

Employment newsletter

Election special



With a general election just around the corner, in this issue we are focusing on what the main parties are saying they will do in the employment law sphere if elected.

Labour



The Labour party have bold (and the most extensive) plans for workers' rights if elected. Shortly before its manifesto launch, it published 'Labour's plan to make work pay – delivering a new deal for working people' (New Deal) setting out what look like some major changes to employment law in the UK.

Unfair dismissal

Probably the most eye-catching new policy is Labour's plan to make unfair dismissal a day one employment right. Previously, there has always been a qualifying period for employees to be able to bring an ordinary unfair dismissal claim (currently 2 years brought in during the coalition government and, before then, 1 year when Labour was last in government). Significantly, New Deal states that employers will still be able to use probationary periods provided they are fair and transparent. It seems, therefore, that under the proposed new law employers would be able to 'safely' terminate employment during a probationary period, for example, for new employees whose performance is unsatisfactory. If Labour is elected, we will have to see what the amended legislation says about probationary periods and then, in due course, prudent employers will want to ensure that their standard employment contracts and related policies are adequate in this regard.



Zero hours contracts and 'Fire and rehire'

Rather than the outright ban in these areas that Labour had previously proposed if it came to power, it has modified the approach it says it would now take. Workers with zero hours contracts would have a right to a contract that guarantees them their normal working hours calculated using a 12-week reference period. They would be entitled to reasonable notice of shift changes and compensation for cancelled shifts. The rules around fire and rehire would be 'strengthened' by amending the statutory code of practice recently introduced by the current government.

Employment status and tribunal time limits

Currently, workers fall into three categories: employees, enjoying full employment rights, the self-employed with very few such rights and 'workers' who have some rights e.g. discrimination and whistleblowing rights, and entitlement to national minimum wage, paid holiday and rest breaks. Labour still wants to move towards establishing a simpler system of employment rights with a binary model featuring just workers and the genuinely self-employed. It seems it will consult with stakeholders before introducing legislation. In a significant change with regards to employment tribunal claims, the 3-month time limit applying to most types of claim will be extended to 6 months.

Family-friendly rights and Discrimination

Labour says it will make flexible working the genuine default from day one of employment except where it is not reasonably viable. Parental leave will be a day one right (currently eligible employees need a year's service). Employers will not be able to dismiss new mothers within the

6-month period following their return to work except in prescribed circumstances. Equal pay rules will be tightened up. Employers will be required to prevent discrimination of their workers by third parties and the new duty on employers to take reasonable steps to prevent sexual harassment (in force from October 2024) will be strengthened. For larger employers with 250+ staff, pay gap reporting will be increased extending it to ethnicity and disability as well as gender and menopause action plans must be put in place explaining how the employer will support its employees going through the menopause.

Trade unions and collective rights

Unsurprisingly, Labour plan to make various changes to employment laws relating to trade unions and collective rights if elected. It says it will repeal some recent legislation such as that relating to minimum staff levels during strikes in critical sectors. Electronic balloting will be introduced and changes will be made regarding union recognition so that a union will require only a simple majority of workers who vote rather than 50% of the workforce for the union to succeed. Unions will have rights to enter the workplace for recruitment and organising purposes. Employers will be required to inform employees of their right to join a union, via the statement of written particulars of employment that employers must give a worker when they start, and regularly remind workers of the right to join a union.

Another significant change will be to amend the rules that determine when an employer must collectively consult with a trade union or employee representatives where it proposes redundancies of 20 or more employees. Currently, the count is made at the individual workplace where redundancies are proposed so there is no duty

to collectively consult where less than 20 employees at a workplace are at risk. Under the proposed change employers will be required to collectively consult where they are proposing 20 or more redundancies across the whole business. This is likely to mean the duty on employers to collectively consult arises more frequently.

