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# Beyond Liberalization: Employers' Organizations' Varied Responses to Employment Law


## Structured abstract

*Purpose*

A key meta-narrative of Employment Relations in the UK over recent decades has been that of labour market deregulation. However, governments have simultaneously introduced workplace rights legislation that juridified individual employment relationships. Within this process, employers and their representatives, Employers' Organizations (EOs), are generally depicted as opposing the introduction of employment law or attempting to weaken its application. Contrary to this belief, our research identified a range of other responses to ask: how and why have EO responses varied?

*Design/methodology/approach*

This article draws on primary qualitative and quantitative data from three projects; one examined the totality of EOs in the UK while the others examined topic-specific behaviour of EOs and other actors. The main source is the first project and its 98 interviews with representatives of EOs and related organisations between 2013 and 2017.

*Findings*

We demonstrate that opposition is not the only EO response to individual employment law by identifying three others: compliance, advocating for law, and going beyond legally stipulated requirements by promoting voluntary standards/best practice. The article argues that there are two explanations for this pattern. One is that individual EOs possess different sets of member interests, the other relates to differences in their organizational characteristics.

*Originality*

The article makes two contributions to the literature. One is that our identification of varying responses challenges more unitary accounts emphasising neoliberal and deregulatory patterns. The other lies in our identification of causal forces not previously identified. Both combine to illustrate how the neo-liberal order is not characterised by employer consensus as to regulation.

Keywords: Employers Organizations, Laws and Regulation, UK

## Introduction

A key meta-narrative of Employment Relations (ER) in the UK has been economic liberalization and labour market deregulation, designed in part to enable greater employer discretion when managing the employment relationship (Purcell, 1995; Howell, 2005). Yet the liberalization of collective employment relations and the associated weakening of unions was paralleled by governments' introduction of workplace rights legislation that juridified individual employment relationships (Heery, 2010; Dickens and Hall, 2006). Despite the dominance of deregulatory arguments, Wright et. al. (2019) proposed an alternative meta-narrative where new regulatory modes had emerged to create a fragmented regulatory environment supplanting the once dominant web of rules founded on collective bargaining.

Employer Organizations (EOs) do not feature prominently in the literature on neo-liberalization but when they appear, they are generally depicted as opposing the introduction of new or more prescriptive employment law or attempting to weaken its application (Baccaro and Howell, 2017; Streeck, 2009; Doellgast, Bidwell, and Colvin, 2021). Yet we identify a range of EO responses beyond these assumptions, indicating more varied behavioural patterns. This article examines these dynamics to ask: how and why have EO responses to individual employment law varied?

We demonstrate that opposition is not the only response of EOs to individual employment law, identifying three other responses, namely compliance, advocating for law, and going beyond legally stipulated requirements. Compliance refers to EOs providing legal services and advice, assisting member firms to implement procedures allowing them to remain within the law and minimize the risk of legal action. Advocacy refers to EOs lobbying for new employment

legislation, the strengthening or extension of law, as well as lobbying against the weakening of existing law. Going beyond refers to efforts by EOs to engage constructively with legislation by developing and promoting private voluntary regulation applying to their members that go beyond existing legal norms to improve workplace standards. Our research demonstrates that EO responses are more varied than previously suggested by the literature on liberalization, reflecting the emerging literature on EOs (e.g.: Sheldon et al., 2016; Ibsen and Navrbjerg, 2019) that explores their changing pattern of activities.

This article argues that there are two explanations for the varied responses of EOs. One is that individual EOs possess different sets of member interests such as those embodied within their approaches to Human Resource Management (HRM) as well as members' sensitivity to their branding and political images. The other relates to differences in their organizational characteristics. The leadership of some EOs are interested in social issues while some organizations are mission driven, activist bodies resembling social movement organizations. As such, these EOs are more likely to advocate for new law and encourage their members to go beyond existing laws (Demougin et. al, 2021).

The article makes two contributions to the literature. One is that our identification of varying responses to juridification from UK EOs challenges more unitary accounts (e.g. Baccaro and Howell, 2017) emphasising neoliberal and deregulatory employer response patterns. A variant of the latter that we also challenge argues that employers who go beyond the law by espousing private voluntary regulation do so principally to forestall harder, state regulation (Kinderman, 2011; Rhodes, 2021). Contrary to this view we find instead that EOs supporting voluntary regulation generally call for aspects of employment law to be strengthened. We argue that the contemporary situation in the UK reflects Wright et. al's. (2019) conception of a fragmented

regulatory patchwork, one that is influencing EOs' nature and behaviour. The other contribution lies in our explanation of causal forces not identified by earlier literature. Both contributions combine to illustrate how the neoliberal order is not characterised by employer consensus as to regulation; there is an employer constituency for reversing, going beyond or developing an alternative to neoliberal labour market politics.

## Employer and EOs' opposition to law

An oft-examined theme of ER in the UK over recent decades is the 'end of institutional industrial relations' (Purcell, 1995). This process liberalized ER to erode collective bargaining between EOs and unions that once set non-binding agreements covering wages and conditions for most of the workforce, and abolished state sponsored bipartite wages councils setting wages and terms of employment in sectors where low union density precluded effective collective bargaining. Nevertheless, collective liberalization was paralleled by a gradual juridification of the individual employment relationship. This trend involved a steady accumulation of statutory regulation beginning with those over individual contracts of employment and sex and race discrimination but more recently encompassing topics including minimum wages, maximum working hours and other aspects of equality (Heery, 2010; Smith and Morton, 2006). Much of this legislation was prompted by European Union (EU) directives including those on discrimination that culminated in the Equality Act 2010 setting out comprehensive workplace rights and duties for individuals and employers. These and other laws combine to form a pattern of regulation based around individual legal rights enforceable through legal process and state agencies, as opposed to collective rights designed to strengthen unions and collective bargaining.

