

Ms Jo Swinson MP
Parliamentary Under Secretary of State for Employment Relations and Consumer
Affairs
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

8 November 2012

Dear Ms Swinson,

We are contacting you to set out our concerns about the government's intention to create a new employment category of 'employee owner'.

The Family and Parenting Institute and Daycare Trust have long championed family friendly employment and business practice. We supported the proposals set out in the Modern Workplaces consultation, including the government's intention to extend the right to request flexible working to all employees, because of the clear evidence of the benefits for both families and employers. We also have a first-hand awareness of good practice through FPI's successful 'Family Friendly' scheme, which works with businesses to maximise the benefits of family friendly approaches to their staff and customers.

We have serious concerns about the government's inclusion in the Growth and Infrastructure Bill of a measure to introduce a new employment status of 'employee owner', the holders of which would give up key employment rights in return for share ownership for the length of their employment.

We have been supportive of the coalition government's flexible working agenda to date and believe you are pushing forward very positive reforms in other areas. In principle too, we would of course be supportive of measures which help employees have a greater stake in the businesses they work for. However, we are concerned that the employee owner policy as it stands will have a number of negative consequences. Specifically, we object to the proposal on three grounds:

- removing flexible working and family employment rights for some workers will send a damaging and negative signal about those rights, reinforcing the myth that they are burdensome, and undermine the government's intentions to create a business culture that supports flexible working and family members in the workforce;
- the proposals will lead to the creation of jobs that are inappropriate for parents and carers. This of itself is undesirable, but will also undermine the government's aim of getting more parents to work. For parents or carers who have no other choice, the proposal will create a sub-set of employees for

Building a family friendly society

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whom balancing the demands of work and family life will be made unnecessarily difficult; and

- there is a lack of evidence to suggest that removing employment rights will reduce barriers to job creation. As a result, the policy does not have credibility with important stakeholders: linking employment rights to employee ownership has been criticised by experts and those championing employee ownership as unworkable, ineffective and potentially counter-productive.

We have set out our objections in more detail below. Family friendly rhetoric from government will be meaningless if it is not accompanied by consistent action. In the light of the serious flaws of the proposal, we would encourage the government to rethink the measure and focus on constructive steps to promote business growth that are compatible with a forward looking and family friendly employment agenda.

The proposals will undermine the goal of creating a culture of flexible working

The Modern Workplaces consultation set out the social and economic benefits of flexible working practices.¹ We are disappointed that the government has developed an approach to employee ownership that will undermine the efficiency of these reforms and positive developments around improving employment rights and flexibility for families and parents.

We are concerned that these proposals, as they stand, will do nothing to counter inaccurate perceptions among the business community of the costs and risks of flexible working. One recent Chartered Institute of Personnel and Development report, *Flexible working provision and uptake*, notes that past concerns around the administrative burden and additional costs of flexible working have proved to be unfounded.² This point was reiterated in the recent Recruitment and Employment Federation Flexible Working Commission report, which found a gap between perceived and actual legislative or regulatory barriers to flexibility in the UK labour market.³

We would therefore encourage the government to continue to pursue its stated aim of challenging these attitudes. This aim cannot be achieved if the government also sends mixed messages about the value and costs of flexible working rights.

The proposals are also inconsistent with the government's welfare reform programme. Under plans to introduce greater conditionality and increase work incentives, more parents will be required to, and encouraged to, find work. For example, the *Universal Credit: Welfare that works* White Paper impact assessment states that the government expects 20,000 to 25,000 more lone parents with children

¹ *Consultation on Modern Workplaces: ii) Flexible Working*, Department for Business, Innovation and Skills (2011)

² *Flexible working provision and uptake*, CIPD (2012), p. 35,
[www.cipd.co.uk/binaries/5790%20Flexible%20Working%20SR%20\(WEB2\).pdf](http://www.cipd.co.uk/binaries/5790%20Flexible%20Working%20SR%20(WEB2).pdf)

³ *Flexible Work Commission report*, Recruitment and Employment Federation (2012), p. 37,
www.rec.uk.com/uploads/documents/rec-flexible-work-commission-report.pdf

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over five to be employed in this spending review period.⁴ Given the slow pace of job creation in the economy, it is unlikely such aims will be supported by creating new jobs that are unsuitable for parents. As these proposals stand, new employee owner status jobs would not be appropriate for parents and are likely to undermine the aim of making work a more viable route out of poverty or welfare dependency for families.

We are also deeply concerned by reports that these provisions could potentially be used as a loophole for companies to avoid paying tax and adhere to employment legislation rather than to create new jobs.

Creating a sub-set of employees with fewer rights and undermining families

If implemented, the proposals will effectively create a new 'subset' of employees who are unable to meet the family responsibilities of those in general employment.

