



*Championing better
work and working lives*

Good Work Plan: Consultation on measures to address one-sided flexibility

Submission to the Department for Business, Energy and Industrial Strategy

Chartered Institute of Personnel and Development (CIPD)

October 2019

Background

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has 150,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

Introductory comments

Our response is informed by a YouGov survey we commissioned of 516 employers, as well as in-depth interviews with senior HR professionals.

We have provided tables of the relevant data that we cite, which we are happy to share with BEIS officials to discuss in further detail.

Executive summary

- **The right to a reasonable notice of work schedules should be a day-one right for all workers.**
- **The appropriate baseline notice period for work schedules should be one week (7 days).**
- **The right to a reasonable notice of work schedules should not apply where workers have given their prior consent that they are happy to be contacted at short notice. Employers that request workers to work at short notice without their prior written consent that they are happy to be contacted for this purpose, would be in breach of their duty to provide reasonable notice of work schedules.**
- **Work schedules should be published, with a date and time, both digitally on organisations' intranets/websites and physically somewhere all workers are aware of and can easily access.**
- **Compensation to workers who have shifts cancelled at short notice should be based on the value of the shift in question.**
- **The cut-off point at which employers have to give their workers notice of a cancelled shift or hours should be 24 hours.**
- **All types of employers, across all sectors should be expected to pay compensation to workers if shifts are cancelled at short notice.**
- **No workers should be exempt from receiving compensation if shifts are cancelled at short notice.**
- **Workers should be eligible for compensation if shifts are cancelled at short notice from the start of their employment.**

Our response

Question 1: If you are an employer or worker, what notice (if any), do you / your workers receive of your / their work? Does this vary by different types of work or worker?

Question 2: How are work schedules currently organised or planned, and how are they currently recorded? Are you aware of best practice examples where work schedules are organised or recorded particularly well?

A CIPD commissioned survey of more than 500 employers to inform our response to this consultation found that in all 28% of employers provide notice periods to variable hours workers of their work schedules of one week or less. Of these, 6% say they provide a minimum notice period of 24 hours, 7% say they provide notice of 1-3 days and 4% report a notice period of 4-6 days.

In all, 6% of employers provide notice period of work schedules to variable hours workers of 2 weeks, while 10% say they provide notice periods of more than two weeks. However, a third of respondents say they have no formally agreed notice periods for variable hours workers and 4% say managers decide on an ad hoc basis. Nearly a fifth of respondents did not know what notice period their organisation provides to variable hours workers.

Micro, small and medium sized employers are much more likely to report they have no formally agreed minimum notice periods than larger employers. Two thirds of micro employers say they have no formally agreed minimum notice periods, as do 48% of small employers and 36% of medium-sized firms. However just 19% of larger employers say they have no formally agreed notice periods.

From a sector perspective, private sector (37%) and voluntary sector organisations (40%) were more likely to report they have no formally agreed notice periods for variable hours workers than public sector employers (21%). There were few significant sector differences in terms of the different types of notice periods typically used.

Table 1: What minimum notice period of work schedules do you provide to variable hours workers, by size of organisation? (Base: 516)

		Micro	Small	Medium		Large
	All	2-6	10-49	50-249	Net below 250	250 and above
Minimum of 24 hours	6%	*	7%	6%	5%	7%
1-3 days	7%	4%	6%	8%	6%	8%
4-6 days	4%	7%	4%	5%	5%	3%
1 week	11%	7%	6%	13%	9%	13%
2 weeks	6%	1%	2%	10%	4%	8%
More than 2 weeks	10%	5%	7%	8%	7%	14%
Managers decide on an ad hoc basis	4%	2%	7%	3%	4%	4%
No formally agreed period for schedules	34%	66%	48%	36%	49%	19%
Don't know	18%	8%	12%	12%	11%	26%

Question 3: What would you define as ‘reasonable notice’ of work schedules? Does this vary between different types of work or contexts? And what working hours should be in scope?