Many researchers argue that employers have reacted to juridification within a weakly regulated neoliberal order by generally opposing employment law. Employers' opposition is assumed to be rooted in their shared belief that markets function most efficiently when left unburdened from state regulation, reflecting deregulatory ideology that such regulation can rebound against those that it targets for support, tends not to meet its objectives, and can jeopardize liberty or efficiency (Friedman, 1999; Hirschman, 1991). Employers' viewpoints have also been conceptualized as reflecting the salience of unitary beliefs and ideologies rooted in an ideology of property rights. Such beliefs emphasise notions of negative freedom from external interference and obstruction by others that can add costs, complicate matters, and prompt delays to managerial decision marking (Cullinane and Dundon, 2012).

Researchers have argued that attempted or successful employer escape from employment law has taken two main forms. First, employers and EOs lobbied governments to remove or weaken legal regulation (Baccaro and Howell, 2017). Second, and parallel to EOs targeting governments, individual employers developed strategies to avoid company level legal norms. Streeck (2009) identified 'unruly capitalists' seeking to escape and circumvent legal regulation through loopholes that change institutional functioning. Employer strategies to avoid or blunt the impact of legal norms include outsourcing production or services, changing employment status or contracts, and relocating production and services to other legal regimes to execute 'regulatory arbitrage' (Benassi and Kornelakis, 2021; Doellgast, Bidwell, and Colvin, 2021). This literature identified various mechanisms of institutional change as governments sought, often incrementally, to create market driven and market-accommodating labour markets (Streeck and Thelen, 2005), prompting a weakening of regulatory and legal constraints.

States are often seen as ‘midwives of institutional change’ (Baccaro and Howell, 2011) implying that they are the main creators of institutional change and a deregulated, liberalized order that enhanced employer discretion in wage determination, hiring and firing, and work organization. Although EOs have little presence as actors within this literature (e.g. Streeck, 2009), exceptions exist. One is Howell’s (2016) identification of the radicalization and politicization of EOs in Sweden, France, Germany, and Italy to encompass activities including mission changes, adopting neoliberal reform programmes and a willingness to abandon concertation for a legislative agenda that focusses on retrenching individual and collective rights. Moreover, McIlroy (2008) identified the Confederation of British Industry (CBI) as an important source of deregulatory pressure in the UK.

Another element within this account is a pronounced scepticism as to the embrace of corporate social responsibility (CSR) and other employer-led initiatives that seemingly mitigate neoliberal restructuring. It is common to suggest that their adoption by employers serves to reinforce the neoliberal order (e.g.: Rhodes, 2021). Kinderman (2011) argues that one factor prompting EOs to create soft regulation within the voluntary framework of CSR was their desire to create an alternative to statutory regulation or to forestall its introduction. Given their fears of an increased or continued ‘regulatory burden’, employer driven CSR and its attendant soft regulation shored up the legitimacy of individual businesses within the UK’s business system to complement liberalization and substitute for institutionalized social solidarity as encapsulated in the assertion ‘free us up so we can be responsible!’ (Kinderman, 2011). The result of CSR was a further layer of soft regulation developed by EOs or civil society actors, focusing on social issues such as equality, that was layered on top of existing statutory minimum standards. Overall, these argued linkages between CSR and neoliberalism imply that EOs endorsing and promoting soft regulation of the employment relationship through

voluntary codes and standards will also be combined with attempts to resist or roll-back the hard regulation embodied by employment law.

However, Wright et. al. (2019) offered an alternative to the neoliberal account of progressive deregulation. They agree that the integrated web-of-rules, founded on collective bargaining, which once governed the labour markets of developed economies has suffered long-term erosion. But they also argued that it has been supplemented by new bodies of regulation. Their account focusses on the emergence of a fragmentary patchwork formed from three overlapping modes of regulation operating in tension or complementing each other. The first is the traditional web of joint regulation through collective arrangements; the second is employment law setting statutory minimum standards aimed predominantly at non-unionised lower-skilled occupations and the non-professional private services sector; and the third is a voluntarist, employer-led approach driven by CSR.

Nevertheless, the dominant narrative of deregulation, and assumptions as to how liberalization impacted on employers' response to juridification, combined in two ways to influence the literature on EOs. One was that as the primary activity of EOs was collective bargaining, then researchers generally assumed that employers would be disinterested in organising collectively as bargaining weakened, and that such disinterest would reduce the incidence of EOs. The other was that employers would tend to seek escape from employment law in a unitarist manner, implying that surviving EOs would seek generally to promote deregulation and liberalization.

The first assumption has been challenged by a 'strange-non death' literature (Brandl and Lehr, 2019) arguing that EOs are resilient organizations who adapt to changing circumstances by developing new practices. In the UK, researchers (Gooberman, Hauptmeier and Heery, 2018) identified 447 EOs active within work and employment relations. Their activities included

lobbying, collective bargaining, providing member services such as advising on HRM, and devising and promoting private voluntary regulation. This literature has identified the evolution of EOs across many dimensions and different country contexts. One focus has been on political interest representation. Pluralist lobbying targeting employment law has increased in countries where corporatist approaches declined or disappeared, but researchers elsewhere have explored how EOs have retained involvement in social pacts such as those operating in some Asian countries (e.g. Benson et al., 2017). Another focus has been the diverse nature of EOs in terms of their spatial coverage and origins. Examples include Zhu's (2022) exploration of how EOs in China act as a 'transmission belt' between state and employers, Sezer's (2019) analysis of religious EOs in Turkey using identity and market-based strategies to accrue political influence and legitimacy, and Larouche's (2022) mapping of regional EOs in Quebec. The key theme, however, is that surviving EOs have demonstrated flexibility and adaptation through developing new services to attract and retain members. This focus is especially apparent where collective regulation has declined most. As examples, Sheldon et. al. (2016) observed how EOs in Australia responded to environmental threats to their financial sustainability by broadening their service-based offer to members, while many EOs in the UK have carried out a similar reorientation incorporating a greater focus on political interest representation.

