



Election news: Labour – all “change” for employment law

The UK general election on 4 July is inching nearer and the parties have launched their manifestos, setting out their plans for the next government.

We have been tracking Labour’s employment law proposals and [wrote previously](#) on Labour’s first package entitled “*A new deal for working people*.” Labour has now published its [manifesto](#), titled “*Change*”, which promises to implement Labour’s revised (and renamed) “[Plan to Make Work Pay: Delivering a New Deal for Working People](#)” (the “**Plan**”) in full.

On current polls, the Labour Party continues to be the frontrunner and is the most likely party to obtain a majority in Parliament next month. Below we set out Labour’s key proposals that could affect employers.

We will also be publishing an article comparing the main party manifestos shortly.

Summary

Labour’s manifesto commitments are largely similar to the original “*A new deal for working people*”, but with some changes and omissions, which we discuss below. The plan is organised around the following themes:

- ending one-sided flexibility
- family friendly rights
- fair pay
- having a voice at work
- equality at work
- rights at work

It is a broad and ambitious package of proposals, touching on all aspects of employment law – the combined effects of which, to the extent that it becomes law, would arguably lead to the largest reform of employment law in decades. As employment law is devolved to the Northern Irish legislature, Labour’s employment law reforms will only apply to England, Scotland and Wales. Separate legislation

will be needed in Northern Ireland if there is a political desire to align Northern Irish law with Labour's approach.

If Labour wins, the law will not change overnight — making changes of this magnitude takes time. Labour has committed in its manifesto to introducing legislation on employment law reform “*within 100 days*” and is no doubt already undertaking work behind the scenes to draft its employment law bill. However, Labour has also emphasised that it will consult fully with businesses, workers and civil society on how to put their plans into practice. Even if Labour want to move quickly and with a large Parliamentary majority (which it is looking likely Labour will achieve), the legislative process will take time.

Further, some of Labour's employment law proposals are unlikely to be immediate priorities, as it has indicated they are longer term goals. For instance, Labour has said it would review and consult on its plans to reform employment status and conduct a review of the parental leave system within the first year of a Labour government.

We discuss each of the key proposals of interest to employers below. Click on each heading to read more.

'Day one' rights and unfair dismissal

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Labour has promised that the new laws will grant all workers “*basic individual rights from day one*” for unfair dismissal, parental leave and sick pay. The most significant of these proposals is in respect of unfair dismissal — essentially reducing the current two-year qualification period to day one of employment, the shortest qualifying period since unfair dismissal was introduced in the 1970s.

Labour appears to be promising that employers can still operate probationary periods for new hires (though Labour has been silent on whether there would be limits to the permitted length of probationary periods) but suggests that dismissal during a probationary period will only be permitted if fair and transparent rules and processes are followed. If this becomes law, an employee could bring an unfair dismissal claim if they are dismissed during probation if the employer fails to follow a fair process to dismiss during probation or if probation is failed. What isn't clear, however, is if this could mean that employers will also have to be cautious about withdrawing offers made and accepted, even when employment hasn't started — we'll have to wait and see on the specifics of the drafting.

As a result, employers are likely to be more cautious during the hiring process and put in place more rigorous recruitment processes. Employers will also need to place more emphasis on probationary periods than is currently the case, properly monitoring performance to make a defensible decision to dismiss. This change could also lead to a greater movement of workers between employers as there would be no reason for them to build up time with an employer for their own security.

Labour has also said that it would “*strengthen statutory sick pay*”, remove the “*waiting days*” before an employee becomes entitled to receive statutory sick pay and remove the lower earnings limit so it is available to all workers. It is unclear if a plan to strengthen sick pay would also be a review of the rate of statutory sick pay, which is capped at £116.75 per week.

The manifesto does not explain what is meant by making “*parental leave*” a day one right - it may be referring to the various types of family-related leave like maternity and paternity leave, or the limited, unpaid right to take parental leave.

