

Insights

LABOUR'S MANIFESTO AND EMPLOYMENT LAW – WHAT CAN EMPLOYERS EXPECT?

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This morning Labour launched its election Manifesto which, by implementing its “*Plan To Make Work Pay*” published last month, includes major employment law reform.

The Plan, now supported by today's Manifesto, is clear that legislation will be introduced within the first 100 days of entering government, so if Labour wins with a solid majority, most of these proposals at the earliest could be in force by October/November 2024.

A small number of the measures, such as the merging of workers/employees and parental leave, are anticipated to take longer and will be implemented within the first year.

Some of these proposals represent the most employee-favourable changes to the law for decades, and we will be publishing weekly blogs up to the election focusing on various aspects of them.

The proposals include:

QUALIFYING PERIODS AND TIME LIMITS

Qualifying periods for all employment claims, including unfair dismissal (currently two years) will be abolished. This is subject to “fair and transparent” probationary periods, which may allude to some form of exemption, but no detail is provided. There is, however, no mention of removing the cap for compensation.

In addition, the three-month time limit for bringing almost all employment claims will be doubled to six months. If implemented, this will represent the biggest change in this area since the 1970s.

EMPLOYMENT STATUS

Labour will create a single employment law category of “worker”, ending the separation between “workers” and “employees”. This is likely to extend employment rights to workers and going forward there will only be employees and self-employed contractors. This may mean that all current workers, which includes some self-employed contractors, will have day-one rights to bring unfair dismissal claims.

PAY GAP REPORTING AND ACTION PLANS

Ethnicity (and Disability) Pay Gap Reporting will become mandatory for all employers with 250 + employees. Gender Pay Gap Reporting will remain in place and be strengthened by obligations to develop, publish and implement action plans to close gender pay gaps. This could create significant work for large employers, including the monitoring of ethnicity and disability within the workforce, which may not be straightforward. Employers will also need to take more action in relation to gender pay gaps.

ZERO-HOURS CONTRACTS

These will be banned and there will be new rights to work regular hours based on hours worked in the last 12 weeks. This is one of the most publicised of Labour's proposals, and it remains to be seen how qualified (or unqualified) the ban will be.

WHISTLEBLOWERS

Protection for whistleblowers generally will be strengthened, although no detail is given. However, one interesting point is that whistleblowing protection will be extended to women who report sexual harassment. This could lead to sexual harassment complaints becoming not just discrimination but also whistleblowing claims, bringing with it the possibility of interim relief applications in sexual harassment cases.

REDUNDANCY AND TUPE

Employees' rights and protections will be strengthened in relation to both, although little detail is provided. Collective redundancy consultation rights look likely to be increased, with statutory consultation thresholds being based on employees affected across the business, rather than in one workplace.

MINIMUM WAGE AND INTERNSHIPS

The compulsory minimum wage will be reviewed and increased to take into account not just median wages and economic conditions, but also the cost of living. The age bands for the NMW will be removed for adult workers (presumably all over-18s) and it looks as if there be heavier penalties for non-compliance.

FAMILY FRIENDLY POLICIES AND SEXUAL HARASSMENT

The proposals in this area seem relatively similar to the current regime, including:

- Introducing opportunities for flexi-time contracts and hours that better accommodate school terms by making flexible working the default for all workers and a day one right, except where

it is not reasonably feasible.

- Increasing protection for pregnant women by making it unlawful/unfair to dismiss a woman for six months after her return from maternity leave, except in specific circumstances.
- Reviewing Carer's Leave, with a view to making it paid. At present it is unpaid.
- Reviewing Parental leave and making it a day one right.
- Introducing the right to bereavement leave.
- Increasing sexual harassment protection to include harassment by third parties. This was a notable omission from the existing Worker Protection Act 2023 (due to come into force in October) which excluded harassment by third parties.

These will require careful implementation as a number are similar to/overlap with existing law, or law about to come into force. This includes the Worker Protection Act 2023 with its positive duty to take reasonable steps to prevent sexual harassment, and the Protection from Redundancy (Pregnancy and Family Leave) Act 2023, which already provides increased dismissal protection to maternity returners made redundant.

FIRE AND REHIRE

There will be a ban on "fire and re-hire" practices, and the introduction of what Labour considers to be fairer methods for negotiating contractual changes. There will also be a revised code of practice. This effectively replaces the current code of practice on fire and rehire, which is not mandatory.

THE RIGHT TO "SWITCH OFF"

This is much publicised but possibly overestimated as, similar to the 48-hour working week, there are likely to be opt-outs, particularly in areas such as financial and professional services. The plan is to follow "switch-off" models in Ireland and Belgium, but little detail is provided.

MENOPAUSE

Action Plans on the Menopause will become mandatory and must be published by all employers with 250+ employees.

SELF-EMPLOYED CONTRACTORS

There will be introduced, for the first time for self-employed individuals, the right to a written contract, and health and safety protection. This could mean that self-employed contractors will have the same health and safety protection as employees. Contractors may also be eligible for trade union membership and protections.

FINAL THOUGHTS

There are many other areas covered, including a raft of changes to trade union law, including much easier access to workplaces by trade unions, and a Fair Pay Agreement for the social care sector. Legislation will be introduced to ensure that hospitality workers receive their tips in full and can decide themselves how tips are allocated. There will also be restrictions on the use of AI at work, including facial recognition software and surveillance.

Overall, this is a very ambitious and wide-ranging programme of reform, and all with a strict time limit. Although not every change will come into force this year (such as the merging of workers/employees), the majority, including removing qualifying periods for employment claims, are likely to be introduced within the first 100 days.

We will be commenting in more detail in the weeks to come on the practicalities and implications of these proposed reforms – and there is still the outstanding issue of winning an election.

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