Yet although researchers have examined EOs' reaction to changing contexts, less commonly considered is their varying reaction to employment law. Neglect is prompted by the second assumption that most organisations will seek escape by clustering around deregulatory stances, as suggested by the dominant meta-narrative of deregulation. This assumption has persisted despite literature identifying varied employer responses elsewhere such as those towards unions ranging from suppression to co-operating with them in social partnership arrangements. Researchers have also identified heterogeneous employer responses to liberalization in some

Eurozone countries (Bulfone and Afonso, 2020; Paster, 2018). This article seeks to extend the ’strange-non death’ literature’s exploration of varied employer responses to external change, to include their varied responses to employment law. We test two hypotheses drawn from the literature. The first is that employers are expected to focus on unitarist attempts to escape from employment law through deregulation and CSR (Rhodes, 2021; Kinderman, 2011). The second is the emergence of a fragmentary patchwork formed from three overlapping modes of regulation (Wright et al, 2019), prompting EOs to exhibit more varied approaches to employment law.

## Methods and data

In developing our argument, we use primary data from three projects. The first examined the totality of EOs in the UK. It broadened the definition of employer collective organisations beyond those bargaining collectively to instead capture membership based EOs in the UK active across work, ER, and HRM (Gooberman, Hauptmeier and Heery, 2018). We developed four criteria to identify such organisations. First, organisations had to demonstrate activity within work, ER or HRM. This could include any of the following: collective bargaining, providing advice on employment law or health and safety, recruitment support, training, voluntary standard setting, or political representation on work and employment topics. Second, their membership base must be formed predominately from employers. Third, members must pay membership fees. Finally, EOs needed to demonstrate significant online activity, to help weed out inactive organisations. We used these criteria to identify 447 EOs. We then carried out 98 semi-structured interviews between 2013 and 2017 with representatives from these UK-wide and regional EOs, unions, governments, civil society organisations, member firms, and experts.

The second and third projects examined topic-specific behaviour of EOs and other actors. The second project examined the Real Living Wage throughout the UK, a voluntary employment standard. The Real Living Wage emerged from the community organising movement but is promoted through an accreditation process that includes employers and EOs (Heery, Hann and Nash, 2023) and our data highlights how and why some EOs promoted this standard. We draw here on some 100 interviews carried out between 2015 and 2020 with campaigners, representatives of UK wide and regional EOs, trade unions, public sector officials, and companies accredited as Living Wage Employers. The final project examined the creation of the Agricultural Advisory Panel for Wales, a bi-partite body including EO representatives that specifies statutory minimum wages and other employment conditions (Gooberman and Hauptmeier, 2023). We draw here on interviews carried out mainly in 2019 with representatives of regional EOs, unions and governments active within agricultural and labour regulation to highlight varying employer viewpoints towards statutory ER regulation.

In what follows, we draw on these qualitative data to identify examples of EOs' varying response to employment law. The bulk of data used derive from the first project given its breath. Interviews carried out as part of this first project sought to uncover the characteristics and functions of EOs across their organisation, membership and activities. Interview themes included the evolution of member services and how EOs defined the interests of their members and represented them through political channels. However, topic specific data amassed by the second and third projects provide detail of individual EO responses that we have incorporated into this study to further illustrate our arguments. Data derived from the second and third project are indicated within the text – all other are from the first.

## Varied EO responses to employment law

This section details the four types of employer responses, namely (1) opposition (2) compliance (3) advocating (4) going beyond.

*1: Opposition*

The first reaction can be seen in EOs opposing employment law through seeking to prevent proposals from being enacted or minimizing their impact on employers once enacted. This is a widespread response pattern pursued through EOs' lobbying and political representation. Their methods include formal mechanisms ranging from responding to government consultations and participating in parliamentary inquiries, to more informal approaches such as meeting civil servants and politicians.

Nevertheless, the extent to which EOs are committed to or are successful in blocking or minimizing employment law varies. Moreover, the commitment of individual EOs to opposing law can change over time while EOs representing the same employer constituency can exhibit opposing views. One example of successful intervention to block law relates to EU holiday back pay owed to employees in some circumstances. Before the UK's exit from the EU, a court ruled that EU legislation allowed the payment of long-term holiday back pay, which could have resulted in significant costs to employers. EOs lobbied to address the impact of this judgement, prompting the government to create a working group including EO representatives that developed suggestions to offset European legislation. Some of these suggestions were then implemented to effectively reverse the court judgement (Gooberman, Hauptmeier and Heery, 2018). Another example, identified by the third dataset on the reregulation of agricultural

minimum wages in Wales, relates to how such wages in England and Wales were set by a bipartite Agricultural Wages Board, the UK's only surviving wages council. The National Farmers' Union (NFU) called for its abolition on deregulatory grounds, a position accepted by the UK Government which abolished the board (Gooberman and Hauptmeier, 2023).

There are, however, many examples where EOs were less successful. One was attempts to minimize annual increases in statutory minimum hourly wages over the past two decades on the deregulatory grounds that such increases will raise costs and harm the ability of businesses to create and sustain employment. One sectoral EO argued, for example, that in a 'deeply challenging' trade environment, increases to minimum wages would harm their members' ability to 'meet their wages bill' and was 'potentially unsustainable' (Interview with representative of sectoral EO, 8.11.2013). But despite such representations, minimum wages have increased significantly in recent years as the UK Government adopted an explicit target of pegging the statutory National Living Wage at two-thirds of median hourly pay. Other EOs made similarly unsuccessful attempts to prevent the creation of the Pensions Levy as well as the Apprenticeship Levy, a compulsory payroll levy to fund training, described by one EO representative as a 'job killer' (Interview with EO representative).

*2: Compliance*

The second EO reaction is pragmatic compliance with individual employment law, carried out through three approaches. The first is offering general guidance to members about the content of legislation and how it should be implemented. One frequent topic is the statutory minimum wage, especially as governments have sought to boost the impact of such legislation through increasing these wages and 'naming and shaming' non-compliant employers. Some EOs, such

as the National Hairdressers Federation, responded by urging members to comply with all aspects of the statutory regime, including measures regulating payments to apprentices, and publishing the risks of non-compliance through circulating guidance to their members (National Hairdressers Foundation, 2022).

