FINANCIAL DIRECTOR

You're fired By Melanie Stern

Employment reform plans aim to reduce tribunals to a trickle and save businesses £40m in the process. Melanie Stern assesses the government's key proposals

IT WAS cheerily pitched as "getting the state out of the way" - Vince Cable's announcement of radical reforms to employment law he claims will save business £40m by making it quicker and cheaper, especially for SMEs, to fire underperformers or make redundancies.

Principal among the proposals are four ideas: making employees pay to pursue claims against their employer; forcing them to take potential claims through the Advisory, Conciliation and Arbitration Service (Acas); the introduction of protected conversations; and reducing the statutory consultation period on collective redundancies by as much as two-thirds.

Slotted into Cable's November speech at EEF, the European manufacturers' association, was a plea that no one should see the changes as a threat to workers' rights. He is merely "improving the process for when staff have to be let go". Trade unions predictably have said they don't believe the changes will create or save jobs.

But Cable himself doesn't seem sure. He points to the OECD view that the UK labour market is among the most lightly regulated of developed economies, while his own Department for Business, Innovation & Skills (BIS) recently found that just 6% of SMEs regard employment regulation as their main obstacle to business.

And finance heads with whom Financial Director spoke have mixed feelings about the impact they can have on SMEs.

Transferring the cost of tribunals from employers to claimants, all employees with a claim will now be obliged to enter into pre-conciliation talks through Acas in the first instance. If that fails, Acas can refer it to tribunal, with employees obliged to pay both to lodge a claim and to pursue it from their own pocket.

The Ministry of Justice is seeking views on two possible fee systems - payment of a fee to lodge a claim and a second to take it to hearing, or a £30,000 threshold so those seeking an award higher than that will pay more to bring a claim.

Employment lawyer Ronnie Fox thinks this will make life easier for SMEs. He believes it is “too easy, cheap and low-risk for a savvy, disgruntled employee to run up costs quickly”. While FDs think it will stem the flow of claims - 218,000 in the past year, with businesses spending some £4,000 defending each claim, and UK taxpayers paying an average £1,900 per claim, says BIS - they foresee complications.

“It will almost certainly stop claims, but that isn’t necessarily good,” says Matthew Howes, a principal with SME interim finance director provider The FD Centre. “The ability to take action will be determined by the depth of employees’ pockets rather than the strength of their case. For SMEs, that could lead to an increase in ‘no win, no fee’ cases from lawyers, which would increase our costs.”

Ian Sharpe, FD at Renewable Technical Services, says: “Fees are probably necessary to reduce vexatious claims, but this change could lead to hardship.”

Duncan Tatton-Brown, CFO at privately owned gym chain Fitness First, thinks it “should help reduce unwarranted claims and speed up resolution at a lower cost”.

But Fox is not convinced. “Acas involvement is already possible, but has rarely proved useful in practice. It’s unlikely to make much difference,” he says.

Fox goes further on proposals to reduce the consultation period for collective redundancies from 90 days to 60, 45 or even 30 days, for which BIS is currently gathering evidence. “The fact is consultation is almost always a complete sham, with a pre-determined outcome. The shorter the period, the better,” he says. “It would be best if the need for such ‘consultation’ could be abolished completely.”

Howes is similarly worried that too short a period could lead to too many or the wrong people being lost to the business, though Sharpe welcomes a reduced period.

One proposal drawing mostly favourable reaction from FDs is “protected conversation’’. Beefing up the current provision for “without prejudice” discussion, employees and employers can raise sensitive issues, including performance or retirement, without bringing a formal dispute. Whereas current provision permits discussion as evidence in a constructive dismissal case if it began before dismissal, protected conversations are inadmissible in a subsequent dispute or tribunal. The government will publish a consultation in early 2012 on this idea.

Sharpe and Howes think it is a good idea to allow discussions to start early, while Fox says it could address problems with existing law relating to without prejudice discussions. “If the new law is expressed in terms easy for the

layman to understand, covering discrimination and unfair dismissal, there are real advantages for businesses," he says.

But do FDs think these measures will help growth and encourage SMEs to take on more staff while the status quo disintegrates before their eyes? Not likely.

"My experience is that businesses do or don't take people on for sound business reasons," says Howes. "If either party is thinking about the employment law ramifications, they are either the wrong person, there isn't a proper business case for the hire, or it's the wrong business." ■