The Labour Party's Manifesto: five key proposals that employers need to know about

The Labour Party's 2024 Manifesto promises root and branch reform of employment law, with legislation to be launched within 100 days of taking office. In this briefing, we examine the five proposals that we think will have the greatest impact for the majority of employers.

Background:

Following the announcement that the General Election will take place on 4 July 2024, Labour published its "Plan to Make Work Pay", setting out its extensive proposals for workplace law reform. It promises that Labour *"…will deliver the biggest upgrade to rights at work for a generation"*. This is underlined in the Labour Party Manifesto – published on 13 June 2024 – which says that Labour will implement Make Work Pay *in full* and will introduce legislation within 100 days of entering Government (so by 12 October 2024).

Despite the promise of legislation within 100 days, Make Work Pay attempts to manage expectations about exactly what can be delivered and when. It provides that there will be full consultation with businesses and workers on how to put the plans into practice before any legislation is passed. Only then would the legislation begin the Parliamentary process in both Houses, and once passed, there may be an implementation period. It also points out that much of the detail will be based in regulations and where those regulations are

substantial there will be a need for further consultation.

Therefore, while employers need to brace themselves for some root and branch reform of workplace rights, the truth is that it is not going to all come into force with a bang on 12 October 2024. It will probably take many months, and in some cases, maybe even years. In this briefing, we take a look at the five proposals that we think will have the greatest impact for the majority of employers, regardless of size or sector.

Key proposal 1 – the creation of a single "worker" status:

Currently, we have a three-tier approach to employment status in the UK: "employee", "worker" and "self-employed". Worker status covers employees and a wider group of workers who are engaged under a contract where they are required to work personally, and the employer is not merely a client of the individual's business. Workers have some employment rights, but these are inferior to the rights of employees, for example, they do not have the right to claim unfair dismissal or to take various forms of statutory family leave.

The Labour Party argues that this state of affairs is confusing for workers, who often find it difficult to get a clear picture of their status and what employment protections they have. It is also said that some employers do not label staff properly, sometimes inadvertently and sometimes deliberately. To resolve this problem, Make Work Pay proposes that employee status should be abolished, and a new single employment status of "worker" should apply to everyone, save for the genuinely self-employed. Under the proposed new system, all workers would be afforded the same employment rights, for example, sick pay, holiday pay, parental leave,

protection against unfair dismissal *"and more".*

This change would radically alter our employment law landscape. Yet the consultation process is going to take time, not least because the various knock-on effects of the change will need to be addressed, for example:

- Currently, some LLP members qualify as workers, but they cannot be employees. If they are still workers under the new framework, would this mean that they would gain full employment rights?

- Would the tax status framework be aligned? If so, would all workers become subject to PAYE (and surely this must be the logical consequence of giving full employment rights to all workers)? If this happens this would increase employer costs as a result of higher employer NICs.

Key proposal 2 – unfair dismissal to become a Day 1 right for workers:

It is proposed that the two-year qualifying period for unfair dismissal claims should be removed – meaning the right to claim unfair dismissal will become a Day 1 right (for all workers and not just employees as is currently the case). Currently, only "automatic" unfair dismissal for certain narrow prohibited reasons, such as whistleblowing, is a Day 1 right.

Labour says that this will not prevent fair dismissals, nor the use of probationary periods – although it is not clear whether it will, in fact, be easier to dismiss someone within their probationary period, or whether the full rules on dismissal will apply even then. If it is easier to dismiss during probationary periods this could encourage employers to use them routinely, perhaps for longer periods of time than is currently the case. And query then whether Labour would place an upper limit on the length of probationary periods?

Either way, removing the qualifying period is certain to generate more grievances and Tribunal claims, some of which will be justified and some not. But all of which will take time and money to deal with. In terms of impact on claims, we think the most likely outcome is that claimants with automatic unfair dismissal or discriminatory dismissal claims (especially if higher paid) will continue to bring those claims but will plead ordinary unfair dismissal as an alternative or additional claim. In future, employers will wish to be more cautious when it comes to recruitment so as to limit the risk of a bad hire.

Also, as discussed below, the plan is that the time limit for bringing this claim will be increased from three to six months. Therefore, employers will have increased exposure to unfair dismissal claims and will also have to live with the uncertainty about whether a claim will be brought for a longer period of time. However, one silver lining for employers is that the proposal to remove the caps on compensation in employment claims appears to have been dropped. Neither Make Work Pay, nor the Manifesto, makes any mention of this. That said, it may yet appear as a question in any future consultation on the reform of unfair dismissal law.

Key proposal 3 – changing the trigger for consultation on collective redundancies:

Currently, collective redundancy consultation is triggered when there is a proposal to dismiss as redundant 20 or more employees assigned to one "establishment" within a 90-day period. The question of what an establishment has been ventilated in litigation, with employees arguing it should mean the business as a whole rather than the local place of work. This would mean that collective consultation would be triggered more frequently as redundancy numbers would have to be counted across the whole business. After some to-ing and fro-ing the senior Courts concluded that establishment means the local unit where the employee works, not the business as a whole.