Creating a limited four week period for the right to request flexible working for employee owners is likely to be unhelpful to both employee owners in this situation and their employers. For new parents, the period immediately following the birth of their child is typically one of stress and uncertainty. Flexible working requests that must be made by employees within four weeks of a return from parental leave will not be made with the best understanding of their circumstances going forward, so the employee is more likely to suffer as a result of not being able to effectively manage their work and life commitments in a way that is sustainable. This provision risks forcing some new parents into periods of unpaid leave during a critical but uncertain period of their lives and damaging relationships between employees and employers.

The proposals also set the notice that employee owners would need to give of their intention to return from parental leave at eight weeks instead of the 16 weeks proposed for other employees. We are not aware of any evidence that small, rapidly growing businesses experience greater difficulties managing the return of employees from maternity leave. The point made by the government in the employee owner consultation document that employee owners will better be able to maintain informal discussions about flexible working because of their engagement with the businesses is not compatible with the notion that the smaller employers targeted by this policy will struggle to plan for maternity periods.⁵

Employee owners would also become the only category of employee not protected from unfair dismissal for making a flexible working request. This will perpetuate fear about requesting flexible working arrangements and will have direct consequences for individuals affected by life changes that are inevitably impossible to anticipate. For example, a grandparent who wishes to take on additional childcare responsibilities when a parent needs help, or an employee whose child has been diagnosed with a

⁴ Universal Credit impact assessment (October 2011), Department for Work and Pensions, p. 15, www.dwp.gov.uk/docs/universal-credit-wr2011-ia.pdf

⁵ *Consultation on implementing employee owner status* (October 2012), Department for Business, Innovation and Skills, p. 16 and p. 38

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long-term health condition, would then be afraid of requesting flexible working approaches for fear of being fired. Not providing this protection for employee owners will help to perpetuate fear about making flexible working requests and the stigma that can be associated with flexible working.

We believe that rights around flexible working requests and parental leave should not be included within the employee owner proposal because it will not be to the benefit of society or the economy to create a new and potentially large subset of jobs that are unsuitable for parents and carers.

The proposals will not have an impact on job creation

We have no objection to measures to support start-ups and micro-businesses; job creation is a fundamental aspect of supporting family wellbeing in the UK. However, there is a lack of evidence to support the assertion that removing employment rights will enhance job creation. As noted, there is a real concern the effect of the proposal will be for employers to turn jobs currently occupied by 'employees', with full employment rights, into roles for employee owners (for example, as people move on from roles and their jobs are re-advertised). The effect would be to change the labour market in unintended ways rather than spur growth.

The introduction to the consultation on implementing employee owner status states:

[T]he risk of being taken to a tribunal over employment rights and the costs of providing some rights are perceived by some as creating a barrier to hiring employees, particularly for fast-growing innovative businesses who need flexible workforces.

This new employment status ensures that companies can reduce these risks in a way that is fair to employees.⁶

There is an inconsistency in these two statements between 'perceived' risks and actual risks. There is little evidence that flexible working and parental leave rights have or will continue to be an economic risk for small businesses. The Modern Workplaces right to request flexible working impact assessment put the cost of extending this right (using a statutory code of practice) at £8 per year for micro businesses and £28 per year for businesses employing fewer than 20 people.⁷ The same consultation confirmed that the economic benefits of those rights are, however, well established.

As the Modern Workplaces consultation stated, flexible working itself increases the loyalty and commitment of staff members.⁸ There is little evidence that share

⁶ Consultation on implementing employee owner status, p. 7

⁷ Modern Workplaces flexible working impact assessment (2011), Department for Business, Innovation and Skills, p. 3

⁸ Consultation on Modern Workplaces: ii) Flexible Working (May 2011), p. 4

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ownership, based on this model of diluting worker rights, will create greater employee engagement.

It seems unfortunate that perceptions of the risks and cost of flexible working rights among businesses are cited by the government as a reason to create this new employment status when the Employee Ownership Association itself has highlighted that *employee ownership in the UK is growing and the businesses concerned thriving, because they enhance not dilute the working conditions and entitlements of employee owners.*⁹

Having put forward a positive, family friendly employment agenda, it will be a blow to the government's credibility in promoting a family friendly society if ministers choose to legitimise and potentially encourage misguided attitudes to family employment rights, rather than work to change those attitudes. The government's approach should be evidence-based, and work to overcome mistaken perceptions of the burden and risks of employment legislation.

The government has stated that it will work with business leaders and employers to promote the case for flexible working, and has identified that increasing take up of flexible working in smaller companies is central to achieving a cultural change around flexible working.¹⁰ In order to be successful in this goal, it is important that the government sticks to this commitment and is not side-tracked by initiatives which are supported by little evidence.

We hope to have set out clearly why we do not believe the employee owner proposal should proceed in its current form. We will continue to work with the government, alongside our direct work with families and employers, to promote family friendly business practice.

We would be delighted to have the opportunity to discuss this and other family and employment issues with you in the near future.

Yours sincerely,

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⁹ www.employeeownership.co.uk/news/press/bis-nuttall-response

¹⁰ *Consultation on Modern Workplaces: ii) Flexible Working*, pp. 6-7; Flexible working impact assessment, p. 15