Worker status and self-employment

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Labour has said it wishes to transition towards a two-part framework for employment status - of workers and self-employed only (unlike the three-tier category of employee, worker and self-employed that we currently have). If the number of individuals entitled to day-one rights (such as unfair dismissal) increases to encompass all individuals currently categorised as self-employed workers the effect of this could be significant for employers in terms of cost and their employment or engagement models.

Recognising that this is a very complex area, Labour has suggested that reforming worker status would be a longer-term ambition on which it will first undertake detailed consultation.

Labour has also promised to “*strengthen rights and protections to help self-employed workers thrive*”, including the right to a written contract, action to tackle late payments, and by extending health and safety and blacklisting protections to self-employed workers in addition to potentially extending union rights to the self-employed.



Flexible working and the right to switch off

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Labour is hoping to move the bar on flexible working too, so that it is the default for all workers from day one, except where it is not reasonably feasible. The current law (recently amended – see our article [here](#)), which Labour has said it will adapt and build upon, only gives employees the right to *request* flexible working (not a right to *have* flexible working), and employers also have broad business reasons on which they can refuse an individual's request. Labour's proposal would potentially be a big shift in approach for employers and could, for example, make return to the office mandates more difficult to put in place.

Labour initially proposed allowing workers the “*right to disconnect and not be contacted outside working hours*”. However, with the revised deal, Labour's description of the policy seems to have changed. This seemingly indicates a change in stance from “*an absolute right*” model, to an employer by employer approach — where workers and employers have the opportunity to have constructive conversations to build bespoke workplace policies that benefit both parties (which it suggests is more likely to be akin to the approach in Ireland or Belgium). Exactly what that will mean in practice remains to be seen, though a similar approach in Ireland has not resulted in much change for employers.

Finding a one size fits all balance between working flexibly and giving clear boundaries for when an employee can “*switch off*” is no easy task, which is perhaps why Labour may decide to leave this to individual employers to resolve.

Family friendly entitlements

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Labour makes commitments to:

- Review the parental leave system within the first year of a Labour government, so any changes to the law will be a second wave of employment law change following Labour's Employment Bill.
- Make it unlawful to dismiss a woman who is pregnant for six months after her “*return*” (except in specific, limited circumstances, which have not yet been set out). It is unclear whether “*after her return*” would cover dismissal during pregnancy and/or the period of six months post-birth of a child and/or the six months after returning from maternity leave. Whichever option Labour decides, this goes further than the current law, which does not grant special protections from dismissal of a pregnant woman or woman who returns from maternity leave say for redundancy or poor performance, provided that the reason for the dismissal is not on discriminatory grounds and in a redundancy situation where the employee has been offered a suitable alternative vacancy if one is available. See how the law has recently expanded on this point [here](#).
- Review the recently introduced Carer's Leave, and potentially expand it to a right to paid leave whilst “*being mindful of the impact of any changes on small employers*”.
- Introduce a statutory right to bereavement leave for all workers (although many employers currently choose to offer compassionate leave for staff, so this may not be a big change for many employers).

Expansion of pay gap reporting for gender, ethnicity, and disability

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Labour will expand the current pay gap reporting regime in the following ways (which would apply to employers with 250 or more employees):

- Gender pay gap reporting would include a mandatory requirement to develop, publish and implement an action plan which sets out how the employer plans to address any gender pay gaps.
- Gender pay gap and pay ratio reporting would include outsourced workers.
- There will be a new requirement to publish pay gap data on ethnicity and disability. Labour has not set out the details, but this is likely to mirror the type of data required under the gender pay gap reporting regime. In practice, this may be quite tricky, given employees are often reluctant to disclose in surveys that they are disabled or do not accurately report their status because they do not understand the legal definition of disability.

