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The Banded Hours Contract Bill 2016 and related matters

Chambers Ireland's Presentation to the Oireachtas Joint Committee on Jobs, Enterprise and Innovation

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Chambers Ireland is the largest business network in the State. With members in every geographic region and economic sector in Ireland, we are well positioned to understand the concerns of businesses from all areas in the country and represent their views.

We welcome the opportunity to contribute to the work of the Committee on Jobs, Innovation and Enterprise and look forward to further engagement with the Committee in the future.

Introduction

At the outset, I believe it is important to stress that Chambers Ireland is supportive of employment regulation that works for the benefit of both employers and employees.

It is a truism that businesses need certainty. Businesses need to know their production cycle, when their liabilities fall due, when their orders will need to be completed, when they will receive payment for their sales, and when and how many staff they will need to operate efficiently. If a business is unable to provide with reasonable certainty a guaranteed number of hours of work for its employees in advance, it is very likely because the business model does not allow them to do so.

In our view, the Banded Hours Contract Bill 2016 as drafted is unbalanced and ignores the perspective of employers and the realities of business. The Bill unfairly assumes that employers are withholding higher hour contracts from employees without good cause. This negative view of employers and business is clearly reflected in the unmanageable requirements which this Bill seeks to impose upon all Irish businesses.

When considering the introduction of legislation, we must consider what the legislation is intended to address, whether or not it can actually achieve this intent, and whether or not it is proportional. This Bill fails to achieve any of these measures and stands to have negative effects for employers and employees if enacted. The publication of the University of Limerick's 2015 report on the Prevalence of Zero Hour Contracts and Low Hour Contracts in the Irish economy found that "Zero hours contracts within the meaning of the Organisation of Working Time Act 1997 (OWTA) are not extensive in Ireland". As such, any increased regulation or legislation to prevent the use of such contracts is disproportionate and indeed unnecessary. This Bill seeks to implement disproportionate and onerous restrictions on sectors which by their nature require a degree of flexibility on the part of both employers and employees.

We would like to take this opportunity to outline some of the substantive weaknesses within the Bill

- For example, under Section 3 part 4 of the Bill, the employer is only permitted to refuse a request by an employee in cases where the "business is experiencing severe financial difficulties". This is an unmanageable requirement which has the potential to undermine a business's ability to operate and grow. The requirement that a business must be experiencing "severe financial difficulties" in order to refuse such a request is an extremely unfair burden on a business and does not exempt cases where the business is facing seasonal downturn, a requirement to invest in other areas, or simply is in too fragile a stage to increase employee hours without actually putting it in "severe financial difficulty". A business may find itself unable to offer increased hours for staff in a wide

variety of instances without necessarily being in “severe financial difficulty” and it is unfair to expect a business to comply with such employee demands six months following their employment.

- The time period which is to be taken into account in the evaluation of a business’s financial ability to provide “objectively justified grounds” for the business to either grant or refuse extra hours is not sufficiently clear. Given that the right of the employee to make a request applies six months after the beginning of their contract, the time period is important, especially for businesses that are seasonally affected or experience an increase in business over a particular period, such as Christmas, or have volatile sales cycles. A business may experience a strong period of trading that is not reflective of a longer term trend.
- The Bill fails to provide any flexibility for employers in the managing of their businesses; there is no provision contained in the Bill that allows for employers to move employees back to a lower band where necessary, for example when trading conditions deteriorate. Regulation which fails to allow for a company to manage their operations efficiently in order to remain viable must be avoided. The Bill fails to allow for flexibility and competitiveness requirements of business and the omission of any provision on the reduction of banded hours where necessary by an employer exemplifies this. Again, outside of a business cycle, the Bill ignores the requirements of businesses most typically engaged in this type of low hour or flexible hour employment contracts, such as seasonal or sharp demand led businesses.
- The Bill does not take into account the flexibility which is often of benefit to employees and employers. For example an employer may alternate extra hours available between two or more staff so that each of them receives a similar increase on top of their contracted hours. Under this Bill, the first employee to request an increase in their banded hours might receive a disproportionate number of extra hours available given that the employer is only able to refuse on the grounds of “severe financial difficulty”. Thus hours would be allocated on a first to demand basis and would unfairly affect other employees benefitting from additional available hours on a shared basis. The Bill leaves no room for the use of judgement by employers on how to manage their business and assumes that employers are unfairly withholding hours from staff, when in most cases the nature of the business is the reason for irregular working hours.
- Banded hours contracts within smaller businesses are more likely to have the effect of reducing the total number of employees rather than increase the number of hours per employee. If there is an obligation, or perceived obligation, for a business to provide increased hours of paid work for an employee regardless of whether or not there is an actual business need for the additional hours, an employer may take the view that there is less exposure to risk of complaint by simply reducing headcount. Less jobs overall is not something that should result from any Legislation.
- This Bill, while attempting to strengthen employee rights, is more likely to act as a deterrent for businesses when considering entering into employment contracts. From a business perspective, the requirements of the Bill are so burdensome and overly restrictive that it would incentivise the avoidance of contracted labour. We are all obliged to deal with the real world, both public representatives and the business community. In the real world there is a risk that this legislation will push some employers to move to more informal working arrangement with employees. The risk of employment moving to the grey economy is not a good outcome for any party.

- The Bill also fails to outline how regularly the employee may exercise their right under Section 3(1) of the Bill to request an employer to move them to an increased band of hours. This right is therefore open to abuse on the part of the employee and could potentially result in a business being continuously embroiled in contract disputes with employees.
- Section 5 of the Bill, which requires that business provide information of overall availability of working hours, mandates that such notices be displayed in English and Irish and in other languages where required. This represents another unfair burden on businesses, the overwhelming majority of which operate solely in the English language. This provision can only result in additional translation and publication costs for small businesses.

Conclusion

This legislation is disproportionate, will have significant unintended consequences and is unnecessary. The Bill is deeply flawed in its approach to employer-employee relations and is more likely to incentivise the avoidance of employment contracts or a reduction in jobs creation.