The second approach is offering legal advisory services across individual employment law to ensure that members can demonstrate compliance and minimise risks associated with non-compliance. Around half of all EOs identified by the research on the totality of EOs in the UK carried out these activities (Gooberman, Hauptmeier and Heery, 2018) through two methods. One, carried out by a minority of EOs, was the provision of legal advice and support through in-house teams. An example is that EOs representing the engineering and manufacturing industries in different UK nations and regions generally employ in-house lawyers who advise members on how to comply with employment law. Scottish Engineering, for example, offers advice on topics including unfair dismissal, absence management, performance management, equal pay, disciplinary and grievance procedures, dealing with unions, redundancy, discrimination, and whistleblowing (Scottish Engineering, 2023). They also advise members how to demonstrate compliance with the law at employment tribunals. One EO observed that they provided:

> Support when there is any kind of issues within the employment space, whether that's a grievance to an employment tribunal claim and us supporting and advising on that claim, to discrimination claims, to anything that can happen in the workplace [the EO] supports its members when dealing with these issues (interview with EO representative, 5.2.2015).

The other method is to collaborate with external providers to offer legal advice to members on their compliance. Many EOs offer outsourced legal hotlines that provide members with such support. One EO representative observed that:

> We offer a legal service for our members as employers for employment law. So, if they've got an issue like they need to make somebody redundant or they've got somebody who's done something they shouldn't have done and they need to deal with it, or they just want contracts of employment, we've got that on offer for them (interview with EO representative, 21.06.2017).

Overall, this approach to law is reactive and focusses on minimizing risks to employers stemming from failure to comply with employment law. This includes the avoidance of legal fines through court orders but also focusses on reputational risks with customers, including other companies that might disapprove of employment rights violation.

*3: Advocacy*

The third EO reaction was advocacy, involving lobbying for new employment legislation, making a case for the strengthening or extension of existing law, and campaigning against the weakening or withdrawal of employment legislation.

Employer Forums are a new type of EO (Demougin et. al, 2021) that often are enthusiastic advocates for stronger legal protections for individual workers. They focus on equality topics such as disability, carers, or diversity, aiming to improve labour and social standards for specific types of workers within their member organizations. The extent to which government

policy impacts on such topics prompts a focus on advocacy and lobbying to develop new employment law or strengthen those already existing. One example is the Disability Employment Charter. The Business Disability Forum (BDF) was a founding signatory to this charter setting out actions that the government should take to address disability employment disadvantage (Business Disability Forum, 2022). Proposed legal strengthening includes requiring all employers with more than 250 employees to annually publish data on the number of disabled people they employ, and their disability pay gap, and requiring employers to notify employees within two weeks on decisions regarding reasonable adjustment of working condition requests made under the Equality Act (2010). Signatories include unions, non-governmental organizations, and other employers such as local authorities, residential care homes providers, the Post Office, and McDonalds. Becoming a signatory does not mean that employer behaviour will change automatically, but it does signify their support for greater statutory regulation. Other Employer Forums have also been active. Employers for Carers lobbied the government to introduce a legal right to unpaid carer's leave and the ability to request flexible working from day one of starting their job, and Working Families advocated for additional leave and pay for employees caring for infants receiving neonatal care.

Moreover, the CBI, the UK's primary employers' confederation, has on occasion argued for new employment law. One example was its advocacy for a new legal duty for employers to monitor ethnic pay gaps (Trades Union Congress, 2021). Yet advocating against deregulation often divides EOs. One example of mixed views was exposed by the government commissioned Beecroft Report on employment law. The report proposed the removal of employee protections against unfair dismissal through introducing compensated 'no-fault' dismissal on the deregulatory grounds of helping businesses to become 'more efficient, more competitive on a domestic and global basis' (HM Government, 2012, 1). EOs divided into two

opposing camps. One, formed from EOs including the CBI and the British Chambers of Commerce, was cautiously supportive of the proposals citing traditional deregulatory grounds of increasing employer competitiveness. The other, formed from EOs including the Federation of Small Businesses and the EEF (now Make UK) were opposed as many of their members viewed excessive deregulation as disruptive given its removal of minimum standards applying to all employers. This dynamic was reflected by one EO representative observing that:

> The Government and ministers probably thought, 'Oh business organisations are going to love this' and then we took it out to members and nobody wanted it. They said, 'Absolutely that is not how our business runs' and we campaigned against it (Interview with EO representative, 5.2.2015).

Their opposition reflected how deregulatory proposals often originate from political interests and are not always a direct expression of employer interests articulated through EOs whose members may be opposed. Diverging views prompted the government to consult on introducing 'compensated no-fault' dismissal for small firms only, before deciding not to proceed.

A second example of deregulation dividing EO advocacy relates to the setting of agricultural wages in Wales explored by our third project. Although employment law is not a devolved competence, the abolition of the Agricultural Wages Board covering England and Wales prompted a constitutional dispute between the Conservative-led UK Government that wanted to abolish such statutory minimum wage setting in Wales, and the Labour-led Welsh Government that wanted to retain it. Farming employers in Wales were represented by two EOs, the NFU Cymru and the Farmers' Union of Wales (FUW). NFU Cymru opposed the

continuation of wage setting arguing that the national minimum wage provided a sufficient wage floor, while advocating deregulation of other employment terms covered by the complex regulatory mechanism. However, the FUW supported the continuation of industry-level statutory wage setting arguing that it helped to reduce workplace conflict. One key difference, however, relates to how the FUW originated in the 1950s as a reaction against employer interest representation being centralised in London. The FUW's origin means that it has often tended to be generally more supportive of the principle of governing bodies with Wales specific remits than does the NFU Cymru, an autonomous part of a larger NFU representing farmers throughout England and Wales. Yet despite their differences, both EOs joined the Welsh Government's new bipartite regulatory panel within which they negotiated agricultural minimum wage levels (Gooberman and Hauptmeier, 2023).

*4: Going beyond*

The fourth reaction attempts to constructively engage with the law and to go beyond it, encouraging the adoption of higher, voluntary employment standards. Here the law is a stimulus to innovation, but action goes beyond promoting mere compliance. One example is private voluntary regulation developed by Employer Forums (Demougin et. al, 2021). Forum members tend to be larger than average UK firms and are over-represented in human-capital intensive industries such as banking, insurance, professional services, and the public sector. Employer Forums have typically used employment law as a platform upon which to build bodies of good practice to be promoted and embedded across their memberships through consultancy, advisory services, codes of conduct, accreditation, and benchmarking.

