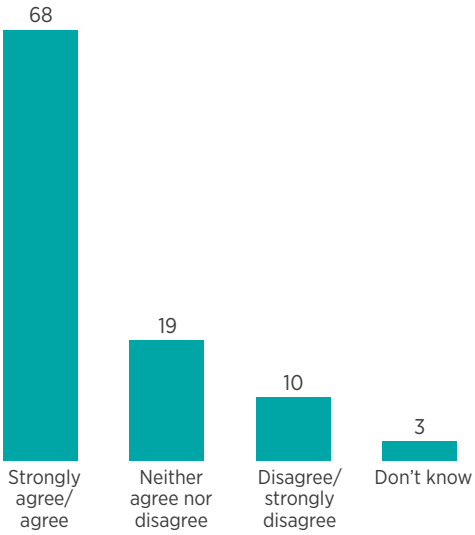
[1] Base: all: 489.

Figure 2: Implementing employment law makes a positive contribution to employee relationships (%)



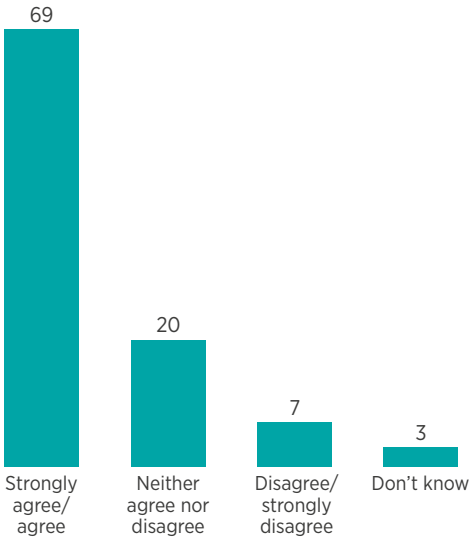
Base: all: 508. Percentages may not sum to 100 because of rounding.

Figure 3: Implementing employment law increases employees' sense of fairness and trust in the employer (%)



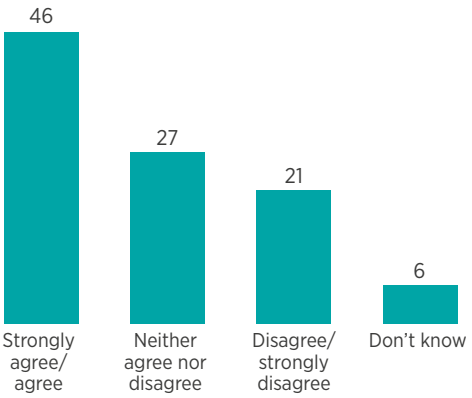
Base: all: 508. Percentages may not sum to 100 because of rounding.

Figure 4: Implementing employment law improves the quality of employees' working lives (%)



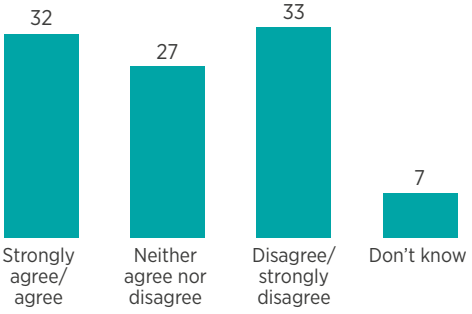
Base: all: 508. Percentages may not sum to 100 because of rounding.

Figure 5: Implementing employment law helps reduce the number of formal disciplinary and grievance cases (%)



Base: all: 508. Percentages may not sum to 100 because of rounding.

Figure 6: Implementing employment law contributes to an increase in the number of formal disciplinary and grievance cases (%)



Base: all: 508. Percentages may not sum to 100 because of rounding.

2 Translating employment regulation into business practice

The survey explored respondents' views on what they consider to be the best methods of translating employment law changes into changes in employment practice and behaviour at work (see Figure 7). Respondents were asked to rank their top five most effective methods.

The five methods ranked as most effective are:

- training for managers (38% of respondents)
- effective internal communication (37%)
- strong leadership (34%)
- training for staff (27%)
- identify risks of not complying and raise awareness at board level (26%).

The approaches ranked as least effective among respondents' top five methods are having a champion's role (7%), the threat of disciplinary action (9%), working with trade unions (9%) and working with staff councils/forums (11%).

We also asked respondents how their organisation implements employment regulation changes, enabling us to compare what they

> *'National Minimum Wage [has improved how the organisation operates] ... prior to April we were paying below £7.20 per hour. Following the National Minimum Wage announcement we have arranged for all our staff to earn a minimum of £7.28 per hour. By the announcement being made in plenty of time, we were able to put measures in place to ensure this was viable and we also have a business plan in place to ensure we are able to continue to keep to the National Minimum Wage as it increases.'*
>
> Middle manager, medium-sized organisation, south-east of England

Figure 7: What are the best methods of translating changes in employment legislation into changes in employment practice/behaviour at work?

Employers (%) ranking this as top five method

Base: all: 456.

consider to be the ideal approach with their own practice on the ground. We were keen to see if there was a similarity between theory and practice. The results reveal a strong level of consistency between the two sets of findings, with four of the same five approaches leading the table as a top five method, albeit in a slightly different order when it comes to how organisations translate employment regulation changes into practice and behaviour.

The five methods ranked as most effective in terms of how respondents' organisations actually translate changes in employment law into changes in employment practice and behaviour at work are:

- effective internal communication (37% of respondents)
- training for managers (35%)
- make changes to people management practices (30%)
- training for staff (30%)
- identify risks of not complying and raise awareness at board level (28%).

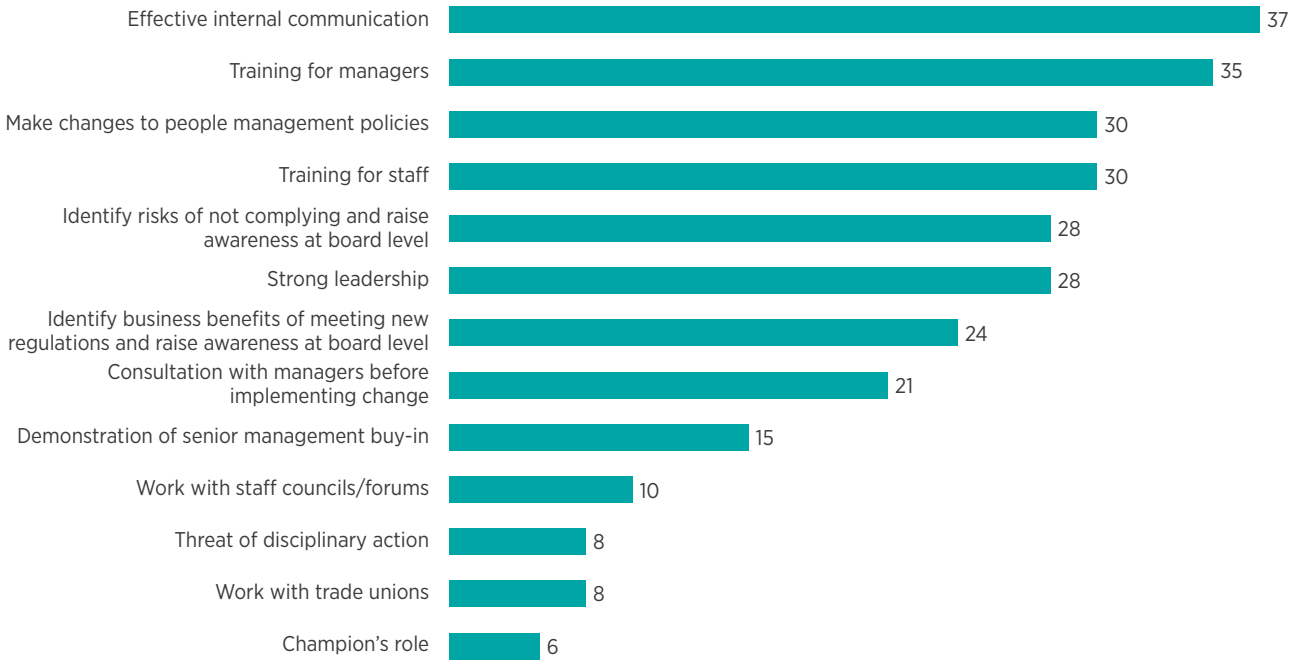
As Figure 8 shows, 'effective internal communication' moves from second to first place in the table as employers' top five method in practice, while 'training for managers' is considered the second most effective method in practice and the top method in theory. 'Strong leadership' was considered the third top five method in theory, but does not feature in the leading five approaches in practice, while the method of making changes to people management policies is now in joint-third place in practice.

In practice, most employers adopt more than one approach to translate changes in employment law into changes in employment practice and behaviour. It stands to reason that the more methods that an employer uses to implement legislative change, the greater its success in embedding new regulatory requirements, which can only benefit the organisation in the long term.

Our results show that more than a quarter (27%) of respondents

Figure 8: How does your organisation translate changes in employment legislation into changes in employment practice/behaviour at work?

Employers (%) ranking this as top five method



Base: all: 457.

report that meeting the requirements of forthcoming employment law is 'always' included in their organisation's business planning, with a further 41% saying that this is 'sometimes' the case. A further fifth (21%) report that this rarely or never happens (see Figure 9).