Discrimination, whistleblowing and harassment

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Labour has not proposed a radical re-writing of the current legislative status quo for discrimination. However, there are some key proposals that are not without significance, including that Labour will:

- Change equal pay law to ensure that outsourcing of services can “no longer be used by employers to avoid paying equal pay”. The detail of this has not been published but it seems that contracted-out employees would be able to look beyond their direct employer to make equal pay comparisons with employees of the end client in a contracting out arrangement.
- Introduce equal pay claims for race and disability (currently limited to sex – although of course individuals could still have recourse by bringing a direct or indirect discrimination claim for these protected characteristics depending on the circumstances).
- Bring into force the public sector socioeconomic duty under section 1 of the Equality Act 2010 in England and Wales (it is currently in effect in Scotland and Wales and some councils in England have voluntarily adopted it).
- Strengthen protections against dual discrimination (i.e. where discrimination is because of a combination of protected characteristics), by bringing into force section 14 of the Equality Act 2010 (which has never been brought into force since the Equality Act became law).

Labour is also proposing changes to the law surrounding workplace harassment, including:

- Strengthening protection for whistleblowers, “including by updating protection for women who report sexual harassment at work”. There are already protections against victimisation at work for raising a complaint of sexual harassment under the Equality Act 2010, however, Labour is suggesting that a report of sexual harassment might also be treated as whistleblowing.
- Strengthening the legal duty for employers to take “all reasonable steps” to stop sexual harassment — upgrading from the requirement to take “reasonable steps” (but not all reasonable steps) as currently set out in the Worker Protection (Amendment of Equality Act 2010) 2023 (the Worker Protection Act) — see our article [here](#).
- Placing a positive obligation on employers to maintain workplaces and working conditions free from harassment, including by third parties — notably the third-party harassment protections were dropped by the current government during the passing of the Worker Protection Act.

The current proposals are silent on the use of non-disclosure agreements in cases involving sexual harassment, an issue that has received a lot of public attention the past few years. However, it would be in keeping with Labour’s promise to “properly tackle sexual harassment at work” (and an easy “win”) to prevent the use of non-disclosure agreements in situations where there has been a complaint relating to sexual harassment.

Menopause

Labour will introduce a new duty for large businesses (those with more than 250 employees) to prepare Menopause Action Plans, which must set out “how they will support employees through the menopause, much like gender pay gap action plans.” This will presumably be a public-facing document, though Labour has not yet set out the details.

Redundancy and TUPE

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Labour looks set to “strengthen” rights and protections during redundancy and TUPE processes. It is unclear what Labour means by strengthening TUPE protections, but in respect of redundancy it has suggested that the right to collective consultation (currently triggered where an employer is proposing to make 20 or more employees redundant at one establishment within a period of 90 days or less) would be revised so the threshold is assessed by looking at the number of people impacted across the employer as a whole rather than in a single workplace.

That would potentially mean that large employers with multiple workplaces across the country have to engage in collective consultation if they are carrying out multiple small-scale unrelated redundancy processes (but which collectively add up to 20 or more redundancies) within a 90-day period. These promises were newly included in the revised “Plan to Make Work Pay”, which is perhaps why details are a little scant. However, many employers already consider that TUPE provides strong protections for staff and the changes proposed to the triggers for collective consultation may be difficult in practice for companies to manage.

End fire and re-hire and ban “exploitative zero hours contracts”

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Labour has indicated it would:

- Ban “exploitative” zero hours contracts — though what is considered “exploitative” is not explained.
- Ensure all workers have the right to a contract that reflects the number of hours they regularly work, based on a twelve-week reference period — how that will deal fairly with workers who have highly variable seasonal working patterns is not clear (for example, a seasonal worker requesting a contract with average hours based on the 12 weeks covering peak season may end up with a distorted average).
- Ensure workers get reasonable notice in changes to shifts or working time with compensation if shifts are cancelled or curtailed.
- End fire and rehire/replace by reforming the law and introducing a strengthened code of practice. Labour have said that they do not want to prevent business restructuring to allow businesses to remain viable, so it may be that a form of fire and rehire will be permitted, but only in very limited circumstances and where the employer has followed a proper process involving dialogue with workers.