The most commonly cited notice period as being reasonable among employers surveyed by the CIPD was one week, with 15% of respondents supporting this, however the survey showed a wide range of views on this matter. In all, 12% of respondents said they regarded a minimum notice period of 24 hours as reasonable, while a similar proportion of employers cited a notice period of between 1-3 days. The next most commonly selected option was 2 weeks, with 11% citing this as reasonable and a further 11% regarding a notice period of more than two weeks as reasonable. In all, 6% of respondents said they did believe organisations should be required to give notice of schedules, while 30% did not know.

Smaller organisations are more likely to regard shorter notice periods for work schedules as reasonable than larger organisations. In all, almost half (49%) of organisations employing less than 250 people report that they regard notice periods of one week and less as reasonable, compared to just 38% of organisations employing 250 or more workers.

Just 17% of small and medium sized firms employing 250 or fewer staff identify a notice period of 2 weeks or more than two weeks as reasonable, compared to 25% of larger firms with 250 or more staff.

Smaller firms have fewer staff to manage rosters and work schedules for but they are also less likely to have sophisticated HR IT systems to automate work scheduling and advance notice periods.

Table 2: What does your organisations regard as reasonable notice? (Base: 516)

		Micro	Small	Medium		Large
	All	2-6	10-49	50-249	Net below 250	250 and above
Minimum of 24 hours	12%	21%	16%	9%	15%	9%
1-3 days	12%	10%	17%	10%	13%	11%
4-6 days	4%	9%	1%	6%	5%	3%
1 week	15%	16%	12%	21%	16%	15%
2 weeks	11%	7%	8%	13%	9%	12%
More than 2 weeks	11%	4%	12%	8%	8%	13%
We don't believe organisations should be required to give minimum notice periods	6%	14%	6%	6%	8%	4%
Don't know	30%	20%	28%	28%	26%	34%

Question 4: What impact (if any) would the introduction of the right to a reasonable notice of work schedules have on you (or those you represent)? How would existing practices change?

CIPD's employer survey suggested the biggest areas of employer concern associated with the introduction of the right to reasonable notice of work schedules is that it would reduce the ability of organisations to respond to last minute changes in circumstances or emergencies such as an employee going off sick or the need to resolve an equipment breakage, which requires more people at short notice. In all, nearly three-in-ten respondents highlighted the introduction of a statutory right to reasonable notice periods as having this impact.

A further fifth of respondents said that it would reduce the ability of their organisation to address short-term fluctuations in demands for good or services.

In all, 16% of respondents reported that the introduction of a right to reasonable notice of work schedules would increase the cost and time associated with managing variable hours workers, while 14% of employers said it may mean increases in the wage bill as they would have to over-staff some shifts.

However, the survey also highlighted evidence that the introduction of a reasonable right to notice of work schedules would have some positive effects. For example, 17% of respondents said the introduction of such a right would mean their workers would feel more valued by the organisation, and a similar proportion of employers reported they thought it would mean they spent more time planning work schedules, suggesting the change could improve employer practice. HR practitioners interviewed to inform this response also agreed that the introduction of a right to a

reasonable notice of work schedules would encourage employers to improve their practices around planning and scheduling staff work schedules.

One-in-ten respondents also said the introduction of statutory notice periods for work scheduling would mean they would provide better training for managers in charge of shift patterns and 8% said their organisation would invest in technology to help improve how work schedules were set and managed.

The survey data suggested a significant minority of employers are sanguine about the proposed introduction of the new right, with 28% saying it would have little impact as they already have a reasonable notice period that they could easily align with any statutory new right.

However, a fifth of respondents said they don't know what impact the new right to reasonable notice of work schedules would have on them, probably reflecting the lack of detail on the proposal and in some instances a lack of close knowledge of existing organisational practice.

