

Insights

# LABOUR'S PROPOSED EMPLOYMENT LAW REFORMS: OUR SECOND WEEKLY PRE-ELECTION GUIDE

## EMPLOYMENT STATUS

Jun 26, 2024

### SUMMARY

Following last week's pre-election guide on qualifying periods and statutory time-limits, we focus this week on Labour's plan to simplify the law on employment status.

### CURRENT POSITION

Under UK law there are three categories of people who work - employees, workers, and self-employed contractors:

- **Employees** – have full statutory employment rights, including maternity leave, unfair dismissal (including whistleblowing), redundancy payments and the right to request flexible working;
- **Workers** – includes employees but also some non-employees – for example individuals who work under non-employment contracts that involve **personally** doing any work or services for another party. This wider definition means self-employed individuals can be workers, as can partners in an LLP. They have only some of the same rights as employees, including the National Minimum Wage, the protection of the Working Time Regulations, and certain whistleblowing rights;
- **Independent/self-employed contractors** – have no statutory employment rights. Rights are contractual only, with very few exceptions. Contracting with a self-employed contractor is the same as contracting with a business. This can include contracting with a personal services company, used by many workers to provide services. Independent/self-employed contractors are their own bosses. They can generally substitute themselves, and so do not have to do the work personally. As long as they do the work they are contracted to do, they can control how and when they do it.

This three-tier system can cause confusion. Individuals' rights and protections and their tax status depends on their employment status, with employees being entitled to the greatest protection. It makes legislation more complex - employees and workers have similar but slightly different whistleblowing rights, workers can bring unlawful deductions claims but not unfair dismissal claims. In a gig economy, this has led to several complex court cases where allegedly self-employed individuals have claimed statutory rights, mostly as "workers".

Labour's proposal is to simplify the law to create a single status of "worker" for all except the genuinely self-employed. If this is carried through, it will have significant ramifications, some which we cover below

## CONSULTATION

This is a major change to UK law and will require extensive consultation. Several pieces of legislation will need to be amended, including the Employment Rights Act 1996 which distinguishes between workers and employees depending on the rights conferred. Creating a single status of worker will also increase the number of individuals entitled to statutory employment rights.

## WHAT WILL HAPPEN?

There is little detail provided by Labour, but the most likely action is to give workers the same rights as employees. So this expanded group will have full employment rights. There are other approaches, but this is the only one that does not involve reducing the rights of employees, and it seems highly unlikely that Labour would adopt an approach that leads to this.

## WHAT ARE THE IMPLICATIONS?

These are a few:

- **Likely increase in claims** - individuals who are currently workers will have day one employment rights. Workers will be entitled to statutory maternity leave and will be able to bring unfair dismissal claims, automatic unfair dismissal claims (e.g., for whistleblowing) and will be eligible to apply for flexible working and redundancy payments. This could lead to a significant increase in claims, especially with the removal of the two-year qualifying period for unfair dismissal claims;
- **Likely increase in PAYE** – if all workers are treated as employees, a large number of individuals will switch from Schedule D to Schedule E and will be taxed through PAYE;
- **Increased costs and burden on employers** – more claims and more PAYE are just two examples of this;

- **Effect on gig economy** – organisations are likely to become more stringent in distinguishing between workers and the genuinely self-employed. If someone thought to be genuinely self-employed is found to be a “worker”, the outcome once these changes have been implemented might be full employment rights, possible breaches of PAYE etc. So organisations who wish to engage self-employed contractors are likely to be very careful to leave no room for doubt.
- **Legal changes**
  - Legislation will need to be amended quite extensively to reflect the changes
  - Workers, who were not formerly employees, will have enhanced statutory employment protection, and the tribunals and courts will need to adapt

Overall, employers will have increased exposure, costs and burdens. Legislation will need to undergo complicated revision, and organisations will need to adapt. We may also have to stop using the word “employee” which in itself might be difficult.

Expect a lengthy and possibly difficult consultation!

## **RELATED PRACTICE AREAS**

- Employment & Labor

## MEET THE TEAM



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