Enforcement of employment rights

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The Labour manifesto also includes plans to improve and expand the enforcement of employment rights by:

- Creating a new “single enforcement body” (with TUC and trade union representation) to enforce worker’s rights, including strong powers to inspect workplaces. This will presumably bring together existing enforcement, which is split across lots of different bodies such as HMRC (minimum wage), the Equality and Human Rights Commission (equality and discrimination) and the Health and Safety Executive (health and safety).
- It seems that Labour considers that the Employment Tribunal will still be the primary mechanism for an individual to enforce their employment rights for complex cases or contract disputes. Labour has said it will work further to digitise the employment tribunal process but it has not suggested that it will increase investment in the tribunal system, which gives rise to concern that the expansion of employment rights will slow down the tribunal process significantly and add to the backlogs, causing more delays in dealing with claims.
- Making it easier for workers to raise workplace grievances, by enabling employees to “collectively raise grievances” about conduct in their place of work, to ACAS. No further detail on how this would operate in practice is given, but this would be a big change as grievances currently are managed on an individual basis between employer and employee.
- In the original New Deal, Labour mentioned removing the caps on compensation that workers receive and extending the time limits for employees to bring employment claims. The manifesto is silent on compensation caps (perhaps this has been dropped) but says that Labour will increase the time limit to bring most employment claims in the employment tribunal from three months to six months.

Collective bargaining and union rights

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The Labour manifesto also sets out an ambitious set of high level policies on union rights and collective bargaining, that might lead to an increase in the level of union membership and/or activity for some UK employers. The most notable of these proposals are:

- Implementing a new Fair Pay Agreement in the adult social care sector to set common terms and conditions across the industry to tackle the recruitment and retention issues in the sector. If successful, Labour indicates it would explore Fair Pay Agreements in other sectors.
- Repealing some of the Conservative reforms made in recent years including the Strikes (Minimum Service Levels) Act 2023 (see our article [here](#)) and the Trade Union Act 2016.
- Acting to ensure that union members and workers can access a trade union at work through a regulated and responsible route.
- Introducing electronic balloting and workplace ballots for union recognition and strike action. This would likely make it much easier for workers to choose to take strike action.
- Simplifying the process of union recognition and statutory recognition thresholds. This would likely make it simpler and easier for workers to require their employer recognises a union.
- Creating new rights and protections of trade union representative at work (although details of what this means are not clearly set out).
- Introducing a new duty on employers to inform all workers of their right to join a union. This would likely be something that would need to be included in all employment contracts.
- Labour have said that it will ensure “at a minimum” that any proposals to introduce surveillance technologies are subject to consultation and negotiation, with a view to agreement of trade unions or staff representatives.

Other relevant proposals

In addition to direct changes to employment law, Labour’s manifesto includes a number of proposals that indirectly impact on employers in the UK, including:

- Labour will work to increase the national minimum wage and remove minimum wage age bands so all adults are entitled to the same rate (which set a lower minimum wage for adult workers under the age of 21).

- Labour has said it will not increase employee taxes (including National Insurance, the basic, higher, or additional rates of income tax).
- Labour has said that *“Private equity is the only industry where performance-related pay is treated as capital gains. Labour will close this loophole”* – seemingly taking aim at the taxation of carried interest. This could have large ramifications for compensation structures in private equity.
- Labour has said it will create a new Regulatory Innovation Office, bringing together existing functions across government, and also introduce binding regulation on the handful of companies developing the most powerful AI models.
- Labour would not undo Brexit or enter into a customs union with the EU but has said it wants to reset the UK’s relationship with the EU and deepen ties with the rest of Europe. Labour has also promised that the UK will remain a member of the European Convention on Human Rights.

If you would like to discuss further, please contact your usual GQ|Littler contact or Ben Smith.