Table 3: What impact (if any) would the introduction of the right to a reasonable notice of work schedules have on your organisation? (Base: 516)

	All employers	Up to 250 staff	More than 250 staff
It would reduce our ability to respond to last minute changes (e.g. a sick employee or equipment breakage)	29%	28%	30
Little impact – we already have a reasonable notice period we could align with new right	28%	34%	21
It would reduce our ability to address short-term fluctuations in demand for our goods and services	21%	20%	22
Our workers would feel more valued by us/the organisation	17%	12%	23
It would mean we would spend more time planning work schedules	17%	14%	20
It would increase the cost and time associated with managing variable-hours workers	16%	16%	16
We would have to update our work-scheduling policies and practices on the provision of reasonable notice to reflect statutory minimum	15%	13%	16
We may have to overstaff some shifts so our wage bill may increase	14%	12%	15
Our workers could be inconvenienced as many of them would like to sign up to work schedules at short notice because they have uncertain or changing circumstances	13%	10%	16
It would mean we provide better training to managers in charge of setting shift patterns	10%	7%	13
We would invest in technology to help improve how we set and manage work schedules	8%	5%	11
Don't know	21%	19%	23

Question 5: In your view, should the right to a reasonable notice of work schedules be something that is guaranteed from the start of someone’s employment, or should an individual need to work for a certain amount of time before becoming eligible?

A significant majority of HR practitioners surveyed agreed that the right to a reasonable notice of work schedules should be guaranteed from the start of someone’s employment, with 62% saying this should be the case. HR practitioners interviewed over the phone also supported a day one right.

In all, 16% of survey respondents said they thought workers should be eligible for a right to reasonable notice of work schedules after six months, while 7% of employers thought the right should be activated after 12 months in employment.

CIPD believes that the right to a reasonable notice of work schedules should be a day-one right for all workers.

Table 4: In your view, should the right to a reasonable notice of work schedules be guaranteed from the start of someone’s employment, or should an individual need to work for a certain amount of time before becoming eligible? (Base: 516)

	All employers	Up to 250 staff	More than 250 staff
Guaranteed from the start of someone’s employment	62%	59%	65%
An individual needs to work for six months for an organisation before becoming eligible	16%	18%	14%
An individual needs to work for 12 months for an organisation before becoming eligible	7%	8%	7%
Other	4%	6%	2%
Don’t know	11%	9%	13%

Question 6: In your view, should Government set a single notice period for work schedules which applies across all employers, or should certain employers / sectors be allowed some degree of flexibility from the “baseline” notice period set by Government?

The CIPD believes that there should be a single baseline minimum notice period for work schedules which applies across all employers, in order to avoid confusion among employers and workers.

However, this would only be workable in practice for many employers if there was sufficient flexibility for organisations to still be able to call on variable hours workers at short notice in certain circumstances, as discussed below.

Question 7: What would be an appropriate “baseline” notice period and degree of flexibility to you? How would this impact you, or those you represent? In your view, are there any instances where reasonable notice of a work schedule would not need to be given? If so, for which workers / types of work?

Based on our survey data and phone interviews with HR practitioners, CIPD believes the appropriate baseline notice period for work schedules should be one week (7 days).

This would give workers enough notice to plan and make arrangements, such as childcare, and also enable employers to continue to flex work schedules to cater for relatively late changes in projected demands for goods or services which might affect calculations over staffing levels.

Question 8: In your view, are there any instances where reasonable notice of a work schedule would not need to be given? If so, for which workers / types of work?

It is crucial that all employers can continue to call on variable hours staff, sometimes at short notice, in certain circumstances to respond to sickness absence or to deal with other unforeseen issues such as equipment breakages, which may require additional staff urgently. As highlighted above, nearly three in ten (29%) employers surveyed expressed concerns that the introduction of a right to a reasonable notice of work schedules would reduce their ability to respond to last minute changes in circumstances or emergencies (e.g. an employee going off sick or an equipment breakage, which requires more people at short notice).

Interviews with senior HR practitioners working for organisations that use significant numbers of variable hours workers also highlighted the need for employers to be able to call on variable hours workers sometimes with very little notice, as a result of these sorts of issues.

However, our interviewees also made the point that this flexibility should be based on the principle that variable hours workers should give their consent that they are happy to be contacted in such circumstances. In the CIPD’s view, the issue of choice and the extent workers can exercise this, is critical to whether atypical working arrangements such as zero-hours contracts are sustainable and fair.