Labour proposes to reverse this, so that collective consultation is triggered where there are 20 proposed redundancies within 90 days across the entire business rather than in just one local workplace. If taken forward, this will mean that multi-site employers will need to have a system in place to ensure that they keep track of proposed redundancies across the business. It will also mean that:

- Collective consultation will be triggered more frequently.
- The process will be administratively more burdensome as employers would need to have appropriate representatives in place for all affected workers no matter where they are based.

- The consultation itself may be more disjointed as employers may be consulting about several small pockets of unrelated redundancies.

If employers get it wrong, they are exposed to protective award claims of up to 90 days' gross pay.

Key proposal 4 – introducing a new right for workers to disconnect outside of working hours:

For the first time, it is proposed that UK workers be given the "right to disconnect" from work outside of normal working hours and to not be contacted by their employers. Make Work Pay says that this is needed in response to the growth in flexible and remote working practices which has *"inadvertently blurred the lines between work and home life".* Are these concerns justified? To some extent, yes. That said, this right is clearly potentially very disruptive to employers, especially if implemented badly.

The plan is to follow similar models to those that are already in place in Ireland or Belgium. In fact, the models used in these two countries are quite different and it is not clear where the Labour proposal will sit on this spectrum. In Belgium, since 1 April 2023, private sector employers with 20 or more employees have been required to implement a right to disconnect for all employees via either a collective bargaining agreement or work rules. In Ireland, a voluntary Code of Practice on the Right to Disconnect has been in place since April 2021. Although only voluntary, workers who

regularly work outside their agreed hours may refer to the Code of Practice before the Labour Court or Workplace Relations Commission.

Make Work pay does state clearly that *"We will bring in a right to switch off"*, which suggests that the Belgian model is the one that we will mirror. A consultation would, of course, be needed, including on important issues such as:

- Whether workers will be permitted to "opt out" of the right.
- What, if any, exceptions there might be (e.g. by reference to job role, sector and/or size of employer).
- What the consequences would be if a worker was mistreated or dismissed for asserting the right to disconnect.

Key proposal 5 – extending the time limit for bringing Employment Tribunal claims:

It is proposed that time limits for employment claims will be increased from three to six months. It appears that this will be for all statutory employment claims. Labour says that this will allow more time for internal procedures to be completed (and also settlement discussions), potentially decreasing the number of Employment Tribunal claims. We think that employers may well see a drop in claims as a result of

employees not being forced to act quickly to protect their position. Of course, the downside is that employers will have the threat of claims hanging over their heads for a significantly longer period of time.

Conspicuous by its absence is the question of introducing fees in the Employment Tribunals. Earlier this year, the Conservative Government opened a consultation on the question of bringing back "modest" fees in the Employment Tribunal and EAT. That consultation closed in March 2024 and the response is awaited. However, it seems very unlikely that a Labour Government would reintroduce Employment Tribunal fees, even at a modest level.

What else is proposed?

While these five proposals are important, they are merely tip of the iceberg. Make Work Pay promises wide-ranging reforms in almost all areas of employment law as follows:

- **Employment status:** introducing better rights for the self-employed and regulating internships.
- **Contracts:** banning "exploitative" zero-hours contracts, giving zero-hours workers the right to a regular hours contract after 12 weeks and requiring employers to give reasonable notice of changes to working time.
- **Pay:** reflecting the cost of living in the national minimum wage rate, removing the national minimum wage age bands so adult workers receive the same rate,

legislating to ensure the fair allocation of tips and making changes to the treatment of travel time as paid working time in certain circumstances.

- **Harassment:** strengthening the new duty to take reasonable steps to prevent sexual harassment at work (due to come into force in October 2024) and introducing protection from harassment at work by third parties.

- **Discrimination and equal pay:** enacting the dual discrimination provisions in the Equality Act 2010, changing equal pay law so that comparisons in pay may be made with outsourced workers and introducing the right to bring equal pay claims based on race and disability (in addition to sex).

- **Work life balance:** strengthening flexible working rights so that it becomes a "genuine default" and regulating the surveillance of workers.

- **Family leave:** reviewing the entire parental leave framework, removing the qualifying period for parental leave (it is unclear whether this means the one-year qualifying period for unpaid parental leave only or any parental leave rights which have a qualifying period), introducing a statutory right to bereavement leave and consideration to be given to introducing paid carer's leave.

- **Other workplace rights:** strengthening whistleblowing and TUPE rights, reviewing health and safety law and guidance and improving access to Statutory Sick Pay.

- **Mandatory employer reporting:** requiring employers to publish and implement gender pay gap actions plans,

introducing ethnicity and disability pay reporting and requiring employers to publish Menopause Action Plans.

- **Disputes and dismissals:** giving workers the right to raise collective grievances via Acas (this proposal is unclear as it stands), restricting the dismissal of pregnant workers and maternity leave returners and restricting the use of fire and rehire practices, save in limited circumstances.

- **Enforcement:** introducing a state Single Enforcement Body to enforce certain areas of employment law and introducing a new enforcement unit for equal pay.

- **Collective rights:** wide-ranging measures aimed at strengthening the role of trade unions and introducing sectoral collective bargaining on pay.

To learn more about all of these proposals, you can view our recent webinar, Labour's Big Plans for Employment Law, presented by BDBF's Managing Partner Gareth Brahams and Principal Knowledge Lawyer Amanda Steadman. You can view the webinar here.

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.