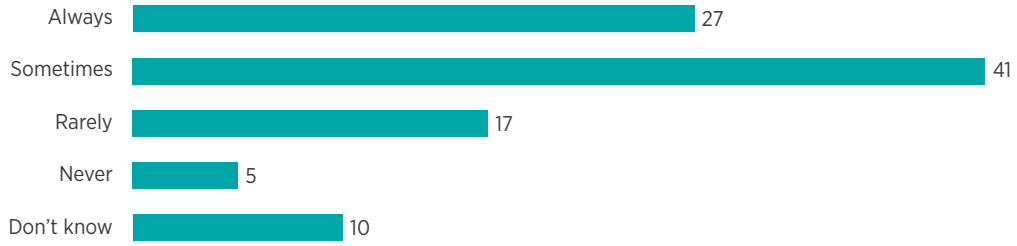
Going beyond the statutory minimum

When implementing employment law, the majority (52%) of respondents say that they go beyond what is required, with a further 44% reporting that they meet the minimum standard (see Table 6). This is an encouraging finding and reflects the importance with which many employers view employment protection for employees, as well as the value they place on approaching regulation in a way that goes beyond the letter of the law. If most organisations are exceeding their statutory requirements in terms of employment law, this does not suggest a climate whereby employers perceive regulation as a burdensome bind of red tape that impedes their day-to-day operations.

The finding also marks a discernible shift in perspective compared with our 2005 survey when we asked the same question of respondents (CIPD 2005). Although a note of caution is needed as the two surveys don't represent a matched sample, in 2005 the vast majority of employers (57%) said that they met the standards imposed by law, with 41% indicating that their organisation went beyond legal requirements.

There are also some interesting comparisons according to broad sector and size of organisation when it comes to how well organisations generally implement changes in employment law. For example, public sector organisations are significantly more likely to go beyond what is required compared with their private sector counterparts (64% versus 48%). Similarly, large employers (59%) are also significantly more likely to

Figure 9: Is meeting the requirements of forthcoming employment law included in the organisation's business planning? (% of employers)



Base: all: 508.

Table 6: How well does your organisation generally implement changes in employment law? (%)

	All employers	Private sector	Public sector	Voluntary sector	Small	Medium	Large
Meets the minimum standard	44	47	32	43	54	52	37
Goes beyond what is required	52	48	64	56	42	43	59
Fails to meet the minimum standard	2	2	1	0	1	1	2
Don't know	3	3	3	1	4	3	2

Base: all: 508; private sector: 359; public sector: 83; voluntary sector: 66; small (2–49): 230; medium (50–249): 90; large (250+): 188.
Percentages may not sum to 100 because of rounding.

go beyond the statutory minimum compared with medium-sized (43%) and small organisations (42%).

The main obstacles to implementing employment law

As Table 7 shows, the top three obstacles to the effective implementation of employment law are:

- a lack of resources (staff/budget/time) – ranked as a barrier by 44% of all respondents
- too much legislation – ranked as a barrier by 34% of all respondents
- a lack of awareness of changes to legislation – ranked as a barrier by 31% of all respondents.

It is encouraging to note that the findings do not suggest a climate of negativity among organisations when it comes to meeting their statutory obligations, with just one in ten (10%) indicating that 'it's cheaper to be reactive and settle out of court and pay compensation'. Similarly, apathy is considered an obstacle by just 17% of respondents, while a further 18% cite both a lack of senior management buy-in and entrenched attitudes in society as a whole. Neither do we find that respondents think there is inadequate consultation over proposed employment law, with just under one-fifth (19%) reporting this area as an impediment to the effective implementation of employment law.

As might be expected, there are some noteworthy differences in perceived barriers to effectively implementing employment law changes according to organisation size.

For example, respondents based in small organisations (fewer than 50 employees) are significantly more likely than those in large ones (250 employees or more) to report that 'too much legislation' (45% versus 28%) and a 'lack of awareness of changes to legislation' (45% versus 27%) are significant obstacles.

Interestingly, small organisations are significantly less likely to indicate that 'entrenched attitudes among managers' is an important obstacle to implementing change – 13% of such organisations compared with 30% of medium-sized and 37% of large organisations. This finding could reflect the fact that it can sometimes be easier to implement change in smaller organisations where there is a reduced cohort of managers to influence and typically a higher degree of informality in how things are done. Large organisations can have greater logistical and communication challenges in reaching a wider spread of managers who can be harder to reach and influence. Public sector organisations (which also tend to be large in size) are also more likely than those in the private sector to say that entrenched attitudes among managers are an obstacle (43% versus 26%).

Table 7: What are the main obstacles in your organisation to implementing changes in employment law effectively?

	Employers (%) ranking this as a top five obstacle to change			
	All	**Small**	**Medium**	**Large**
Lack of resources (staff/budget/time)	44	49	44	41
Too much legislation	34	45	35	28
Lack of awareness of changes to legislation	31	41	32	27
Entrenched attitudes among managers	29	13	30	37
Entrenched attitudes among the workforce	25	21	21	29
Inadequate guidance from the Government	25	27	19	25
Inadequate consultation over proposed employment law	19	17	19	19
Entrenched attitudes in society as a whole	18	16	18	19
Lack of senior management buy-in	18	10	19	21
Apathy	17	14	13	19
It is cheaper to be reactive and settle out of court/pay compensation	10	4	8	13

Base: all: 446; small (2–49): 199; medium (50–249): 80; large (250+): 167.

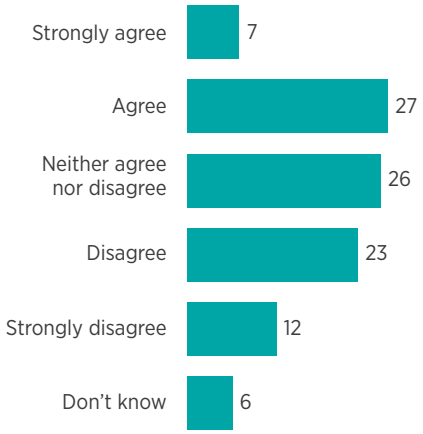
The survey explores some wider attitudes and perceived barriers to employment regulation on the part of respondents.

For example, views are mixed as to whether or not lack of interest in employment regulation at board level undermines effective implementation of new legislation in respondents' organisations, with 33% agreeing and 35% disagreeing (see Figure 10).

As Figure 11 shows, respondents are more likely to agree (45%) than disagree (20%) that the available guidance to help employers meet their employment regulation obligations is poor. However, public sector organisations are more likely to disagree with this statement (31% of respondents) compared with private sector organisations (16%).

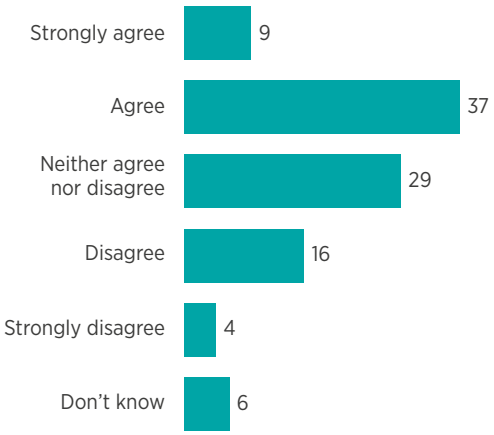
A strong majority (59% of respondents) think that legislation is too complex (see Figure 12), while respondents are much more likely to agree that there's not enough time to devote to employment law issues in their organisation (45% of respondents versus 23% who disagree; see Figure 13). The perception that legislation is more complex may depend on the size and type of organisation. Those from small

Figure 10: A lack of interest in employment regulation at board level undermines effective implementation of new legislation at my organisation (%)



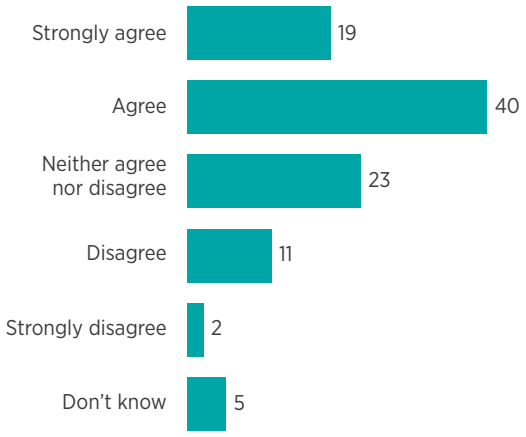
Base: all: 508.
Percentages may not sum to 100 because of rounding.

Figure 11: Available guidance to help employers meet their employment regulation obligations is poor (%)



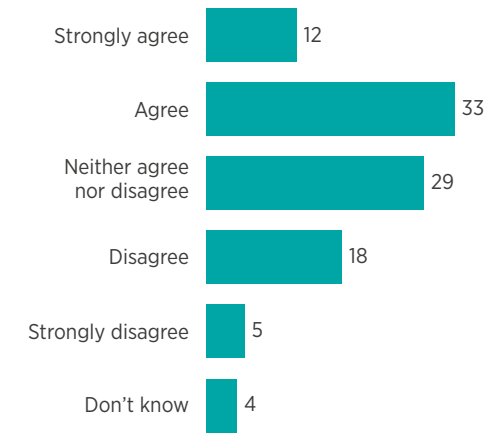
Base: all: 508.
Percentages may not sum to 100 because of rounding.

Figure 12: Legislation is too complex (%)



Base: all: 508.
Percentages may not sum to 100 because of rounding.