A senior HR practitioner working for a large restaurant chain said that while there was standard notice period of two weeks for work schedules, workers also indicate whether or not they are happy to be contacted at short notice if shifts become available because of sickness absence or other reasons. Only workers that have given their consent to be contacted are then contacted by managers to be offered shifts but there is no obligation for them to accept them. Workers are also able to swap shifts with other staff at short notice if their plans change or personal issues crop up which means they cannot do the shifts they had planned to do.

Similarly, a senior HR practitioner working for an NHS Trust said that while ward work schedules are set every six weeks, the nature of health care and the needs of staff meant that there was a

requirement for significant additional flexibility which is to a large extent provided by bank staff on zero-hours working arrangements. Shifts that become available at short notice are offered to all bank staff but there is no obligation for staff to accept shifts that don't suit them.

Variable hours workers can also benefit from the flexibility of being offered work at short notice. For example, workers with disabilities or fluctuating health conditions who cannot guarantee to being fit to work from week to week or even day to day. A leading disability charity told CIPD that workers in this category can benefit from being offered work at short notice via zero-hours contracts as this can enable them to choose to work only when they feel well enough to do so, with no obligation to accept work the rest of the time.

Other reasons which mean workers can also benefit from being offered work at short notice include changes to caring responsibilities, study deadlines and for some workers just the ability to choose when they work for a whole range of reasons and personal preferences. In all, 44% of zero-hours contract workers surveyed for our research report [Zero hours contracts: myth and reality](#), said they were satisfied with working in this way as it 'suits my circumstances at the moment'.

The CIPD's view is that the right to a reasonable notice of work schedules should not apply where workers have given their prior consent that they are happy to be contacted at short notice. Employers that request workers to work at short notice without their prior written consent that they are happy to be contacted for this purpose, would be in breach of their duty to provide reasonable notice of work schedules.

Question 9: How do you think a reasonable notice of a work schedule would be recorded?

Work schedules should be published, with a date and time, both digitally on organisations' intranets/websites and physically somewhere all workers are aware of and can easily access.

This would ensure there is transparency over the publication of work schedules and evidence that work schedules were published with sufficient notice.

Question 10: What impact, if any, would the requirement of recording work schedules have on you (or those you represent) and how you organise work?

CIPD members interviewed thought the requirement to record work schedules was good practice, and would aid understanding and transparency over work scheduling. No potential negative impacts were reported.

Question 11: If Government were to introduce the right to a reasonable notice of work schedule, what would be most useful for employers within statutory guidance?

Guidance for employers should go beyond setting out the minimum requirements, in terms of providing all workers with the right to reasonable notice of work schedules, to include examples of good practice. This should include workforce planning, highlighting the benefits to organisations of strategically evaluating the overall business requirement for workforce flexibility and the different ways that this can be achieved, including both through flexible working practices for the permanent workforce, as well as through the use of contingent or atypical working practices.

The guidance should highlight the importance of variable hours workers, wherever possible, having choice over their working patterns and arrangements as evidence shows that where variable hours workers are satisfied with working in this way, they have higher levels of engagement, motivation and commitment.

The guidance should contain case studies demonstrating how employers in different sectors manage variable hours workers effectively maximising choice and achieving two-way flexibility. Guidance should also highlight the importance of training managers in charge of variable hours workers and setting shift patterns as, too often, policies fail because managers are not aware of their responsibilities or are inadequately trained. This is particularly likely to be the case in organisations which lack sophisticated IT systems for work scheduling and rostering and where the manager has a more direct role in this respect as a result.

Question 12: What would an appropriate penalty be in the event of non-compliance (when workers are not given reasonable notice of their work schedule, and / or if it is not recorded correctly)?

One option would be for the penalty for non-compliance with a new requirement on employers to provide reasonable notice periods to mirror that of the compliance regime for the right to request flexible working regulations.

