

What would a Labour Government mean for employment law?

Earlier this month, the Labour Party published a Green Paper entitled *A New Deal for Working People*, setting out its proposals for changes in workplace rights. The ambitious document sets out over 50 proposals for change across a range of areas. In this briefing we discuss five key aspects of the Green Paper that have the potential to lead to a major shake-up of employment law.

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 both employees and a wider group of workers who are engaged under a contract where: (i) they are required to work personally; and (ii) the employer cannot be described as a client of the individual’s own business. Therefore, all employees are workers, but not all workers are employees.

The Green Paper argues that secure and safe work is jeopardised by certain employers exploiting the complexity in this three-tier system. Moreover, it is difficult for individuals to know where they stand, and, as a result, they often do not know their basic legal rights. To resolve this problem, the Labour Party proposes that a single employment status of “worker” should apply to all but the genuinely self-employed. It is not clear whether the existing worker status test will be retained, or whether a brand-new test will be

introduced.

All workers will be afforded the same basic employment rights, for example, sick pay, holiday pay, parental leave, protection against unfair dismissal *“and more”*. The practical result is that those who qualify as workers under the existing system will receive a fairly significant upgrade in their employment rights, including the right to claim unfair dismissal. The position for employees will not change as a result of the merger of status, save that they will be known as workers, rather than employees.

Strengthening unfair dismissal protection and other employment rights

Currently, only employees are protected from unfair dismissal, and they will usually need two years' continuous service to bring a claim. The exception to this is where the principal reason for the dismissal is “automatically unfair” (e.g. because the employee has blown the whistle or because the employee is on maternity leave). In automatically unfair dismissal claims, there is no need for the employee to have accrued two years' service – it is a Day 1 right.

Prior to April 2012, the qualifying period to bring an unfair dismissal was one year, and many commentators expected the Labour Party to bring back this threshold if it came to power. However, the Green Paper takes a more radical approach, promising to abolish the service requirement altogether and make unfair dismissal a Day 1 right for all workers.

Coupled with this, the Green Paper also promises to remove the caps which limit compensation in employment claims, with the result that *“workers [will] receive full compensation without statutory limit if they suffer loss because of employers’ breaches of the law”*. It is not entirely clear whether the intention is to remove the caps on compensation on some, or all, statutory employment claims (and if not all, whether unfair dismissal will be covered).

However, assuming that the cap on compensation for unfair dismissal *is* to be removed, then the end result of these proposals would be to put an unfair dismissal claim on a par with a discrimination claim in the sense that it would be Day 1 right available to all workers offering unlimited compensation. If this comes to pass, dismissal will become more dangerous territory for employers as the prospect of getting it wrong risks more claims and higher compensation awards.

On top of this, the Green Paper also promises to remove qualifying periods for other basic rights such as sick pay and parental leave. Promises are also made to strengthen other employment rights including for pregnant workers, whistleblowers, those facing a redundancy, and those being transferred to a new employer – although it has to be said these promises are light on detail.

And, finally, tucked away towards the end of the Green Paper, is the brief statement that time limits for Employment Tribunal claims will be extended. Again, the detail is light, and we don’t know whether this will apply to all claims or just a certain class of claims, or what the new time limits will be. Currently, the time limits for the majority of statutory employment claims is three months less one day from

the cause of action (albeit that this may be extended by the Acas Early Conciliation process). A six-month time limit has been mooted in the past for pregnancy (and other) discrimination claims.

Discrimination and inequality

The Green Paper promises to require employers to create and maintain workplaces and working conditions free from harassment, including by third parties. Currently, employers are not strictly obliged to take steps to prevent harassment at work and workers are not protected from harassment by third parties. The [Worker Protection \(Amendment of Equality Act 2010\) Bill](#) is on its passage through Parliament and will introduce a legal requirement for employers to take reasonable steps to prevent sexual harassment at work (but not harassment related to other protected characteristics). The Bill had originally sought to introduce protection from third party harassment, but this was recently dropped from the Bill. Therefore, Labour's proposals go further by introducing a duty to prevent harassment across the board and by introducing protection from third party harassment.

As far as pay transparency is concerned, employers with 250+ staff will be required to report on their ethnicity pay gaps – a proposal that was mothballed by the Conservative Government. In addition, Labour are seeking to drive efforts to close pay gaps by forcing employers to not only report on their gender and ethnicity pay gaps, but to devise and implement plans to eradicate any such pay gaps. Gender pay reporting was introduced in 2017 under the mantra “*what gets measured gets managed*”. But after years of disappointing gender pay gap results, with little movement in the right direction, it is apparent that mere reporting is not

enough. The requirement to take concrete action should be welcomed, although it remains to be seen what the consequences will be for failing to succeed in closing a pay gap.

Better family friendly rights

The Green Paper makes a host of promises to improve the position for working families including:

- extending maternity and paternity leave (nothing is said about adoption leave);
- reviewing the “failed” shared parental leave system;
- introducing a new right to bereavement leave;
- strengthening the rights of workers to respond to family emergencies with paid family and carer’s leave; and
- making it unlawful to dismiss a woman whilst pregnant or for six months after her return from maternity leave, save in certain circumstances (which are not specified).

Again, we must await the detail of how these rights will be enhanced, but if these changes come to pass, employers will need to be ready to rewrite Staff Handbooks and revisit any enhanced pay offerings. What can be said with some certainty

is that most employers (and employees) would welcome an overhaul of the cumbersome shared parental leave system.

Labour also promise to make the right to request flexible working a Day 1 right. The Conservative Government have promised to do the same and has said [legislation will be introduced](#) in July 2024.

Right to disconnect and protection from surveillance

Several EU member states have introduced domestic legislation or guidance on the right to disconnect, including France, Italy, Spain, Belgium, Ireland and Portugal. In 2021, a House of Lords Select Committee called upon the UK Government to introduce a right to disconnect law. However, currently, there is no legal right to disconnect in the UK.

The Green Paper states that Labour will give workers a right to disconnect from work outside their normal working hours and not be contacted by their employers. It is not yet clear what, if any, exceptions will be made to this new right and what the consequences for breach will be.

Labour also promises to protect workers from surveillance by employers by requiring proposals to introduce surveillance to be subject to consultation and the agreement of either trade unions or elected staff representatives.

What else?

There are many more proposals in the Green Paper covering a wide range of areas including:

- banning zero hours contracts and introducing greater security in working patterns for workers;
- outlawing the practice of fire and rehire;
- raising the minimum wage to at least £10 per hour for all workers and assessing how to raise the National Living Wage;
- a suite of measures to strengthen the role of trade unions; and
- introducing a single enforcement body to enforce workers' rights.

The proposals in the Green Paper are to be debated at the Labour Party conference in October 2023. We can expect those that pass muster to make their way into the Labour Party's Manifesto for the imminent General Election. And with the bookies' money on the next Government being a Labour Government, it may not be long before some of these proposals become law.

[The Labour Party: A New Deal for Working People](#)

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