Figure 13: There is not enough time to devote to employment law issues in my organisation (%)



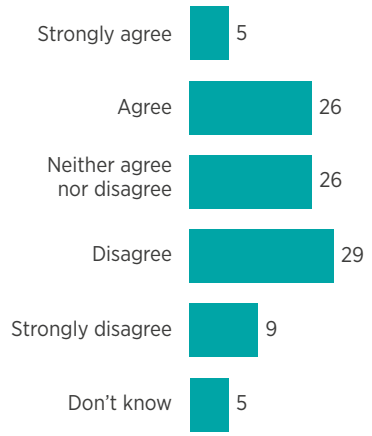
Base: all: 508.
Percentages may not sum to 100 because of rounding.

organisations are significantly more likely to agree that legislation in this area is too complex compared with large organisations (67% versus 56%). Also, those in public sector organisations are twice as likely to *disagree* that employment legislation is too complex compared with private sector organisations (21% versus 10%).

The results are more mixed when it comes to whether or not line managers implement changes in law effectively. Three respondents in ten (31%) agree with the statement that 'line managers *don't* implement changes in law effectively', compared with 38% who disagree (see Figure 14).

It should be noted that a relatively high proportion of respondents selected the 'neither agree nor disagree' option for the statements set out in Figures 10–14. This is a genuine finding and not surprising given the challenging nature of these questions – some respondents would genuinely feel they were not in a position to give an informed response in some of these areas.

Figure 14: Our line managers don't implement changes in law effectively (%)



Base: all: 508.
Percentages may not sum to 100 because of rounding.

3 Training and communicating to embed compliance with the law

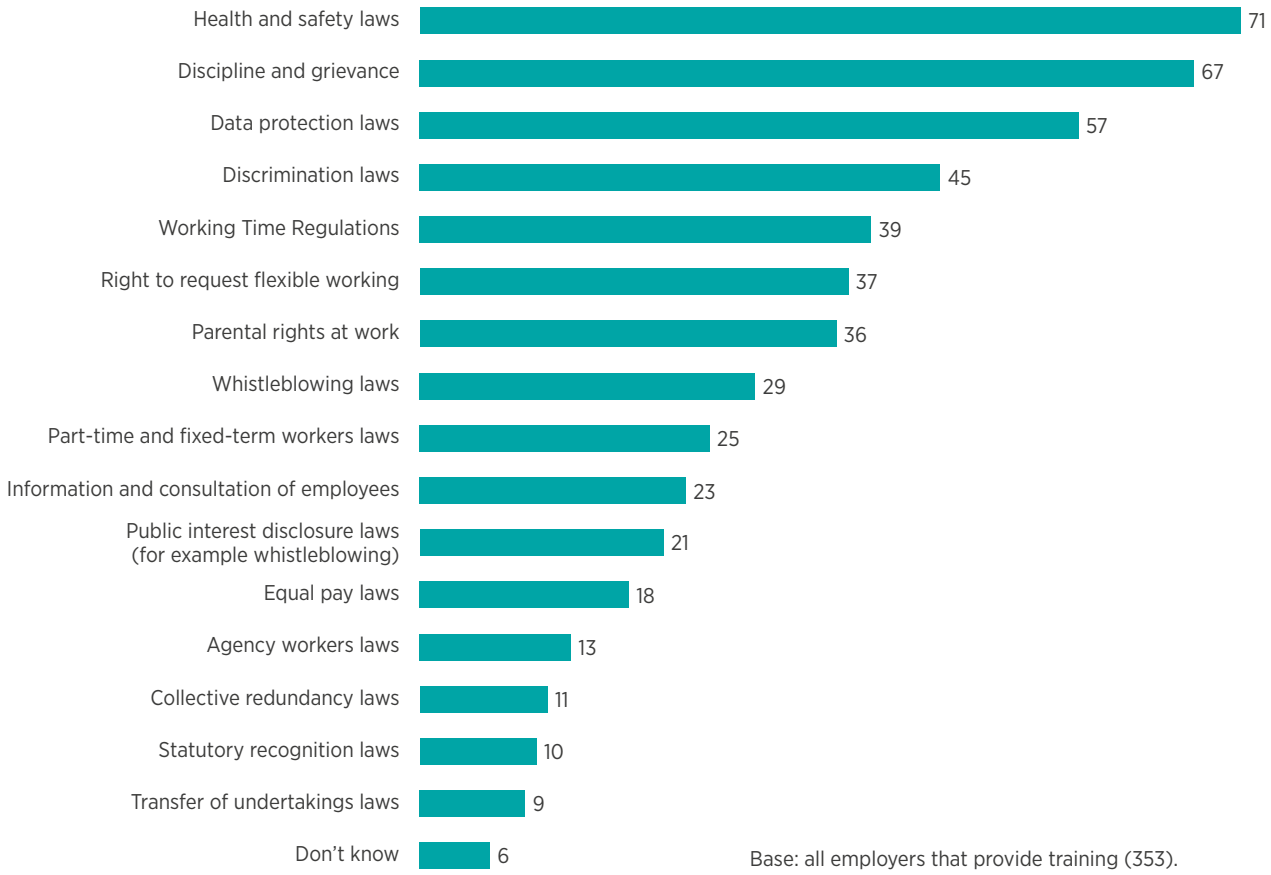
Responsibility for managing people on a day-to-day basis is now typically devolved to line managers, but many organisations pay too little attention to equipping them with the skills and knowledge for carrying out this complex and challenging role. Ensuring that their people managers are educated and aware of at least the core elements of employment law should be a priority for all employers. This will help to give them the confidence and capability to not only manage but motivate their teams to give of their best.

However, among our survey of 508 organisations, nearly a quarter (23%) do not train line managers in employment law to help ensure they are competent to manage people. This proportion rises to 50% in the case of small organisations (2–49 employees) but drops to 11% for large employers (250-plus employees), while 21% of medium-sized employers (50–249 employees) don't provide training.

Among the 353 organisations that do provide training, the top regulatory areas where they train line managers are health and safety laws (71% of organisations) and discipline and grievance (67%) (see Figure 15).

That these two areas emerge as the most popular for training provision is not surprising. There is a well-established and comprehensive framework of health and safety legislation affecting UK workplaces, with potentially serious repercussions following non-compliance in certain areas, including corporate manslaughter.

Figure 15: Areas of employment law in which employers train line managers to make sure they are competent to manage people (%)



Base: all employers that provide training (353).

In the case of discipline and grievance, most managers will have to deal with some kind of individual dispute at work on a regular basis, and the risk of an employment tribunal case can be high if statutory and corporate procedures are not observed.

Training in data protection laws is also common, provided by 57% of organisations, followed by discrimination laws (45%), Working Time Regulations (39%), the right to request flexible working (37%) and parental rights at work (36%). The three areas where organisations are least likely to train line managers are collective redundancy laws (11%), statutory recognition laws (10%) and transfer of undertakings laws (9%) – perhaps because all three relate to situations that a manager is only likely to encounter on an ad hoc basis, or possibly never have to handle.

Overall, respondents think that their HR function is more effective in promoting the importance of compliance with employment law to senior managers than to line managers – 58% of respondents compared with 45%, respectively (see Tables 8 and 9).

Although our findings show that small employers are less likely to think that they are effective in both cases, the comparative figures shown in Tables 8 and 9 should be treated with caution because they are skewed by the fact that small organisations are less likely to have an HR function. When this factor is accounted for, there is no significant difference in how effective respondents think their HR function is in promoting the importance of employment law to senior managers or line managers.

The only significant difference according to sector is that public sector employers are more likely to think their HR function is ineffective in promoting the importance of employment law to line managers – 27% of public sector organisations compared with 13% of private sector and 10% of voluntary sector organisations (see Table 9).

Table 8: Effectiveness of the HR function in promoting the importance of compliance with employment law to senior managers (%)

	All employers	Private sector	Public sector	Voluntary sector	Small	Medium	Large
Effective	58	60	51	61	43	62	65
Neutral	19	18	26	10	19	17	20
Ineffective	10	9	15	9	7	13	11
Don't know	4	4	4	5	4	4	4
Not applicable – no HR function	9	10	4	14	28	4	0

Base: all: 508; private sector: 359; public sector: 83; voluntary sector: 66; small (2–49): 230; medium (50–249): 90; large (250+): 188.
Percentages may not sum to 100 because of rounding.

Table 9: Effectiveness of the HR function in promoting the importance of compliance with employment law to line managers (%)

	All employers	Private sector	Public sector	Voluntary sector	Small	Medium	Large
Effective	45	45	46	50	35	45	50
Neutral	25	27	19	17	22	32	25
Ineffective	15	13	27	10	5	13	21
Don't know	4	4	4	5	5	4	4
Not applicable – no HR function	10	11	4	16	33	5	0

Base: all: 508; private sector: 359; public sector: 83; voluntary sector: 66; small (2–49): 230; medium (50–249): 90; large (250+): 188.
Percentages may not sum to 100 because of rounding.

When we asked organisations in 2005 about the manner in which HR promotes employment law, HR professionals were significantly more likely to promote the importance of compliance within their organisation in a positive way before highlighting the dangers of breaching employment law.

Ten years on, there is a more mixed picture in terms of how HR promotes compliance, with the top compliance approach being 'a necessary obligation' (54% of organisations with an HR function) followed by HR promoting compliance as 'a way to encourage line managers to adopt good practice' (41%) (see Figure 16).

More than a third (35%) adopt the more negative stance of promoting adherence to the law as 'a way of keeping out of trouble', with the least popular approach being one where complying with employment law as being an important step towards becoming an employer of choice (33%). However, public sector organisations' HR functions are more likely than their private sector counterparts to promote this latter compliance approach, with 45% of public sector respondents saying their HR function promotes compliance with employment law as being an important step towards becoming an employer of choice compared with 29% of private sector respondents.

Just 9% of organisations told us that they don't inform the workforce about employment law. Among those employers that do, many organisations employ a range of proactive and reactive methods to ensure that their workforce is aware of employment law and their obligations under it.