If a tribunal finds that the employer failed to provide adequate notice of work schedules or work schedules were not recorded correctly it could order the employer to:

- ensure there is no repeat of this and that they remedy any shortcomings to their systems or management capability that led to this breach
- award compensation of up to eight weeks' pay (limited to £525 per week, as for failure to follow proper procedure when considering requests to work flexibly).

Compensation for shift cancellation or curtailment without reasonable notice

Question 13: Are shifts or hours of work cancelled by the employer at short notice in your workplace, or in the workplaces of those you represent? Why? Are reasons provided to workers? Are these hours then replaced?

CIPD research into zero-hours contract workers (Zero hours contracts – myth and reality) suggests that a significant proportion of such workers experience shift cancellation at short or no notice. In all, 40% of zero-hours workers reported they receive no notice when work is no longer available.

Our interviews with HR practitioners suggested that, particularly in sectors such as health and social care, there are often very late changes in terms of patient/client needs/circumstances as well as staff availability, which might mean that variable hours workers are not needed.

Question 14: How often are shifts or hours of work cancelled by the employer at short notice?

Question 15: What notice, if any, is provided by the employer before the shift or hours of work are cancelled? Does it vary at all?

Our interviews with HR practitioners suggest that shift cancellation at short notice does happen in some circumstances, and is more likely in sectors where demand for services can vary from day to day, such as in health and social care.

One health sector HR practitioner said while it did not happen often, shifts could be cancelled up to four hours before staff were due to work without compensating staff for the cancelled shifts. This, he said, was an NHS-wide approach though the use of staff banks.

An HR practitioner in the agri-food sector said they provide their zero-hours contract workers at least 24-hours notice if work is no longer available and would pay the value of the shift if the notice was shorter.

An HR practitioner working in the hospitality sector said that shifts for variable hours workers were never cancelled at short notice and that even if they had to close a restaurant as a result of an extreme weather event they would pay their variable hours workers for the shifts they were scheduled to do regardless.

Question 16: Do you/workers receive compensation if shifts or hours of work are cancelled? If so, what compensation is provided?

Question 17: Does this compensation vary by different types of worker/work? If so, how does it vary?

Question 18: Are you aware of any best practice examples from other areas of industry where workers receive compensation for shifts or hours of work which are cancelled?

CIPD's survey of 500 employers found that nearly 57% of employers say they don't cancel shifts of variable hours workers at little or no notice, however 6% of employers said they provide compensation when shifts are cancelled at short notice, while 25% report they don't. See Table 5 below.

The survey did not provide data on how much compensation was typically awarded.

CIPD would regard best practice as paying the worker the value of the shift in question if work is cancelled at short/no notice e.g. less than 24 hours.

Table 5: Does your organisation currently provide compensation to workers if shifts are cancelled at little or no notice (for example, less than 24-hours notice)? [Base: 516]

	All employers
Yes	6%
No	25%
We don't cancel shifts	57%
Don't know	12%

Question 19: What impacts, both positive and negative, would this proposed policy have on you (or those you represent) if any?

The main impact for some employers would be the increased cost they would incur as a result of having to compensate workers if they cancel work at short notice, although the extent of this impact would be determined by the notice period set to trigger the payment of compensation. The introduction of a requirement to compensate workers if work is cancelled at short notice might also encourage employers to plan their work scheduling more effectively and reduce the incidence of shifts being cancelled.

Question 20: Noting the three proposed options put forward by the LPC, if compensation were introduced for shifts or hours which are cancelled at short notice, what would you consider to be a 'fair' amount of compensation?

- ***The value of the shift in question***
- ***The worker's appropriate NMW rate multiplied by their scheduled number of hours***
- ***A multiple of the worker's NMW rate***
- ***Other. If so, please specify***

HR practitioners responding to the CIPD survey were most likely to identify the value of the shift in question as a fair amount, with 41% of respondents supporting this option, followed by 25% who said they supported the option of the worker's appropriate NMW rate multiplied by their scheduled number of hours cancelled. In all, 5% of respondents supported compensation being a multiple of a

worker's appropriate NMW. However a further 2% chose an 'other' option while 33% of respondents said 'None of these'. Smaller employers with less than 250 workers were less likely to support compensation being the value of the shift in questions (37%) than larger employers with 250 or more staff (44%).