Central to Employer Forums' 'going beyond' was their circular processes of self-assessment, evaluation, and revision of voluntary employment standards. Some forums also enhanced their standards once most members met them, to create a 'stretching exercise' whereby the standards applied by its members would be increased by a 'ratchet' effect. Examples of such processes include the BDF's business disability standard, Working Families' benchmarking of members to identify those promoting flexible working and work-life policies and practice, and Employers for Carers' evaluations of member practices. These standards are promoted through business case arguments, suggesting that improving employment standards for employees also produces better business results. For example, adopting enhanced norms and standards for employees with caring responsibilities might allow them to better balance work and family responsibilities and improve their performance. Such norms often operate by enabling the hiring and retaining of employees with domestic responsibilities that need to be balanced with their work if they are to be successfully integrated within the labour force.

Support for private regulation is not coupled with hostility to legal regulation, being prompted instead by the potential to drive better workplace outcomes through layering soft regulation onto legal regulation. Some employers have supported voluntary regulation within corporate social responsibility initiatives as an alternative to law (Kinderman, 2011). One historic example was the launch of gender and race equality initiatives by Business in the Community in the early 1990s. These initiatives were designed explicitly as a voluntary alternative to the strengthening of legislation. There was, however, no argument that the Sex Discrimination Act 1975 or the Race Relations Act 1976 needed to be withdrawn or weakened – there was no positive deregulatory argument but rather one that voluntary initiatives could serve better than strengthening the law. More recently, EOs have advocated both for hard law as well as for

private regulation that goes beyond such law, implying that they and their members support both forms of regulation and do not see them as exclusive alternatives.

Another area where employment law triggered innovative voluntary extension of norms is the minimum wage. Employer activity within this topic was highlighted by data gathered by the second dataset, derived from our project exploring the voluntary Real Living Wage. Building on the government's statutory minimum wage, the Living Wage Foundation promoted a voluntary Real Living Wage, an hourly minimum rate greater than that stipulated by the government. The number of employers paying the Real Living Wage has risen in recent years to more than 12,000, impacting the wage levels of more than 400,000 employees (Living Wage Foundation, 2023).

Some EOs have supported the Real Living Wage by becoming accredited as Real Living Wage employers. Of the 12,000 employers accredited as Real Living Wage employers, around one hundred are collective bodies including EOs such as Scottish Engineering, the Association of Colleges, and the Welsh Local Government Association, as well as Employers in Voluntary Housing and the Employer Forums Business in the Community and Inclusive Employers. Becoming a Real Living Wage Employer often has few direct consequences for these bodies as most are small employers and may not have many low-paid employees; joining is instead an expression of support for the campaign. One EO explicitly linked their decision to join the Real Living Wage to their origins within social movement campaigning, observing that:

> We were desperate to get on it [the Real Living Wage] not because we felt it would make thousands of people much richer but because we thought it was the right thing to

> do and we thought because of our roots, we should be doing that […] we should be giving leadership (Interview with EO representative, 11.05.2017).

As well as becoming Real Living Wage Employers, some EOs take other supportive actions that divide into four categories. The first is arranging seminars for members to raise their awareness of the initiative; the Universities and Colleges Association and the Association of Colleges both provide such events. The second is arranging briefings to persuade members to become accredited employers, often through 'business case' arguments; examples include the Welsh Local Government Association and some Chambers of Commerce. One EO representative argued that "We live and breathe it [the Living Wage] and must act ourselves […] we believe in it", before observing that it was important for the EO to have "credibility" if it was saying to its member businesses that "You should be thinking about this" (Interview with EO representative, 11.2019). The third action is taking part in place-based initiatives where a steering group of employers encourage local employers to join. The final action is joining broader initiatives. One example is the Good Business Charter formulated with the backing of the CBI that comprises a list of business standards, the first of which is accreditation as a Real Living Wage Employer. There is also a streamlined version for small organizations, developed with the support of the Federation of Small Businesses.

Importantly, EOs that have either become accredited Real Living Wage employers or who have promoted the initiative to their memberships tend to operate in high-paying industries such as professional services and information technology, meaning that most of their employee hourly wages are likely to already meet or exceed the requirements of the Real Living Wage. In contrast, EOs in lower paying industries such as retail and hospitality are less likely to participate as the cost implications of the Real Living Wage are more serious for their

membership as it is more likely that their payroll costs will increase. One cross-sectoral EO observed that many of its member firms joining the Real Living Wage were high-tech businesses and their participation was often a 'paper-exercise, particularly for digital businesses and professional practices' but other businesses, especially those in hospitality, were unwilling to join given the cost implications (Interview with cross-sectoral EO representative, July 2015). Nevertheless, this relationship is not exclusive and some EOs and their member businesses in low paying industries have supported the Real Living Wage, often prompted by factors such as recruitment difficulties.

The case highlights how EO promotion of voluntary standards can have significant workplace impacts leading to significant pay increases for many low paid workers. In addition, their support also helped the voluntary standard gain political credibility as it demonstrated the feasibility of higher minimum wages, one factor prompting the government to rename its statutory National Minimum Wage as the National Living Wage in 2016 before substantially increasing its level.

**Variation and explanation**

How frequent were these four responses to employment law? Answering this question is hampered by EOs' behavioural inconsistency across two dynamics. One is how they often simultaneously exhibit multiple responses across different topics. The CBI, for example, cautiously welcomed the Beecroft report and its deregulatory proposals, but later supported a new legal duty for employers to monitor ethnic pay gaps. The other is where EOs representing similar employers exhibit different responses. One example was uncovered by the third dataset,

on agricultural minimum wages in Wales. Here, the responses of the two farming unions differed, attributable largely to their different origins.