The two most common (and proactive) methods are informing new employees during induction and providing health and safety training for all staff (55% of respondents; see Table 10). Using the staff handbook is also a popular approach (53%), followed by the less proactive, but still valuable, approach of employees

Figure 16: Organisations' HR function promoting compliance with employment law as... (% of employers)

Table 10: Methods used by employers for ensuring that their workforce is aware of employment law and their obligations under it (% of employers)

	All	Small	Medium	Large
We inform new employees during induction	55	57	58	54
There is health and safety training for all staff	55	49	57	57
Through the staff handbook	53	57	68	49
Employees contact HR for advice on a need-to-know basis	46	34	46	51
Line manager briefings	44	30	36	51
There is a section on the intranet	43	7	23	60
Line managers ensure staff are aware in an ad hoc way	29	25	20	33
HR holds training sessions for all staff on employment law	18	8	19	21
Don't know	3	3	1	3

Base: all employers that inform the workforce about employment law: 444; small (2–49): 181; medium (50–249): 81; large (250+): 182.

contacting HR for advice on a need-to-know basis (46%). Line manager briefings are used by 44% of organisations.

It makes sense that large employers are far more likely to have a section on their intranet promoting awareness to the wider workforce, with 60% of such employers using this digital method, compared with 23% of medium-sized organisations and just 7% of small employers.

Keeping up to date

The majority of employers have at least one mechanism in place to obtain advice on new employment legislation and how to meet any obligations arising from it; when asked which organisations/resources they use to keep up to date, just 15% said they don't know or the question isn't applicable, with the remainder of our 508 employers indicating at least one source from the list provided.

Some organisations rely on in-house resource, with one employer in three (33%) drawing on the expertise of their own HR department. This approach tops the table in terms of the most popular information source from the list we provided to respondents (see Table 11). The other expert internal source, an in-house employment lawyer, is cited by 19% of employers and ranked in joint-seventh place. A further 17% say that they draw on the input of colleagues and peers, which could be an internal or external source of information.

Employers depend on a diverse range of external information sources to keep abreast of regulatory changes, the top one being government departments' websites and/or publications (30% of respondents), followed by an employment law firm (27%), Acas (25%), HR consultants (23%), courses or conferences (21%) and the CIPD (19%). Very few organisations indicate that they use the Equality and Human Rights Commission (6%) and the Employers Network for Equality & Inclusion (enei) (5%).

Table 11: What organisations/resources does your organisation use to seek advice on new legislation and on how to meet any new obligations?

	% of employers using this information source[1]	Employers (%) ranking this as a top five information source[2]
In-house expertise within the HR department	33	31
Government departments' websites/publications	30	26
Employment law firm	27	24
Acas	25	23
HR consultants	23	19
Courses/conferences	21	15
CIPD	19	14
In-house employment lawyer	19	18
Colleagues/peers	17	11
Employer organisations	17	13
HR trade press	17	9
Accountant	16	11
Legal helplines	15	9
Employer networking groups	14	10
Don't know	12	–
Trade union	11	32
Online subscription products	10	7
Equality and Human Rights Commission	6	4
Employers Network for Equality & Inclusion (enei)	5	4
Other	2	–

[1] Base: all: 508. [2] Base: all employers excluding those who 'don't know' (334)

There were some differences in the type of information source relied on according to size of organisation. For example, small organisations (with 2–49 employees) are more likely to draw on the services of their accountant – 31% of respondents cited this approach compared with 14% of medium-sized organisations (50–249 employees) and 9% of large organisations (250-plus employees). Conversely, small organisations were less likely to rely on an employment law firm – 17% of small employers indicated this information source compared with 32% of medium-sized organisations and 30% of large organisations.

Unsurprisingly, the larger the organisation, the more likely it is to draw on the expertise of an in-house HR function to keep up to date – 11% of small organisations compared with 27% of medium-sized organisations and 44% of large organisations.

In October 2012 the Government launched Gov.uk, *'the new online home of government services and information'*. Research published by the former Department for Business, Innovation and Skills (BIS 2013) about the impact of employment regulation noted the need for a 'single information portal' to *'support employers who had no internal HR and considered regulation too complex to understand'*. It flagged the launch of the (then new) Gov.uk portal as hopefully providing *'a gateway to this information, if the level of detail meets users' needs'.* Nearly five years on from its launch, it would be timely for the Government to evaluate whether or not Gov.uk is helping small employers, in particular, to keep up to date with their obligations under employment law.

Overall, there is little discrepancy between the level of employers' reliance on a particular information source and its perceived effectiveness when respondents were asked to rank their most important information source. The exception is trade unions – just 11% of respondents overall reported that they draw on information from a trade union to seek advice on new legislation, but almost three times this proportion (32%) rank trade unions as a top five information source. The next two most highly ranked information sources are in-house expertise within the HR department (31%) and government departments' websites/publications (26%).

> *'A good employer will get the best out of the workforce without being treated as if he is a bad employer. What is most useful is guidance on good practice rather than legislation, which can be abused. There are no law changes that have improved our performance or our people management.'*
>
> Owner of a small firm, East Midlands

4 Employment tribunals and the law

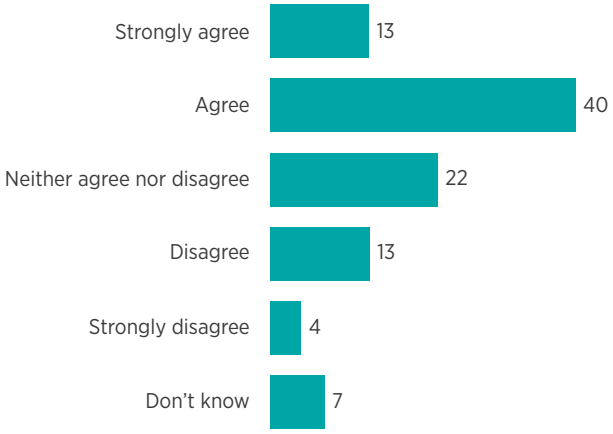
The original 'industrial tribunals' were set up more than 50 years ago as a form of tripartite adjudication to determine employment disputes that may be brought against employers by employees. The premise underpinning the introduction of employment tribunals was that they should be a speedy, informal and inexpensive way of resolving disputes between an employer and employee. Unfortunately, this is not how they have turned out in practice over the long term.

The nature of employment tribunals has changed significantly over the decades: they have become increasingly legalistic and now deal with over 70 types of employment claim. The employment tribunal and Employee Appeal Tribunal (EAT) system has also been, and continues to be, subject to significant public policy reform. A recent consultation by the Ministry of Justice and Department for Business, Energy and Industrial Strategy (BEIS), for example, examines areas of reform such as moving to a more digitally based system, the delegation of judicial functions to caseworkers and changes to the law regarding panel composition and the role of non-legal members (MoJ and BEIS 2016).

According to our findings, almost three organisations in ten (28%) had experienced an employment tribunal claim in the past 12 months, with those in the public sector nearly twice as likely to have had a claim (49% compared with 22% of private sector and 16% of voluntary sector organisations). Understandably, large employers are far more likely to have experienced an employment tribunal claim because they employ many more employees (see Table 12).

In terms of the impact of regulation on employment disputes, over half of respondents (53%) agree that 'implementing employment law helps to reduce the number of employment tribunal claims' compared with 17% who disagree with the statement (see Figure 17).

Figure 17: Implementing employment law helps to reduce the number of employment tribunal claims (% of employers)



Base: all: 508. Percentages may not sum to 100 because of rounding.

Table 12: Employers (%) that have had an employment tribunal claim in the past 12 months

	All employers	Private sector	Public sector	Voluntary sector	Small	Medium	Large
Yes	28	22	49	16	1	7	45
No	57	63	31	71	97	87	31
Don't know	16	15	20	12	2	5	25

Base: all: 508; private sector: 359; public sector: 83; voluntary sector: 66; small (2–49): 230; medium (50–249): 90; large (250+): 188. Percentages may not sum to 100 because of rounding.

Employment tribunal fees

In July 2013, a new system was introduced whereby employees, or 'claimants', have to pay a fee to lodge and pursue a claim to an employment tribunal. Further, from April 2014, an individual who considers submitting an employment tribunal claim must first contact Acas. Acas then offers 'early conciliation' to both parties to try and resolve the dispute quickly and cost-effectively as an alternative to the case proceeding to a tribunal hearing.

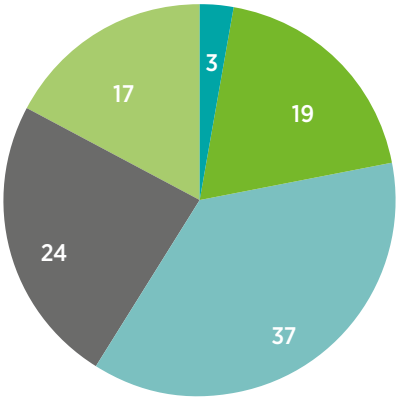
Government statistics reveal that employment tribunal fees have resulted in a reduction of over 70% in the number of claims being made (MoJ 2016). Whether or not the fee regime has adversely affected employees' access to justice has promoted fierce debate, and it may face further reforms following a legal challenge being brought by Unison concerning the legality of fees, and a government review on the impact of the tribunal fees and remission system.