Among our interviews with HR practitioners there was strong support for compensation being based on the value of the shift in question.

Based on both the survey evidence and individual feedback from HR practitioners, CIPD's view is that compensation to workers who have shifts cancelled at short notice should be based on the value of the shift in question.

Table 6: Which of the following compensation options for workers whose shifts or hours of work are cancelled at short notice would you support if introduced by Government?

	All employers
The value of the shift/hours in question	41%
The worker's appropriate NMW rate multiplied by their scheduled number of hours cancelled	25%
A multiple of the worker's appropriate NMW rate	5%
Other	2%
None of these	33%

Question 21: If compensation were introduced, what should be the cut-off point at which employers have to give their workers notice of a cancelled shift or hours (after which workers would become eligible for compensation)?

CIPD believes that the cut-off point at which employers have to give their workers notice of a cancelled shift or hours should be 24 hours. This was based on the majority opinion among HR practitioners interviewed to inform this response and the need to ensure workers have sufficient time to cancel any arrangements they may have made, such as childcare.

Question 22: If Government were to implement a policy where the notice period for cancelling shifts or hours of work was longer than the amount of time you suggest above, what impact (if any) would this have on you (or those you represent)?

It should be recognised that even a 24 hours minimum notice period for cancelling shifts could have cost implications for employers, such as health and social care providers, as the nature of the work and the demands of patient care mean that shifts do quite often have to be cancelled at much shorter notice. As stated above, NHS trusts typically work to a cut-off point of 4 hours for informing workers that shifts are cancelled, after which compensation is payable. The point was made that a 24-hours baseline standard was achievable but would mean that NHS Trusts and other healthcare providers would incur additional costs that would either be passed on to the public finances or which would impact on trust budgets. CIPD recommends that the Department for Business, Energy and Industrial Strategy consults further with bodies such as NHS Employers and social care providers to understand in more detail the impact of different cut off points at which employers would have to give their workers notice of a cancelled shift of hours and the subsequent cost implications.

A resourcing expert from the health sector also explained that often health care workers who are working on staff banks will say they are no longer available at very short notice which means that no matter how well the employer plans work schedules staffing arrangements do change at short notice in the sector. One large provider of NHS staff through staff banks said that they require workers to give only 8 hours-notice that they are no longer available for work.

Question 23: Should all types of employer, across all sectors, be expected to pay compensation?

- 1. Yes – employers should be expected to pay compensation**
- 2. No – employers should NOT be expected to pay compensation**

Please explain your answer.

In the CIPD's view all types of employers, across all sectors should be expected to pay compensation to workers if shifts are cancelled at short notice.

Question 24: Which workers, if any, should be exempt from receiving compensation?

No workers should be exempt from receiving compensation if shifts are cancelled at short notice

Question 25: In your view, should workers become eligible for compensation from the start of their employment, or should they become eligible after a certain amount of time?

- 1. Guaranteed from the start of someone's employment**
- 2. An individual needs to work for a certain amount of time before becoming eligible**

Please explain your answer.

CIPD believes that workers should be eligible for compensation if shifts are cancelled at short notice from the start of their employment. This is because it will be simpler and easier to enforce if this was the case, with greater clarity for both employers and workers. CIPD members interviewed to inform this response were also unanimous in their view that this should be a day one right.

Question 27: What could employers/employer representatives do to share best practice and drive change through their workforce?

Bodies such as Acas, Citizens Advice Bureau and the TUC, as well as professional bodies such as the CIPD and employer bodies such as CBI, FSB and BCC have a key role in highlighting the introduction of any new rights to combat one-sided flexibility. CIPD already has [detailed guidance for employers on how to manage atypical workers responsibly](#) which we will be updating once any changes to legislation become clear.

Sector bodies such as NHS Employers, the BHA, BRC and Skills for Care representing employers which frequently use variable hours workers can also play a key role in promoting guidance and sharing best practice.