Yet some quantification is possible. One key indicator of the second response, compliance, is EO provision of reactive advice on their members' compliance with employment law. Such advice was provided by around half of the 447 EOs identified by our first project. Moreover, the most dedicated proponents of the third and fourth positions, advocacy and going beyond, are Employer Forums – out of the 447 EOs identified, 11 are Forums although their membership features large employers that boost their reach. Nevertheless, the Forums have been joined on the specific topic of the Real Living Wage by some more general EOs. All this suggests that EO responses to employment law operate along a constantly evolving continuum, with some bunching occurring around the second reaction of compliance.

These variable EO responses to employment law, we believe, are an expression of two factors; one is member interests, and the other is differences in their organizational characteristics prompted by their founding circumstances. In relation to the first factor, EOs possess different sets of members with varying interests shaping their perception of employment law across two topics. The first is labour market topics embodied within their approach to HRM, and the other is their image sensitivity (see Table 1).

**Table 1: EO member interests**

| | EO member characteristics | |
|---|---|---|
| **Response to law** | HRM approach | Image Sensitivity |
| Opposing | Low | Low |
| Compliance | ↓ | ↓ |
| Advocacy | ↓ | ↓ |
| Going Beyond | High | High |

In relation to HRM, companies in lower value-added sectors where labour costs form a high proportion of total costs are concerned with the financial implications of legislation, prompting opposition to employment law. Conversely, EOs representing employers relying on highly qualified employees for innovation and competitiveness tend to support workforce development and retention through expansive HRM, which can be supported through EO private voluntary regulation. Additionally, sectors formed from larger companies where wages account for a smaller proportion of costs or public sector organizations with more socially orientated missions may be more likely to pragmatically accept law or go beyond it. For example, Employer Forum members tended to be larger than typical UK firms, while Living Wage accreditation amongst employers and their representatives is biased towards high-paying industries and high-paying regions (Heery, Hann and Nash, 2023).

Overall, EOs' compliance function reproduces a proceduralist, often minimal conception of HRM, which is adversarial in its assumptions. EOs when they try and shape HR practice, it suggests, tend not to be concerned with high commitment forms of HRM but rather with minimal compliance, in which the workforce is seen as a potentially recalcitrant risk.

The second set of interests relates to image sensitivities. One sensitivity is commercial and relates to branding. Companies relying on a positive brand image in consumer markets tend to be more willing to collaborate with EOs supporting compliance or going beyond the law, and this dynamic can also impact on companies providing services such as cleaning and hospitality to high profile companies. Such employer responses have been identified as a factor within the enforcement of statutory minimum wage regulation (Slaughter, 2021) as reflected by the government's 'naming and shaming' of employers failing to discharge statutory obligations. Conversely, companies within supply chains selling primarily to other companies that do not directly face consumer markets or serve high profile companies may be less sensitive. The other sensitivity relates to the social and political salience of many employment-related topics. Many companies are susceptible to mobilization by NGOs, often using consumer pressure to heighten the political salience of selected topics. NGOs shape the behaviour of employers not only through direct interaction but also indirectly, lobbying the state to adopt their agenda prompting pressure on employers to amend employment practices. In other words, companies join EOs that encourage their members to voluntarily go beyond the law to manage their reputation within social, supplier, consumer, and political contexts. These dynamics were apparent within Employer Forums whose memberships often featured prominent global brands. BDF members, for example, included Deutsche Bank, IKEA, Roche, BP, and Airbus.

The other explanation of EO responses relates to differences in how they are founded and their subsequent mission, and how they are governed. EOs exhibiting a combination of social mission and committed leadership will tend to concentrate within the upper end of the response continuum. Conventional EOs are membership and service providing organizations founded by employers coming together in an association. Many EOs, such as Make UK, emerged as bargaining associations but they reoriented subsequently towards providing member services

after their multi-employer agreements broke down. However, the leadership of some EOs place a greater focus on balancing commercial and social considerations. The most prominent are Employer Forums; mission driven, activist organizations resembling professional social movement organizations created by social entrepreneurs emerging from social movements. Their founders attracted financial support from businesses, deploying business case and reputational arguments. One interviewee recalled how their forum was created in the 1960s by a 'campaigning [and] amazing' founder when 'there weren't really any [employment] rights on the statue book' for the social group she wanted to assist (Interview with EO representative, 02.03.15). Employer Forums often work closely with 'champion' member firms and rely upon a network of movement supporters in member organizations. Finally, they tend to have weak accountability to members while more 'normal' EOs have representative constitutions that enable linkages between member opinions and organizational policies. They resemble social movement organizations and often feature social movement activists amongst their employees and advisers. Yet they do not rely on mobilization to secure their objectives but instead achieve their aims by becoming accepted by governments as constructive interlocutors.

In contrast to arguments that EOs promote voluntary standards to oppose new law (Kinderman, 2011; Rhodes 2021), promotion has been accompanied by calls to strengthen individual employment law, a combination at odds with critical interpretations. As examples, Employers for Carers advocated for increased employment rights for carers, Working Families for additional leave and pay for employees caring for infants receiving neonatal care, and the BDF for mandatory pay gap reporting. Meanwhile, these EOs simultaneously operate private voluntary regulation. In addition, where other EOs have proposed going beyond, they have not suggested that doing so justifies the weakening of legal employment rights. For example, we have not identified any EOs advocating that its member organizations pay the Living Wage

while calling for the weakening of statutory minimum wage regulation. Different forms of regulation are not alternatives but should be viewed stratigraphically, one building on the other; an approach that is dominant amongst EOs seeking to go beyond the law.

**Conclusion**

In this article, we believe that we make two significant contributions to the literature on EOs. The first contribution tests two hypotheses drawn from the literature. One is prompted by the dominant interpretation of a neoliberal transformation of ER (e.g. Baccaro and Howell, 2017). EOs do not feature prominently in this literature but when they appear (Kinderman, 2011), they are seen as naturally hostile to employment law, anxious to maximize the decision-making freedoms of their members, and lobby to block new law and roll back existing regulation. The other is the emergence of a fragmentary patchwork formed from three overlapping modes of regulation (Wright et al, 2019). Our research concludes that employers, and by extension EOs, are not essentially 'unruly' (Streeck, 2009) and consistently hostile to employment law as the first hypothesis suggests. They have instead adopted a variety of responses to employment law in an environment and manner corresponding to that suggested by the second hypothesis.