In January 2017 the Government published its long-awaited post-implementation review of employment tribunal fees (MoJ 2017). It concludes that the current system of fees and remissions is working effectively, although *'some re-balancing action'* is necessary. It states that, *'while there is clear evidence that ET fees have discouraged people from bringing claims, there is no conclusive evidence that they have been prevented from doing so.'* The review includes a consultation on further proposals to widen the support available for people under the 'Help with fees', or remission, scheme, but does not open the door to any reform of the level of fees. Currently, there are two fee levels – for level 1 claims, the issue fee is £160 and the hearing fee is £230, while for level 2 claims the issue fee is £250 and the hearing fee is £950.

According to our findings, one organisation in five (19%) report that the number of tribunal claims has decreased as a result of the introduction of employment tribunal fees, with a further 37% saying they have stayed the same, 17% saying the question is not applicable (perhaps because the organisation had not experienced any claims prior to July 2013), 24% don't know and just 3% say that they have increased (see Figure 18).

Although probably a dormant issue for now because the Government is not consulting on the level of ET fees, we asked respondents how they think the Government should respond to the 70% reduction in claims since the introduction of ET fees in 2013. The majority of respondents are in favour of a fundamental change to the current system, with 15% indicating that ET fees should be abolished, 11% agreeing that they should be reduced substantially, and 19% indicating that a single £50 fee should apply to all claims (see Figure 19).

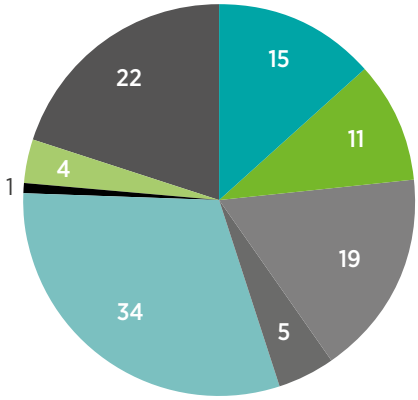
Figure 18: Impact of the introduction of employment tribunal fees on tribunal claims in organisation (% of employers)



Base: all: 508.

- Increased
- Decreased
- Stayed the same
- Don't know
- Not applicable

Figure 19: How should the Government respond to the 70% reduction in claims since the introduction of ET fees in 2013? (% of employers)



Base: all: 508.
Percentages may not sum to 100 because of rounding.

- ET fees should be abolished
- ET fees should be reduced substantially
- A single £50 fee should apply to all claims
- The system of remission should be made more generous
- The present fee system should be left as it is
- Other
- None of these
- Don't know

A further third (34% of organisations) think that the present fee system should be left as it is, while just 5% think that making the system of remission more generous is an effective solution, despite this being the main course of action following the Government's review.

We also explored how much impact the risk of employment tribunal claims has on influencing management behaviour in respondents' organisations. Although not directly comparable as the sample is different and there could be other variables that come into play, it's interesting to compare the findings with those from the 2005 survey when we asked the same question and there was no fee system in place (CIPD 2005).

As Table 13 shows, in this survey just 16% reported that the risk of employment tribunal claims has a strong influence on management behaviour; this compares with 51% of employers who reported a strong influence in 2005. A further 34% report a 'little influence' (compared with 12% in 2005), while 39% report a 'marginal influence' (a similar finding to 2005, when 37% reported the same).

Table 13: How much impact does the risk of employment tribunal claims have on influencing management behaviour in your organisation? (% of employers)

	All	Small	Medium	Large
Strong influence	16	10	14	19
Marginal influence	39	26	41	45
Little influence	34	54	36	24
Don't know	11	10	8	11

Base: all: 508; small (2–49): 230; medium (50–249): 90; large (250+): 188.
Percentages may not sum to 100 because of rounding.

5 Views on key areas of EU-derived regulation

Agency Workers Regulations

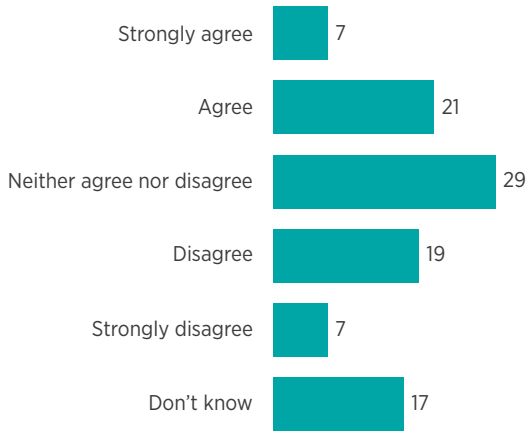
The Regulations establish equal treatment for temporary agency workers with permanent employees and, as such, in addition to 'day one' rights relating to facilities, after 12 weeks working for the same organisation, agency workers are entitled to the same basic conditions with regard to rights such as pay, working hours and holidays.

A 2016 inquiry by the former Business, Innovation and Skills (BIS) Select Committee focused on Sports Direct's Shirebrook warehouse and highlighted the complex employer/worker relationship for agency workers, but also the poor practices of the two agencies used by Sports Direct in not affording the workers their statutory rights. The recent 'Future world of work' inquiry by the Business, Energy and Industrial Strategy (BEIS) Committee is examining the business model around agency working.

For their part, some employers and business groups have also voiced dissatisfaction with aspects of the Agency Workers Regulations; some commentators predicted that the introduction of the Regulations and their equal treatment provision would severely restrict the use of agency working, and so we were keen to explore employers' views and experience of working with the Regulations as part of our research. Respondents' views on whether or not the Regulations have hampered their organisation's resourcing capability were mixed, with 28% indicating that they had hampered it, 26% reporting that they hadn't and a further 29% neither agreeing nor disagreeing with the statement; a further 17% don't know (see Figure 20).

'Some employers and business groups have also voiced dissatisfaction with aspects of the Agency Workers Regulations.'

Figure 20: The Agency Workers Regulations have hampered my organisation's resourcing capability (% of employers)



Base: all employers who use agency workers: 257.
Percentages may not sum to 100 because of rounding.

It is worth noting that well over one-third (38%) of organisations overall don't use agency workers, rising to 42% in the case of private sector and 61% of voluntary sector organisations, but just 18% of public sector organisations don't use agency workers (see Table 14). Of those organisations that use agency workers, most say their organisation's use of agency workers has not increased or decreased since the introduction of the Regulations in 2011. Public sector organisations are more likely than private sector organisations to say that their use of agency workers has decreased since this change.

The 12-week qualifying period and agency workers' rights

First, we asked respondents whether or not they think it's right that temporary agency workers are entitled to the same basic conditions of employment as comparable employees after a 12-week qualifying period. The majority view is that it is the right approach, with 44% of respondents in agreement and 19% disagreeing (see Figure 21). We also asked respondents whether or not their organisation relies heavily on the use of temporary agency staff despite their enhanced employment rights after 12 weeks; here the results are more mixed, with one-third (33%) agreeing, 35% disagreeing and 20% neither agreeing nor disagreeing (see Figure 22).

> *'Equal treatment of temps and permanent staff has improved morale and output.'*
>
> Board member, medium-sized organisation, south-east of England

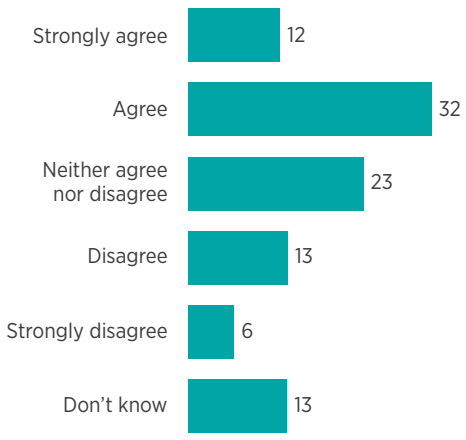
Careful monitoring of the length of an agency worker's assignment is needed so that all parties know well in advance when the 12-week qualifying period applies and the individual becomes entitled to the same basic rights as a 'comparable employee' in that organisation. Our research shows that, among those organisations that use agency workers, well over half (58%) have in place a process to determine when temporary agency workers qualify for equal rights to permanent staff in relation to basic

Table 14: Has your organisation's use of agency workers to source temporary staff changed since the Agency Workers Regulations 2010 were introduced (in October 2011)? (% of employers)

	All employers	Private sector	Public sector	Voluntary sector
Increased considerably	4	3	9	3
Increased slightly	8	9	6	7
Stayed the same	26	28	21	18
Decreased slightly	7	4	18	1
Decreased considerably	5	4	6	4
Don't know	12	9	23	5
Not applicable – we don't use agency workers	38	42	18	61

Base: all: 508; private sector: 359; public sector: 83; voluntary sector: 66.
Percentages may not sum to 100 because of rounding.

Figure 21: It is right that temporary agency workers are entitled to the same basic conditions of employment after a 12-week qualifying period (% of employers)

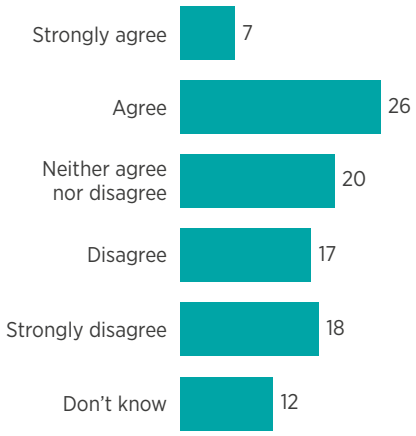


Base: all employers who use agency workers: 257.
Percentages may not sum to 100 because of rounding.

conditions of employment after 12 weeks (see Figure 23). A further 19% don't have in place such a process and 22% 'don't know'.

