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Dear Tony,

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL: EMPLOYMENT TRIBUNALS, NATIONAL MINIMUM WAGE AND ZERO HOURS CONTRACTS

I would like to thank you for your contributions in Committee during debate on the National Minimum Wage penalty and additional rights for those on Zero Hours Contracts. Lord Popat and I said that we would write to you with more detail on these important issues, and I hope these explanations will be helpful.

Underpayment of the National Minimum Wage

You asked how many cases went to court in relation to underpayment of the National Minimum Wage. Where there is evidence that an offence has been committed the case will always be considered for prosecution. The Crown Prosecution Service successfully prosecuted one of the most serious offenders in 2013, however there were no cases where prosecution was deemed necessary last year.

It is worth noting that criminal investigations by HMRC and prosecutions by the Crown Prosecution Service will not necessarily result in arrears of wages being paid back to the workers. Our number one priority is getting workers the money they are owed and the civil route is more successful in achieving this. Under the civil route employers are not only faced with reputational consequences but also face a financial penalty for breaking the law. This Bill increases the maximum civil penalty that can be imposed on an employer found to be breaking National Minimum Wage law.

In addition to this, we have simplified the criteria for naming and shaming employers who have not complied with the law, to deter employers from breaking NMW law. To date, we have named 92 employers, who owed over £316,000 and were charged over £111,000 in financial penalties.

Pay and Work Rights Helpline

To follow up the discussion about calls made to the Pay and Work Rights Helpline, I can confirm that 14,845 National Minimum Wage enquiries were received by the Helpline and 2,260 complaints were made in 2014.

Zero Hours Contracts and Employment Tribunal penalties

You asked for clarification with regard to the issue of financial compensation, relating to amendment 68ZX. This amendment sought provision to give zero hours workers the right to be awarded financial compensation and give employment tribunals the power to enforce their judgments, including financial compensation awarded to zero hours workers.

The order making power in Clause 148 currently allows for Regulations to make provisions to ensure that zero hours workers are not restricted from working for another employer. Such regulations could include employers having to pay compensation to zero hours workers and providing routes of redress for the individual if they suffer a detriment due to an exclusivity clause. This could be done via a complaint made to an employment tribunal.

The situation is different with regard to compensation for late notice cancellation of shifts. Clause 148 is about banning exclusivity terms in zero hours contracts. It does not go wider than that. The purpose of the order making power is to tackle avoidance of the exclusivity ban, provide routes of redress for the individual and to extend the scope of the ban to other types of contract. The order making power does not extend to other issues around zero hours contracts such as compensation for late notice cancellations. The order making power can only deal with exclusivity.

However, I recognise that late notice cancellation of shifts is an issue for some. A one size fits all legislative solution would not be appropriate and could prove to be a prohibitive cost for business, and could also lead to employers only offering work at short notice to reduce the risk of cancelling. Government believes this issue should be covered in sector-specific codes of practice on the responsible use of zero hours contracts.

I hope you find this useful and I or my officials would of course be happy to discuss further.

I am copying this letter to Lord Popat, Lord Newby, Baroness Hollis, Lord Morris of Handsworth, Baroness Donaghy, Lord Storey, Lord Whitty, Lord Watson and Lord Stoneham. I am also placing copies in the Libraries of both Houses.

Warm regards

Lucy

BARONESS NEVILLE-ROLFE DBE CMG