

2013 Enterprise and Regulatory Reform Act: impacts and effects

Institute of Employment Rights
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At UNISON, Euston Road, London
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The shifting sands of ACAS

- The 2013 Act has meant a large increase in workload for ACAS staff as early conciliation starts up. [PCS and the fight against *Toyotaism* and privatisation ...]
- Based on the benefits of the pre-claim conciliation system
- The conciliator 'seeks to promote a settlement' which is quicker, cheaper, and more convenient for all
- ACAS thus becomes a champion of technical individualised solutions rather than part of a collective bargaining system as originally conceived by Mortimer

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What lies beneath?

- The government's stated intentions include:
 1. Encourage 'earliest possible resolution of disputes'
 2. Make ETs more *efficient* and *effective* [Direct costs and usage have risen by 40% since 2000; and indirect costs average £4,000 per case] ... Although the remaining 'known unknowns' include costs and other forms of litigation
 3. Have a more 'flexible, *effective*, and fair' labour market and thereby encourage employers to hire more ...

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Adrian Beecroft – venture capitalist and hero of no-fault dismissals

Hansard for June 11th 2012:

Vince Cable: On employment law, the Government are acutely aware of the need to do all they can to support business expansion and job creation. That is why the Bill contains provisions to reform the employment tribunal system and encourage dispute resolution through conciliation. Smaller businesses have consistently told us that the fear of ending up in a tribunal is high up their worry list and is a real disincentive to taking on staff. I have made it absolutely clear that I have no truck with the idea of a free-for-all hire-and-fire culture, and responsible British businesses do not want to go there either.

David Evennett (Bexleyheath and Crayford) (Con): Government Members strongly believe in business, and we do not want to hold it back. On the other hand, we want regulation that is necessary to protect the work force, and we want to help them. We need a change in the law to help businesses grow and flourish.

Richard Fuller (Bedford) (Con): I am grateful to my right hon. Friend for saying that he will have no truck with compensated no-fault dismissal, but with many businesses, through the Institute of Directors and the Federation of Small Businesses, making the case for compensated no-fault dismissal, what representations has he had on that? Why has he been so strenuous in saying that he will have no truck with it?

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Labour Market Reform --- hire and fire in the land of the rising zero-hours contract, the lump, and the part-time industrial reserve army

- A right to treat employees as employers' may wish is derived from ownership of private property -- exclusive control against all comers is the main imperative
- The economic reality within the Principal-Agent problem becomes a legal reality with the 1831 Truck Act when managers can contract and therefore discipline workers -- legal rights as part of the expression of democratic rights over which there is a class struggle
- The rights of the managed are derived from a social inequality before the market and a power inequality within the market
- Freedom to choose? The loaded gun and the freedom not to be free ... Wage slavery in the country of cover-ups

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Rights and Wrongs – the individual is the collective

- The nature of collective bargaining ... Extended, reformed, and deformed. Union demands for the full restoration of collective bargaining rights as a necessary (but not sufficient) condition to restore rights and living standards
- Both trade unions and management represent a collective
- Accompany, represent, negotiate ... OR state-sponsored conciliation on the cheap
- The micro-politics of the workplace -- the impact on others; the impact on systems and procedures; and the impact on management-staff/union relationships

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Legal speed up under Labour

- Legal intervention starts in the 1970's; it then speeds up with the 1996 Act, 1999 and 2002 Acts followed by [see IER for details]
- Changing role of the state and neo-liberal ideology as the dominant position of a globalised market system in which sectional and sectarian demands replace systematic general opposition
- So 'Fairness at work' supports deregulated labour markets and flexible working practices linked with supply side economics, neo-classical theories of the firm, and the rule of rigged markets ... Has Labour repudiated this policy set?
- This and the last government's stated aim is to 'replace the notion of conflict between employers and employees with the promotion of partnership' but a partnership of the increasingly unequal

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Fairness at work depends on collective powers

- Inequality in the labour market undermines notions of fairness as parodied in the Taylorist slogan 'A fair day's pay for a fair day's work'!
- Collective bargaining and procedures are mechanisms for reducing conflict when workers resist through their collective organisations so the rise of arbitration, establishment of Whitley, and the 'give an inch' of pluralism. This becomes part of the implosion of individual rights of the managed.
- The use and abuse legally-based rights at work are directly related to levels of unemployment and under-employment
- Rights at work become part of the problem, because elements such as a hearing, being accompanied, having a meeting form the basis for 'decoupling' of trade union representation from the world of the worker.

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Wither the worker?

- Workers are removed from history along with the working-class and class struggle as all become:
- Subordinate to the 'business case' in all areas
- Unequal partners in a world of ever-increasing inequality
- Decision-receivers (not makers)
- Wage-takers (not setters)
- Legitimisers of wealth and income inequality
- Purveyors of imperfections in the labour market
- Unless there is a return to collective bargaining for all seasons ... Making sense of the nonsense of embedded inequality

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