



Response to Department of Employment and Learning:

Employment Law Review

November 2013

About NISMP

1. Northern Ireland Strategic Migration Partnership (NISMP) aims to work across the spheres of government in Northern Ireland and with other key stakeholders to ensure that Northern Ireland is a welcoming place for new migrants. It seeks to support the retention and integration of people in a way that helps meet skills and labour needs to support future economic growth. It provides a regional advisory, developmental and consultative function, enabling our partners and stakeholders to develop an appropriate Northern Ireland migration policy structure. This aims to ensure that Northern Ireland's needs and concerns in respect of immigration are recognised within the constraints of UK wide strategy.

Background to Response

2. NISMP welcomes the opportunity to respond to this consultation on Employment Law Review. We will limit our response to those questions which we think may have implications for migrant workers.

3. The expansion of the EU, together with the practice of some Northern Ireland businesses and sectors to actively recruit from outside the UK, has resulted in significant changes to the demographic make up of the Northern Ireland workforce. In total an estimated 122,000 international migrants arrived in NI between July 2000 and June 2010¹, although the rate of inward migration has slowed considerably in recent years.

4. There is evidence of particularly high rates of migrant employment in certain sectors in Northern Ireland, notably within lower-skilled roles in agriculture, food processing and health and social care². The nature of employment in these sectors often requires a flexible workforce which, for workers who are unfamiliar with local employment rights and legislative framework and have variable competencies in English, may make them more vulnerable to exploitation.

5. In our response we will limit our remarks to those proposals outlined in the consultation paper which could have particular consequence for migrant workers.

6. This response has been approved by representatives on the Partnership. However this does not necessarily reflect the views of Partner Organisations, some of whom have not been canvassed.

¹ Northern Ireland Assembly, Feb 2012

² DEL (2009): The Economic, Labour Market and Skills Impacts of Migrant Workers in Northern Ireland

RESPONSE

Routing of claims through LRA

Q1 *If early conciliation (EC) is implemented, should it include a provision to ‘stop the clock’, suspending the limitation period for lodging a tribunal claim?*

NISMP is supportive of the ‘stop the clock’ provision or, alternatively an extension of time periods, which will remove time pressures that claimants may feel in relation to pursuing their case through tribunal and allow for a focus on conciliation.

Q5 *Should hard copy EC forms receive a written acknowledgement?*

NISMP would recommend that in addition to a written acknowledgement workers should receive acknowledgement by text message. It has been documented that migrant workers are more likely to have temporary accommodation arrangements than the general population³. A text message would ensure continuity of communication between the claimant and the LRA.

Q6 *What should be considered ‘reasonable attempts’ to contact the parties in the first instance, and should the same approach be taken for both prospective claimants and prospective respondents?*

Communications with migrant workers will be more prone to misunderstandings and misinterpretations due both to the different first languages of parties and the different levels of familiarity with employment rights and the justice system in Northern Ireland. In addition, the more temporary accommodation arrangements of migrant workers may mean that first attempts to contact could be unsuccessful. These factors should be taken into account when deciding what constitutes a ‘reasonable attempt’ to contact this party.

Q10 *Please give your views on the proposed EC process as a whole. If any, what alternatives should the Department consider?*

NISMP is supportive of any attempt to seek conciliation between parties. We believe that routing all claims through LRA may represent a more accessible avenue for redress for vulnerable workers, such as migrant workers, who find that the bureaucracy and costs of the tribunal system often deter pursual of a claim. However, in order for the process to be truly unbiased as intended, we believe that the EC process would need to be appropriately and adequately promoted among migrant workers as well as adequately resourced in order that the difficulties that many migrant workers experience in negotiating any formal process in an unfamiliar environment, such as language, cultural understanding and institutional knowledge can be minimised.

³ ibid

Unfair dismissal qualifying period

Q20 *Northern Ireland has, for the most part, maintained the same unfair dismissal qualifying period as Great Britain. Do you consider that retaining that parity is desirable, considering that employment law is devolved to the Northern Ireland Assembly? Please give reasons for your answer.*

While there are benefits to maintaining parity with GB employment law where appropriate, it is important that the local evidence base is considered. As outlined in the consultation document, there is a lack of evidence base showing a correlation between the qualifying period for unfair dismissal and growth in employment, inward investment or volumes of tribunal claims. There is therefore no evidence that parity in this case would have a beneficial impact on the local economy. There is, however, concern that increasing the qualifying period for unfair dismissal would create further vulnerability to individuals already at increased risk of unfair employment practices.

Q29 *Should the unfair dismissal qualifying period remain at one year? Please provide reasons for your response.*

NISMP has indicated that by increasing the qualifying period for unfair dismissal, there is a risk that already vulnerable migrant workers could be made more vulnerable for a longer time. There is evidence to suggest the value of using the most vulnerable groups as baseline indicators of the fairness of legislation. In this case, it is possible that taking into account the impact upon some of the most vulnerable workers, legislation will be more equitable for the wider workforce in the jurisdiction. In the absence of clear evidence that there are negative impacts on inward investment and hiring practices, we recommend that the unfair dismissal qualifying period remains at one year.

Unfair Dismissal – Limits on Compensatory Awards

Q 41 *Is there evidence of unrealistic expectations about tribunal awards in unfair dismissal cases and, if so, how can these be addressed?*

NISMP has no evidence regarding expectations about tribunal awards in unfair dismissal cases. However we believe that realistic expectations can be promoted through education initiatives, effective information dissemination and continued work with the LRA regarding ADR and the proposed neutral assessment service.

Review of Compromise Agreements and Possible Introduction of a System of Protected Conversations

Q66. *What are the equality/discrimination risks in creating a system of inadmissible offers of settlement?*

While safeguards to minimize equality/discrimination risks are outlined in the consultation document, the risk remains that the proposed system of protected conversations may, either intentionally or unintentionally, be employed more frequently by employers to terminate the employment of more vulnerable employees, including migrant workers, who may not be as aware of employment rights and alternative courses of action. NISMP would advise that the use of protected conversations be monitored and an equality impact assessment regarding their use be carried out.

Q70. *How do we ensure that there is an equal balance of power between employers and employees in settlement negotiations?*

As explained in the consultation document, settlement negotiations are usually initiated by the employer, thus suggesting an inherent power balance in favour of the employer who wishes to terminate the employment of the employee. In order to minimize this, NISMP would recommend that information on employment rights and related Northern Ireland specific contacts is disseminated to migrant workers who have been given, or are about to be given permission to enter the UK and work in Northern Ireland.

We would further recommend that a small number of employment support hubs, following the model of the Ethnic Minority Support Unit in Newry and Mourne Council are set up to act as liaison between migrant workers, who are notoriously difficult to contact, and advice and support organizations.