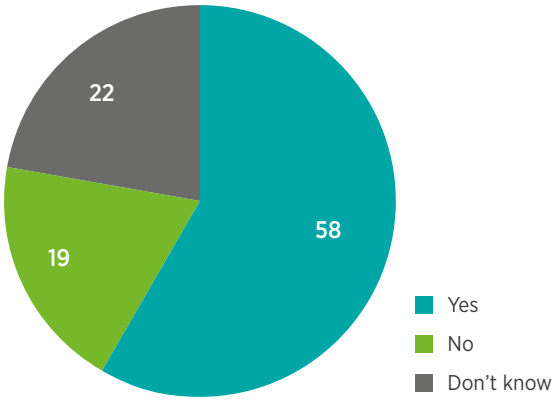
The 2010 Regulations contain strong anti-avoidance measures, based on an agreement between the CBI and TUC, to help ensure that the 12-week qualifying period for agency workers is not circumvented. However, it is still perfectly legal for an end-user to end a temporary agency worker's assignment before this point, providing it complies with these anti-avoidance measures. Our research shows that, among those employers that use agency workers, more than a third (36%) said they try to limit assignments for temporary agency workers to less than 12 weeks, with a further 45% responding that they don't, while 19% don't know (see Figure 24).

Figure 22: My organisation relies heavily on the use of temporary agency staff despite their enhanced employment rights after 12 weeks (% of employers)



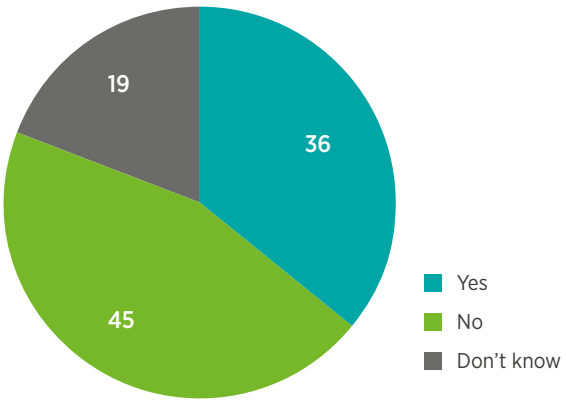
Base: all employers who use agency workers: 257.
Percentages may not sum to 100 because of rounding.

Figure 23: Does your organisation have a process in place to determine when temporary agency workers qualify for equal rights to permanent staff in relation to basic conditions of employment (after the 12-week qualifying period)? (% of employers)



Base: all employers who use agency workers: 257.
Percentages may not sum to 100 because of rounding.

Figure 24: Does your organisation try to limit assignments for temporary agency workers to less than 12 weeks? (% of employers)



Base: all employers who use agency workers: 257.

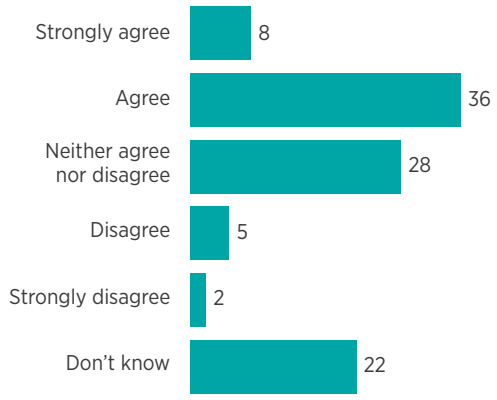
Should the Agency Workers Regulations be reviewed?

The 2010 Agency Workers Regulations have been flagged as a potential area for reform following Britain's withdrawal from the European Union, and the research reveals some interesting findings about their implementation and impact that could help to inform a future decision. Just 7% of respondents disagreed that the 'Regulations have significantly increased the cost of using temporary agency workers', with 44% agreeing with the statement; a further 28% neither agreed nor disagreed, while 22% don't know, which is understandable as this could be a challenging area to quantify in comparable terms if the respondent has not directly been involved in hiring agency workers over the past six years (see Figure 25).

Our findings are also mixed in terms of how challenging the Regulations are to administer, with 28% of respondents agreeing that they 'are NOT challenging and time-consuming to administer' and 20% disagreeing with the statement (see Figure 26). A further 30% are ambivalent while 22% don't know.

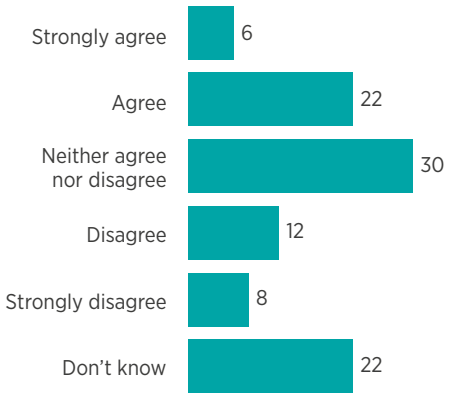
The majority of respondents (56%) agree that the Regulations should be reviewed to assess their effectiveness (see Figure 27), but there is less support for their abolition: a quarter (24%) agree that they should be repealed while 19% disagreed, although 34% neither agree nor disagree and 23% don't know – again suggesting a high level of ambiguity about the Regulations (see Figure 28).

Figure 25: The Agency Workers Regulations have significantly increased the cost of using temporary agency workers (% of employers)



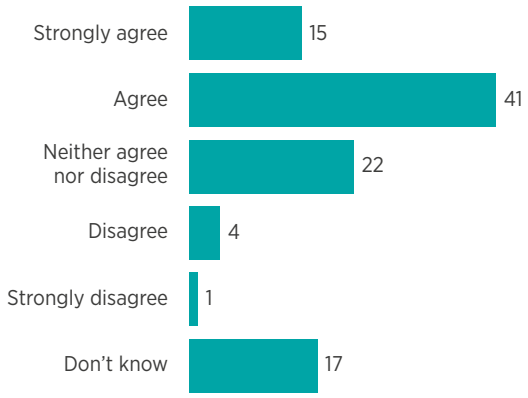
Base: all employers who use agency workers: 257.
Percentages may not sum to 100 because of rounding.

Figure 26: The Agency Workers Regulations are NOT challenging and time-consuming to administer in my organisation (% of employers)



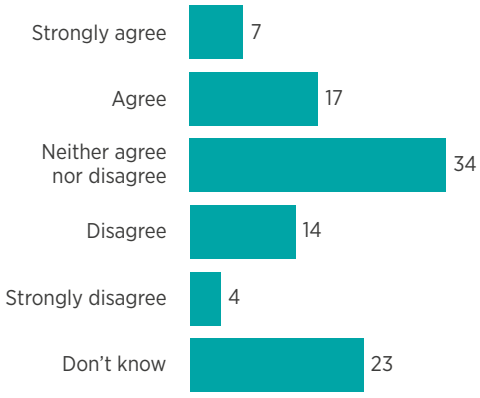
Base: all employers who use agency workers: 257.
Percentages may not sum to 100 because of rounding.

Figure 27: The Agency Workers Regulations should be reviewed to assess their effectiveness (% of employers)



Base: all employers who use agency workers: 257.
Percentages may not sum to 100 because of rounding.

Figure 28: The Agency Workers Regulations should be repealed (% of employers)



Base: all employers who use agency workers: 257.
Percentages may not sum to 100 because of rounding.

The Working Time Regulations

The EU-derived Working Time Regulations (WTRs) came into force in October 1998. They lay down minimum conditions relating to weekly working time, rest entitlements and annual leave, and make special provision for night workers. The rules governing working time have been subject to recent changes, for example in connection with travelling time and holiday pay, especially where the worker has a commission or overtime element to their regular pay.

The WTRs currently provide employees with the following basic rights and protections in the UK (CIPD 2016a):

- a limit of an average of 48 hours a week over a 17-week period which a worker can be required to work
- a limit of an average of eight hours' work in 24 hours which night workers can work
- a right to 11 hours' rest a day
- a right to a day off each week
- a right to an in-work rest break if the working day is longer than 6 hours
- a right to 28 days' paid leave for full-time workers per year.

> *'Working time legislation has resulted in better-negotiated shift patterns.'*
>
> Middle manager, large private sector organisation

The opt-out from the 48-hour limit to the working week

The UK Government increased the minimum statutory paid holiday entitlement stipulated in the Working Time Directive from 20 days to 28 days including bank holidays when it introduced the Regulations. However, the WTRs have been one of the more controversial elements of EU employment regulation in this country, in particular the 48-hour limit to the working week, to which the UK Government sought and obtained an opt-out. This allows some member states to put in place measures allowing workers to agree not to be subject to the 48-hour working limit over the four-month calculation period.

> *'The Working Time Directive has made managers realise that they couldn't force staff to work 24/7.'*
>
> Managing director, small employer, south-east of England

According to our findings, more than a third (35%) of respondents report that no one in their workforce has opted out of the right to limit their average weekly working time to 48 hours, but this rises to 71% of small employers. Meanwhile, over a quarter (27%) of all respondents don't know the proportion (see Table 15). Just 10% say that between 76% and 100% of their workforce has opted out and a similar proportion (11%) say that less than 10% of the workforce has opted out.

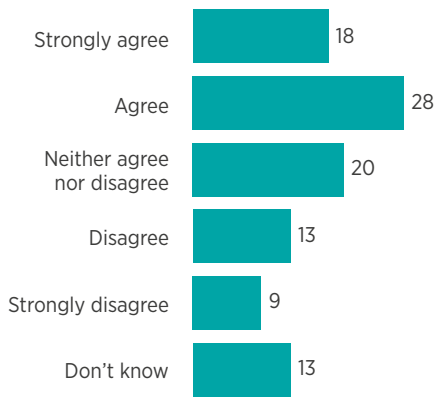
Our survey finds that employers are in favour of retaining the UK's opt-out agreement, with 46% agreeing with the statement that 'it's crucial for our business that the UK retains its "opt-out" from the average 48-hour working week' and 21% disagreeing; a further 20% neither agree nor disagree, while 13% don't know (see Figure 29).