We identify four EO responses to employment law. The first is opposition to new law and lobbying to weaken existing regulation. This is as suggested in the neoliberal account although it is often limited in scope, accepting that the broader set of employment rights should remain unchanged. The second reflects this acceptance, prompting around half of all EOs to routinely advise their members as to compliance. Third, in a few cases EOs have lobbied for new law or for the strengthening of existing regulations, activities counterintuitive to a neoliberal perspective. Our examples come primarily from 'mission-driven' EOs, but this response is also

found elsewhere. The final reaction is to 'go beyond' the law by advocating voluntary labour standards exceeding legal minima. Importantly, the third and fourth responses appear to sit together, not the first and fourth as suggested by other researchers arguing from the neoliberal perspective (Kinderman, 2011; Rhodes 2021).

The other contribution explains variation. One element is structural: we argue that responses to employment law reflect the characteristics of EO members, articulated through internal systems of representation. Thus, opposition to aspects of employment law, such as minimum wage regulation, is a feature of EOs representing small businesses in sectors where margins are tight and firms are delivering low value-added goods and services such as agriculture, hospitality, and personal services. Acceptance of law and advocacy of new statutory and voluntary regulations, in contrast, tends to be found in organizations representing large businesses in high value-added sectors such as finance, tech, and professional services. The strong support of tech and legal EOs for the Living Wage exemplifies this pattern.

The second element of our explanation is ideational. We argue that a sub-set of EOs are mission-driven and display some of the characteristics of social movement organizations. The clearest examples of these are the mission-driven Employer Forums that have often argued for extending employment law while developing their own standards and codes that reach beyond the law. It is important to note, however, that behaviour of this type is not confined to Employer Forums but encompasses a broader set of EOs. EOs representing cooperatives, social enterprises, faith-based organizations, and a variety of not-for-profit organizations involved in anti-poverty and social justice activities, have also embraced voluntary regulation that goes beyond the law.

Our research supports a conception of contemporary employment regimes as increasingly complex and multiform, both in terms of the formal institutions that represent and articulate interests as well as the bodies of regulation that comprise these regimes. Wright et al. (2019) highlighted how different types of responses to liberalization prompted the emergence of a 'web of rules' formed from three components operating in tension or through complementing each other; a traditional web of joint regulation through collective bargaining or equivalent arrangements; employment law setting statutory minimum standards aimed predominantly at non-unionised lower-skilled occupations; and, a voluntarist, employer-led approach driven by CSR and high-commitment HRM. Yet our research has limitations such as those prompted by the difficulty of quantifying the frequency of differing EO responses, a topic that future studies could explore.

Accounts of neoliberalism arguably suppress such complexity. They identify instead a single impulse towards deregulation and liberalization as well as 'unruliness' on the part of employers and their organizations, articulating an account identifying one dominant regulatory trend of rolling back protective regulation and widening employer discretion. Yet our research identified variation in EO responses to employment law, which in turn arises from variation in both the structure and purpose of EOs. Not all EOs are subaltern actors in the process of liberalization, and neither are they united behind a single project of marketization and the associated creation of an employment regime characterized by flexibility, precarity and management discretion. We argue that the image of a patchwork of different modes of regulation (Wright et. al., 2019) accurately captures the contemporary situation in the UK where it influences the nature and behaviour of its EOs.

**Bibliography**

Baccaro, L. and Howell, C. (2011), "A common neoliberal trajectory: The transformation of industrial relations in advanced capitalism", *Politics & Society,* Vol. 39 No. 4, pp. 521-563. https://doi.org/10.1177/0032329211420082

Baccaro, L. and Howell, C. (2017), *Trajectories of Neoliberal Transformation: European Industrial Relations Since the 1970s.* Cambridge University Press, Cambridge.

Benson, J., Zhu, Y. and Gospel, H. (2017), *Employers' Associations in Asia: Employer Collective Action.*: Routledge, New York.

Benassi, C. and Kornelakis, A. (2021), "How do employers choose between types of contingent work? Costs, control, and institutional toying", *ILR Review*, Vol. 74 No 3, pp. 715-738. https://doi.org/10.1177/0019793920944910.

Brandl, B. and Lehr, A. (2019), "The strange non-death of employer and business associations: An analysis of their representativeness and activities in Western European countries", *Economic and Industrial Democracy*, Vol. 37 No. 1, pp. 73–94. http://doi.org/10.1177/0143831X16669842

Bulfone, F. and Afonso, A. (2020), "Business against markets: employer resistance to collective bargaining liberalization during the Eurozone Crisis", *Comparative Political Studies*, 53(5): 809–846. https://doi.org/10.1177/0010414019879963

Business Disability Forum (2022), "Disability Employment Charter: update", available at https://businessdisabilityforum.org.uk/news-opinion/disability-employment-charter-update/ (accessed 22 May 2023)

Cullinane, N. and Dundon, T., (2012), "Unitarism and employer resistance to trade unionism", *The International Journal of Human Resource Management*, Vol. 25 No. 18, pp. 2573-2590. https://doi.org/10.1080/09585192.2012.667428

Demougin, P., Gooberman, L., Hauptmeier, M. and Heery, E. (2021) 'Revisiting Voluntarism: Private Voluntary Regulation by Employer Forums in the United Kingdom'. *Journal of Industrial Relations, Vol* 63 No 5, pp. 684–705. https://doi.org/10.1177%2F00221856211038308

Dickens, L. and Hall, M. (2006), "Fairness – Up to a point: Assessing the impact of new Labour's employment legislation", *Human Resource Management Journal,* Vol. 16 No. 4, pp. 338–356. https://doi.org/10.1111/j.1748-8583.2006.00024.x

Doellgast, V., Bidwell, M. and Colvin, A.J. (2021), "New Directions in Employment Relations Theory: Understanding Fragmentation, Identity, and Legitimacy", *ILR Review*, Vol. 74 No. 3, pp. 555-579.
https://doi.org/10.1177/0019793921993445

Friedman, M. (1999), *The Lexus and the Orange Tree*. Anchor Books, New York.

