

Theme 5: Legal regulation of the employment relationship

Review of research into the impact of employment relations legislation

In late 2004, Mark Hall and Linda Dickens successfully tendered for a study contract from the DTI to undertake a review of research into the impact of employment relations legislation introduced since 1997. Their report was completed in spring 2005 and published in the DTI's Employment Relations Research Series in October. IRRU doctoral researcher Aristeia Koukiadaki assisted by carrying out a comprehensive literature search for relevant publications from both academic and practitioner sources and compiling a bibliography and synoptic table highlighting the main research findings.

Since 1997 there has been a significant extension in the legal regulation of the employment relationship and Dickens and Hall reviewed the research that has been undertaken into its impact. As well as highlighting key findings, the report identifies the factors affecting impact/compliance, and suggests reasons for the relatively limited amount of primary research in this area. The present Labour government has emphasised the complementarities between the objectives of fairness/security and flexibility/competitiveness. The report indicates possible tensions in this but notes that the working out in practice of the balance and relationship between these two policy objectives remains to be investigated.

Regulation and employment relations in small firms

Paul Edwards and Monder Ram continued their research on the regulation of work in small firms. They produced a forthcoming paper that synthesizes the results of four separate projects. It examines the survival of small low-wage firms in a modern economy, which it explains in terms of the product and labour market conditions facing these firms, together the internal resources of the firms. This set of factors is then elaborated into a formal framework that is used to define a future research agenda. As noted above, current work is refining and applying this framework.

The researchers also continued to develop papers based on their research on the 'informal economy' and the impact of labour legislation. Results are summarized in the box below.

How and Why the Informal Economy Remains Beyond the Reach of Employment Legislation

The National Minimum Wage (NMW) is widely hailed as a success, and evidence suggests that it is very widely known and implemented. But pockets of the economy remain outside its scope. Research, funded by the Low Pay Commission, by Paul Edwards together with Monder Ram and Trevor Jones (DMU) set out to explain why.

The 'informal economy' is an imprecise term with a variety of meanings. The approach adopted here is to view the informal economy as the paid production and sale of goods and services that are unregistered by, or hidden from, the state for tax and welfare purposes, but which are legal in all other respects. This definition distinguishes the informal economy from, on the one hand, the formal sector and, on the other, unpaid work and monetary transactions involving illicit goods and service.

The study, conducted in 2003-04, examined 17 firms from sectors where informality is common, clothing and catering. It included four that complied with the NMW and five that had been studied previously, so as to identify any factors leading to

compliance and whether processes over time were leading to an increase in compliance.

The key finding was that informal employers remained largely immune to the NMW. All the non-compliant firms were, by definition, paying at least some workers below the minimum; but in several of them average wages, and in some cases even the highest wages, were below the NMW level. The main means of evasion of the NMW was the under-declaring of the number of hours worked by employees. For example, a restaurant worker would be paid a fixed sum for a week's work, and actual hours would substantially exceed those formally recorded. Given this, calculating hourly rates of pay must be inexact, but rates as low as £2 per hour were uncovered, with average rates being in the range of £3 to £4. Most owners felt that the NMW, including the progressive up-ratings, had little influence over levels pay. As one employer asserted, the NMW had 'no influence at all. It's just another level of bureaucracy we have to deal with'.

Looking at the five firms studied previously suggested that there was no gradual move towards increased compliance. Firms tended to operate as they always had, and in some cases there was a move deeper into the informal economy, as when clothing firms shifted to produce counterfeit goods.

The main processes leading to these results were two. First, firms were under product market pressure to contain costs. Restaurateurs made repeated reference to the clustering of rival firms, commenting on the 'cut-throat' nature of competition and 'trying to outdo one another'. For virtually all clothing employers, survival rested upon price-cutting, sourcing cheap imports, and a retreat from manufacturing. Second, the labour market continues to supply workers willing to work for extremely low wages. Immigration contributes to this supply.

Firms that complied with the NMW did so mainly because they occupied distinct niches that enabled them to pay relatively high wages. They were assisted in this by being connected to business networks that suggested potential routes out of very competitive low-wage activities.

The informal economy has long existed, and is likely to continue. The implication is that the NMW will not eliminate informal practices, and should not be expected to do so. It may, however, have an effect if combined with other measures to educate firms in the benefits of moving away from low value-added activities. Local business networks are one means of doing so.

In related research, a joint project with WBS's Centre for Small and Medium-sized Enterprises is under way on the relationship between the size of firm and the employment tribunals system. The research, funded by the DTI and mainly involving Sen-Gupta, is using the most recent Survey of Employment Tribunal Applications to assess the likelihood of small firms' being subject to ET claims and also whether firm size affects subsequent aspects of the tribunal process.