Table 15: Proportion of the workforce that has opted out of the right to limit their average weekly working time to 48 hours (% of employers)

	All	Small	Medium	Large
None	35	71	29	20
Less than 10%	11	3	7	15
11–25%	7	0	8	11
26–50%	7	3	6	8
51–75%	3	1	6	3
76–100%	10	14	23	6
Don't know	27	8	21	37

Base: all: 508; small (2–49): 230; medium (50–249): 90; large (250+): 188.
Percentages may not sum to 100 because of rounding.

Figure 29: It's crucial for our business that the UK retains its 'opt-out' from the average 48-hour working week (% of employers)



Base: all: 508.
Percentages may not sum to 100 because of rounding.

The impact of the Working Time Regulations on the business

The majority response from our respondents is that the Working Time Regulations have had a negligible influence on their organisation, indicated by 47% overall compared with 26% who say the impact has been positive and 13% who report a negative influence (see Table 16). Large employers are significantly more likely to say that their influence has been positive: 38% of such organisations, compared with 8% of small and 11% of medium-sized organisations.

The majority of respondents agree that the Working Time Regulations are necessary to protect the health and safety of workers (59%), although responses were more mixed in terms of whether or not they have a negative impact on the cost of running a business: 34% agree, 24% disagree and 28% neither agree nor disagree, while 15% don't know (see Figures 30 and 31).

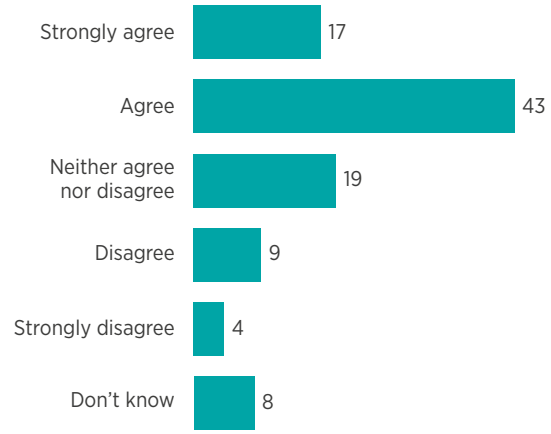
There is also a varied response in terms of whether or not the record-keeping required by the Working Time Regulations is a significant administrative burden (see Figure 32), but a significant proportion think that the case law arising from the legal interpretation of the Working Time Regulations (for example holiday pay) is 'confusing and unhelpful' (see Figure 33). Thirty-nine per cent of respondents agree that the Regulations 'are too prescriptive and impede flexibility in the workplace', compared with 20% who disagree, although a further 27% neither agree nor disagree (see Figure 34).

Table 16: How would you describe the influence of the Working Time Regulations on your organisation? (% of employers)

	All	Small	Medium	Large
Positive	26	8	11	38
Negative	13	11	13	14
Negligible	47	64	54	37
Don't know	14	17	22	10

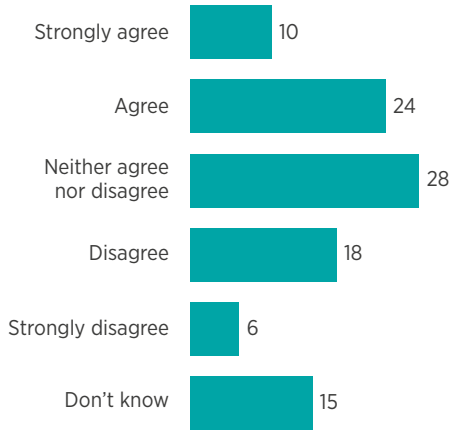
Base: all: 508; small (2–49): 230; medium (50–249): 90; large (250+): 188.
Percentages may not sum to 100 because of rounding.

Figure 30: The Working Time Regulations are necessary to protect the health and safety of workers (% of employers)



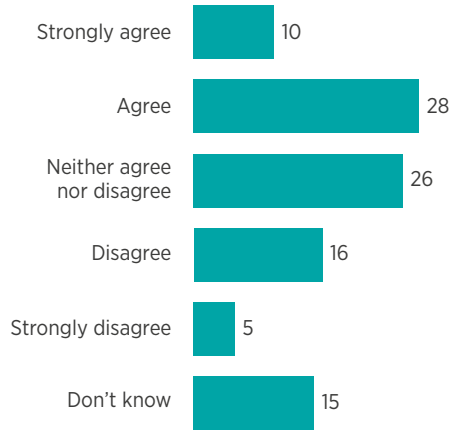
Base: all: 508.
Percentages may not sum to 100 because of rounding.

Figure 31: The Working Time Regulations have a negative impact on the cost of running a business (% of employers)



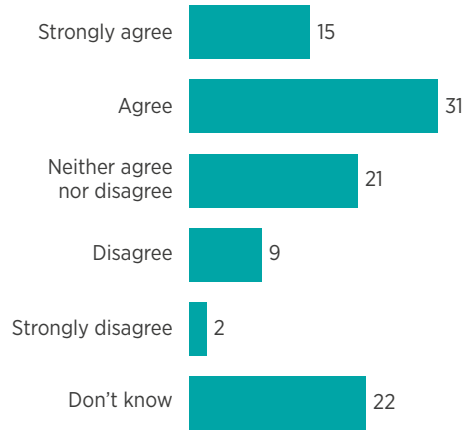
Base: all: 508.
Percentages may not sum to 100 because of rounding.

Figure 32: The record-keeping required by the Working Time Regulations is a significant administrative burden (% of employers)



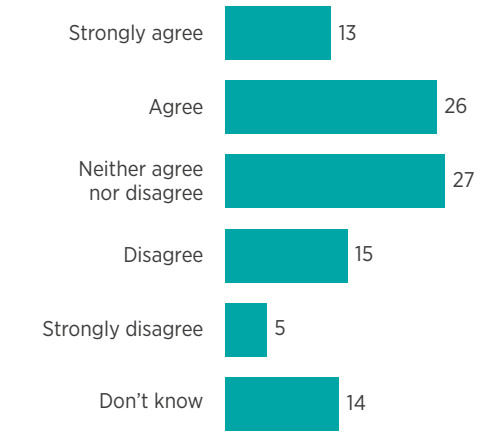
Base: all: 508.
Percentages may not sum to 100 because of rounding.

Figure 33: The case law arising from the legal interpretation of the Working Time Regulations (for example holiday pay) is confusing and unhelpful (% of employers)



Base: all: 508.
Percentages may not sum to 100 because of rounding.

Figure 34: The Working Time Regulations are too prescriptive and impede flexibility in the workplace (% of employers)



Base: all: 508.
Percentages may not sum to 100 because of rounding.

Compensation awards in discrimination claims

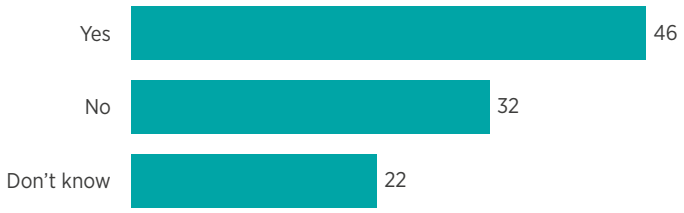
Unlike compensation awards for successful unfair dismissal claims, as a result of the UK's membership of the EU and a 1993 European Court of Justice ruling, there is currently no limit on the compensation that can be awarded for unlawful discrimination. The damages awarded will cover both financial loss and compensation for personal injury, as well as for injury to feelings. Introducing a cap on the level of financial compensation in discrimination cases has been flagged as a potential area for future reform following the UK's withdrawal from the EU.

According to our survey findings, almost half (46%) of respondents think that compensation awards in discrimination employment tribunal claims should remain uncapped, while a further third (32%) say they should not remain uncapped and 22% 'don't know' (see Figure 35).

Among those respondents who indicated that compensation awards for discrimination claims should be capped, the majority view (42% of organisations) is that they should be capped at the same level as unfair dismissal awards (see Figure 36). From 6 April 2017, the maximum compensatory award for unfair dismissal cases (with a limited number of exceptions) is £80,541 or a year's gross pay, whichever is the smaller.

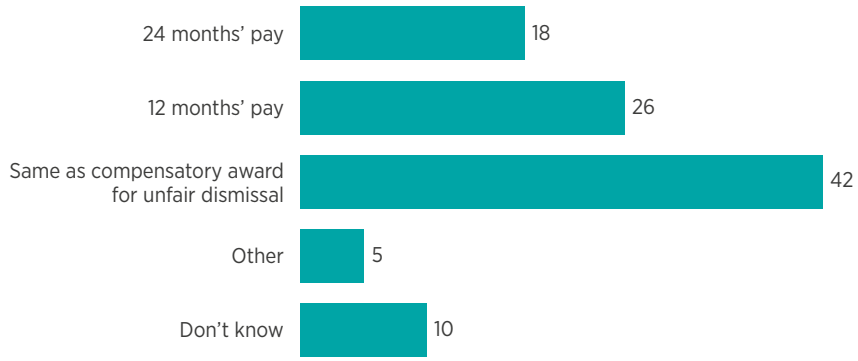
A further 26% of respondents indicated that awards should be capped at 12 months' pay and 18% indicated that 24 months' pay would be a suitable cap.

Figure 35: Do you think compensation awards in discrimination employment tribunal claims should remain uncapped? (% of employers)



Base: all: 508.