Gooberman, L., Hauptmeier, M. and Heery, E. (2018), 'Contemporary Employer Interest Representation in the United Kingdom', *Work, Employment and Society,* Vol. 32 No 1, 114–132: https://doi.org/10.1177/0950017017701074

Gooberman, L. and Hauptmeier, M. (2023), 'Union Coalitions and Strategic Framing: The Case of the Agricultural Advisory Panel for Wales'. *Work, Employment and Society,* Vol 37 No 5, pp. 1226–1243 https://doi.org/10.1177%2F09500170211069787

Heery, E (2010), "Debating employment law: responses to juridification", in Blyton P, Heery E. and Turnbull P. (eds.) *Reassessing the Employment Relationship*. Palgrave Macmillan, Basingstoke, pp. 71-96.

Heery, E., Hann, D., and Nash, D. (2023), *The Real Living Wage: Civil regulation and the Employment Relationship*. Oxford University Press, Oxford.

Hirschman, A. (1991), *The Rhetoric of Reaction: Perversity, Futility, Jeopardy*. Harvard University Press, Cambridge MA.
https://doi.org/10.1177/0950017004045547

Howell, C. (2005), *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain, 1890–2005*. Princeton University Press, Princeton, NJ.

Howell, C. (2016), "Regulating class in the neoliberal era: the role of the state in the restructuring of work and employment relations", *Work, Employment and Society*, Vol. 30 No. 4, pp. 573-589.
https://doi.org/10.1177/0950017015595954

HM Government (2012), "Report on Employment Law", available at https://www.gov.uk/government/publications/employment-law-review-report-beecroft (accessed 18 May 2023)

Ibsen, C. L. and Navrbjerg, S. E. (2019), "Adapting to survive: The case of Danish employers' organizations", *Human Resource Management Journal*, Vol. 58 No. 5, pp. 1–15.
https://doi.org/10.1111/1748-8583.12182

National Hairdressers Foundation (2022), "National Minimum Wage Rises", available at https://www.nhbf.co.uk/news-and-blogs/blog/national-minimum-wage-rises-for-hair-and-beauty-salon-owners/ (accessed 20 May 2023)

McIlroy, J. (2008), "Ten years of New Labour: workplace learning, social partnership and union revitalization in Britain", *British Journal of Industrial Relations*, Vol 46 No 2, pp. 283-313.
https://doi.org/10.1111/j.1467-8543.2008.00678.x

Kinderman, D. (2011), "'Free us up so we can be responsible!' The co-evolution of corporate social responsibility and neo-liberalism in the UK, 1977–2010", *Socio-Economic Review,* Vol 10 No. 1, pp. 29–57.
https://doi.org/10.1093/ser/mwr028

Larouche, M. (2022), Representing the Interests of Quebec Employers: The Contribution of Regional Employers' Organizations. In Gooberman, L. and Hauptmeier, M (eds.) *Contemporary Employers' Organizations* (pp. 196-212). Routledge, New York.

Living Wage Foundation (2023), "For the Real Cost of Living", available at www.livingwage.org.uk" (Accessed 22 May 2023)

Paster, T. (2018), "How do Business Interest Groups respond to political challenges? A study of the Politics of German Employers", *New Political Economy*, 23:6, 674-689.
https://doi.org/10.1080/13563467.2018.1384453

Purcell, J. (1995), "Ideology and the end of institutional industrial relations: evidence from the UK", in Crouch C and Traxler F (eds) *Organized Industrial Relations in Europe: What Future?* Aldershot; Brookfield, VT: Avebury, pp. 101–19.

Rhodes, C. (2021), *Woke capitalism: How corporate morality is sabotaging democracy*. Policy Press, Bristol.

Scottish Engineering (2023), "Advisory Services", available at
https://www.scottishengineering.org.uk/become-a-member/ (accessed 17 May 2023)

Sezer, L. A. (2019), Employers' organisations as social movements: Political power and identity work. *Human Resource Management Journal*, 29(1), 67-81.
https://doi.org/10.1111/1748-8583.12209

Sheldon, P., Nacamulli, R., Paoletti, F. and Morgan, D. E. (2016), "Employer association responses to the effects of bargaining decentralization in Australia and Italy: Seeking explanations from organizational theory", *British Journal of Industrial Relations,* Vol. 54 No. 1, pp.160–191.
https://doi.org/10.1111/bjir.12061

Smith, P. and Morton, G. (2006), "Nine years of new labour: Neoliberalism and workers' rights", *British Journal of Industrial Relations,* Vol 44 No 3, pp. 401–420.
https://doi.org/10.1111/j.1467-8543.2006.00506.x

Slaughter, H. (2021), *No Shame, No Gain? The Role of Reputation in Labour Market Enforcement*. Resolution Foundation, London.

Streeck, W. and Thelen, K. (eds.) (2005), *Beyond Continuity, Institutional Change in Advanced Political Economies*. Oxford University Press, Oxford.

Streeck, W. (2009), "Institutions in History: Bringing Capitalism Back", in Morgan G. et al. (eds.) *The Oxford Handbook of Comparative Institutional Analysis*. Oxford University Press, Oxford, pp. 659-686.

Trades Union Congress (2021), "The TUC, CBI and EHRC issue joint call for mandatory ethnicity pay gap reporting", available at: https://www.tuc.org.uk/news/tuc-cbi-and-ehrc-issue-joint-call-mandatory-ethnicity-pay-gap-reporting (accessed on 18 May 2023)

Wright C., Wood, A., Trevor, J., McLaughlin, C., Huang, W., Harney, B., Geelan, T., Colfer, B., Chang, C., and Brown, W. (2019), "Towards a new web of rules: an international review of institutional experimentation to strengthen employment protections", *Employee Relations*, Vol. 41 No. 2, pp. 313–33.

Zhu, J. S. (2022). Employers' Organizations in China: Transmission Belt between Members and State. In Gooberman, L. and Hauptmeier, M (eds.) *Contemporary Employers' Organizations* (pp. 105-121). Routledge, New York.