

Does Employment Regulation Burden Small Employers?

John Kitching

ESRC Seminar on the **Regulation of Work and Employment**

Newcastle University Business School

22 January 2014

Research objectives

- How might employment regulation burdens be conceptualised?
- What factors influence employment regulation burdens?
- What are the implications for our understanding of the influence of employment regulation on small employers?

Research context

- employment law argued to be a burden for small employers:
 - limited managerial capacity, vulnerability to external shocks
 - informal reactive approach to HR problems
 - fear of exposure to litigation & legal sanctions
- contrary evidence emphasises *variability* of regulatory effects (Edwards et al. 2004):
 - informal relations permit absorption of costs
 - external market conditions exacerbate/mitigate impact of regulation
- variable employer confidence in employment law compliance
- prevalence of 'regulatory burden' discourses promoted by powerful social agents

Analytical Framework 1:

An ontology of regulation and its effects

- social reality as stratified (informed by critical realist philosophy & social theory):
 - deep level (regulation as rules with causal powers)
 - actual level (employer actions to comply/adapt)
 - empirical level (perceptions of actions & effects)

- levels out of phase:
 - regulation only produces effects by being perceived & acted upon
 - regulatory effects cannot be reduced to agents' perceptions of effects
 - regulation is enabling *as well as* constraining - if regulation was solely a constraint, how could employers exercise agency at all?

Analytical Framework 2: Conceptualising regulatory burdens

- *substantive* – implementing actions mandated by regulation
- *administrative* – costs of identifying & interpreting obligations, including advice-seeking
- *psychological* – subjective employer uncertainty/anxiety surrounding compliance:
 - frequent regulatory change
 - complexity
 - threat of legal action
 - loss of control/constraint on employer agency

Method

- sample - 20 UK small business, in a range of sectors:
 - 13 micro, 7 small firms (employed 2-19 employees)
 - mostly established firms (only four aged 3 years or younger)
 - located in London, Birmingham, Leeds, Glasgow

- data collection:
 - qualitative, face-to-face interviews with employers/managers
 - emphasis on process, temporality & motivations for action
 - data obtained on HR practices prior to asking about awareness & influence of regulation
 - none of the 20 firms employed a HR specialist
 - no data from employees

Findings 1: Influences on regulatory burdens

- contingent upon conception of 'burden'
- psychological - vulnerable compliance v confident ignorance?
- employer confidence rested on a number of bases (conditions of possibility):
 - non-occurrence of employee litigation
 - belief that employees wouldn't litigate (influence of informal recruitment)
 - prior knowledge of employment law
 - belief HR practices were fair & defensible, despite an absence of certainty
 - access to expertise from trusted, formal & informal intermediaries providing tailored advice & reassurance

Findings 2: Impact on employer agency

- employment regulation *constrains* employers:
 - HR problems occur at particular times that prompt the search for solutions (e.g. recruitment, dismissal, redundancy, maternity leave)
 - ... often incurring administrative costs of advice-seeking
 - but: *not* perceived as a general burden or major impediment to employer agency
- but: employment regulation also *enables* employers:
 - otherwise, how could they manage a profitable business at all?
- regulation impacts employers *whether or not* they are aware of this &/or report it or not

Conclusions and implications

- need for a stratified conception of regulation and its effects
- contrasting conceptions of 'regulatory burden':
 - substantive/administrative v psychological burdens
 - temporal variation in psychological burdens & actions to ameliorate
- research agenda:
 - how does employment regulation enable and/or constrain employer agency?
 - under what conditions?
 - with what effects? (for employers, employees)