Figure 36: What would be an appropriate cap on compensation awards for discrimination claims? (%)



Base: all employers who say that awards should be capped: 185.

6 Scope and appetite for further regulatory change

The UK has a well-established and cohesive framework of employment law that has expanded considerably over the past few decades. However, this does not mean that there is not scope for further improvement or, indeed, further expansion in certain areas. The regulatory context cannot stand still because the wider environment within which organisations are operating – including huge technological and demographic change – is constantly changing.

> *'Most [laws] are good – just too complex for the average (smaller) employer to have any chance of complying.'*
>
> Middle manager, small private sector organisation, south-east of England

This means that government and business should constantly evaluate whether or not existing regulatory requirements are continuing to meet the needs of a competitive economy as well as the individual needs of those who contribute to it as part of the labour market. New business models such as those evident in the 'gig economy' are currently throwing a spotlight on workers' rights and whether or not individuals selling their labour in some corners of the economy are benefiting from the protections to which they are legally entitled. We therefore welcome the current review of modern workplaces commissioned by the Government and led by Matthew Taylor.

> *'The gig economy should be abolished, as should zero-hours contracts. Agency working needs more control.'*
>
> Partner, small private sector organisation, East Midlands

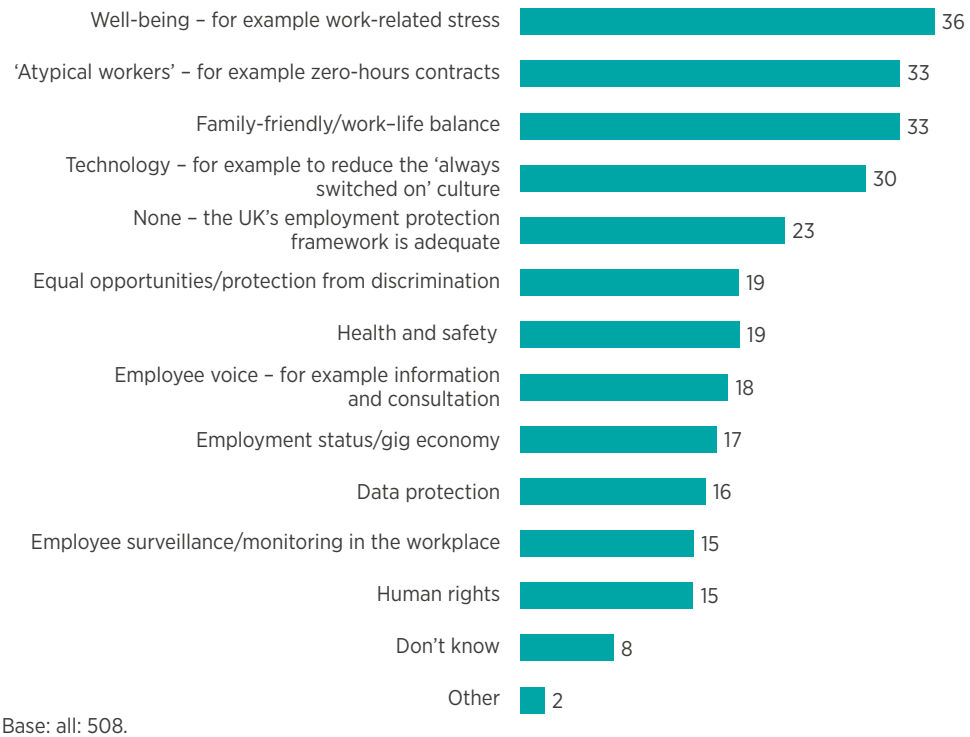
This is why we were also keen, as part of our research, to explore with respondents whether or not they feel there are areas of working life that could benefit from further legislative changes to improve the protection and experience of people at work. Just under a quarter of respondents (23%) said that they don't think further regulatory reform is needed, and that the UK's employment protection framework is adequate.

As Figure 37 shows, people's well-being, including work-related stress, is the main area respondents say could be ready for further change, with more than a third (36%) of organisations indicating this option.

This finding is not surprising. Successive CIPD surveys and reports highlight the need for organisations to proactively manage the health and well-being of their people. The 2016 CIPD *Absence Management* survey, in partnership with Simplyhealth, for example, found that nearly a third of organisations had seen an increase in stress-related absence over the past year (CIPD 2016b). Stress again topped the list of the most common causes of long-term absence. Around two-fifths of respondents reported that

'People's well-being, including work-related stress, is the main area respondents say could be ready for further change, with more than a third (36%) of organisations indicating this option.'

Figure 37: In what areas of working life, if any, do you think there should be further legislative changes to improve the protection and experience of people at work? (% of employers)



Base: all: 508.

mental health problems, such as anxiety and depression, have also increased over the past year.

> *'Workplace stress – for both staff and managers – is not given enough prominence. Discrimination laws work well in my organisation, as do equal pay laws.'*
>
> Senior manager, medium-sized public organisation, London

Whether or not legislative change is needed to improve health and well-being at work is a question for debate, but there is no doubt that an increased focus on well-being by employers, supported by government policies and services, is good news for employees, business and wider society. Earlier in 2017 the CIPD responded to far-reaching proposals in the Government's *Work, Health and Disability Green Paper: Improving lives* (DWP and DH 2016). If some of the public policy initiatives outlined in the consultation document are implemented, we will hopefully see a number of positive developments impacting on workplace health and well-being in the future.

Another area where some respondents supported further change is 'atypical workers' such as those on zero-hours contracts, indicated by one-third (33%) of organisations. This status of people working on zero-hours contracts continues to be a source of debate and, in its submission to the recent Business, Energy and Industrial Strategy Committee's inquiry into the future world of work and rights of workers, the CIPD said that there is an argument for agency workers on zero-hours contracts to be given the right to request regular hours after 12 months working for one organisation in which they have been working a consistent pattern of hours each week (CIPD 2017b).

> *'There need to be much simpler ways to ENFORCE core regulation amongst "cowboy" employers.'*
>
> Owner, small private sector organisation

> *'There needs to be more regulation and clearer guidelines as to the employment status of those working in the gig economy and on zero-hour contracts. Also more monitoring of age and disability discrimination.'*
>
> Board member, private sector medium-sized organisation

> *'Zero-hours contracts should be illegal; there should be more protection for the "apparent self-employed", that is, the gig economy.'*
>
> Senior manager, small private sector organisation, Scotland

'In terms of zero-hours contracts, we don't understand them or what advantages they could have for our staff in any situation.'

Chair, large public sector organisation, east of England

'[There should be] time limits for being always switched on and better stress awareness and prevention.'

Middle manager, medium-sized private sector organisation

A third (33%) of employers also highlighted family-friendly practices and work–life balance as a potential area for further reform. Successive governments have already been proactive in this area and initiatives such as the extension of the right to request flexible working to all and shared parental leave (SPL) and pay will hopefully support work–life balance for families and help more working men take on a more equal role in caring. However, the extremely low take-up rate of SPL so far and the significant contribution that the 'motherhood penalty' continues to make to the persistent gender pay gap are a stark reminder of the progress that is still needed in both a regulatory and cultural capacity.

'The introduction of the right to request flexible working has opened our minds to allocate staff and resources more effectively through the use of part-time employees and job-share arrangements.'

Senior manager, large private sector organisation, London

Technology and the need to reduce the 'always switched on' culture also emerges as an area that many respondents think needs further legislative change (30% of respondents). It is true that we have seen a growing trend of technology enabling workers to take their work home with them, which undoubtedly has the potential to adversely affect some people's well-being.

Some companies, and even countries, have taken the bold policy step of banning access to a company's server and/or emails during out-of-work hours. The French Government, for example, introduced a 'right to disconnect' law earlier in 2017 whereby companies with more than 50 workers will have to draw up a 'charter of good conduct' setting out the hours when staff are not supposed to send or reply to emails (BBC 2016). Whether or not it is regulatory, or cultural, change that is required to encourage a UK shift in employers' and employees' attitudes to technologically switch off from work during their downtime is an important area for discussion.

Other, less popular, areas open to potential legislative change in the view of our respondents include equal opportunities/protection from discrimination (19% of organisations), health and safety (19%), employee voice (18%) and employment status/gig economy (17%).

Background to the survey

Respondent profile

Survey method and weighting
The fieldwork for the survey was managed by YouGov Plc. This survey has been conducted using the bespoke YouGov online system, administered to members of the YouGov Plc UK panel who have agreed to take part in surveys, and the CIPD membership. The survey is based on responses from 508 senior HR professionals and employers carried out between 28 October and 7 November 2016. The figures have been weighted and are representative of the UK business population.

An email was sent to each respondent from the YouGov sample, who are selected at random from the base sample according to the sample definition, inviting them to take part in the survey and providing a link to the survey. Each member of the CIPD sample is invited to complete the survey. Respondents are given three weeks to reply and reminder emails are sent to boost response rates (subject to the CIPD's re-contact policy).

Note: YouGov's raw data is produced to two decimal places and within the data tables each percentage is rounded to the nearest whole number. The nets are calculated using the raw data (that is, two decimal places) and then also rounded to the nearest whole number. As a result of this rounding process, there may be instances in the report where figures do not add up to the expected total.

Table 17: Breakdown of the sample, by sector (%)

Sector	
Private	73
Public	21
Voluntary	6
N	508

Table 18: Breakdown of the sample, by number of employees in organisation (%)

2–9	14
10–49	14
50–99	6
100–249	7
250–499	6
500–999	8
1,000–1,999	6
2,000–4,999	9
5,000–9,999	9
10,000–19,999	5
20,000 or more	15
N	508

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