Following consultation, 'fair pay agreements' will be established in the adult social care sector allowing unions or workers to negotiate pay, conditions and benefits with employers. Groups of employees will be able to bring collective grievances using the ACAS conciliation service. In relation to AI and employment, Labour says it will consult with stakeholders and experts and introduce appropriate measures where necessary to protect workers. Employers wanting to introduce surveillance technology to monitor employees would first need to consult with the union or employee representatives.

Other changes

Another eye-catching policy is the introduction of 'a right to switch off' similar to what has been introduced elsewhere in Europe. On this point, New Deal states that employers and employees will be able to agree policies or contract terms that benefit both parties. A new single enforcement body would be established to enforce workers' rights if Labour comes to power. Health and safety guidance would be modernised including in relation to extreme temperatures at work. Bereavement leave, currently limited to parents of children under 18 and stillbirths, will be extended to all workers. The living wage will take into account cost of living and age bands will be removed. Statutory sick pay rules will change so that SSP is payable from the first day of absence and the lower earnings limit will be removed making all workers eligible. Unpaid internships will be banned unless part of an education or training course. ■



Liberal Democrats



If the Lib Dems form the next government, 'caring' would become a protected characteristic under the Equality Act 2010 and employers would be required to make reasonable adjustments to enable them to carry out their caring responsibilities. Carer's leave (a new right to unpaid leave brought in by the current government in effect from April 2024), would become paid. A new right to paid neonatal care would be introduced. Paid parental leave would become a day one right. Statutory maternity (and shared parental) pay, which is mainly claimed back from the Treasury, would be increased to £350 per week (currently £184.03 per week). Paternity pay, currently paid at the £184.03 per week rate, would be increased to 90% of earnings subject to a cap for high earners. An extra 'use it or lose it' month for fathers and partners would be introduced, also payable at 90% of earnings subject to a cap for high earners.

In relation to SSP, the Lib Dems would make it payable from the first day of sickness absence, extend it to all workers including low earners and align the rate with the national minimum wage (which would nearly quadruple the amount for someone working 37.5 hours a week).

Zero hours workers would be entitled to a 20% higher minimum wage to compensate them for the uncertainty of fluctuating hours.

In respect of AI, the Lib Dems would introduce a regulatory framework to govern its use including any form of biometric surveillance. The use of live facial recognition surveillance by the police and private companies would be banned.

A new 'dependent contractor' employment status would be created with the right to minimum pay protection, sick pay and holidays (nb. this is slightly confusing given the existing 'worker' category who already enjoy these and other rights). A new right to flexible working would be introduced for 'everyone' and all disabled employees would have a right to work from home except if there were significant business reasons why this would not work. Zero hours and agency workers would have a right to request a fixed hours contract after 12 months which could not be unreasonably refused.

A new Worker Protection Authority would be set up to enforce payment of the national minimum wage, deal with modern slavery and protect agency workers.

Like Labour, the Lib Dems would increase pay gap reporting to other areas beyond gender for larger firms. Name-blind recruitment would be extended in the public sector and its use encouraged by private firms. The rights of disabled people at work would be boosted by incorporating the UN Convention on the Rights of Persons with Disabilities into British law.

Changes would be made to boost apprenticeships including by making them entitled to at least national minimum wage. ■



Conservative



The Conservative manifesto is relatively light on new proposals but is expected to continue with its current legislative plans including, amongst other things,

the probable reintroduction of employment tribunal fees for bringing claims, following the recent consultation, the introduction of a 3-month limit on non-compete clauses in employment contracts and changes to TUPE.

The manifesto does state that if returned to power, the Conservatives would fund 100,000 new high-quality apprenticeships in England during the next Parliament and strengthen apprenticeships in the creative industries. The Equality Act 2010 would be amended to clarify that 'sex' means biological sex, which is designed to protect women in same-sex only spaces such as changing rooms.

As was widely reported at the start of the campaign, all school leavers aged 18 would be required to undertake a period of mandatory national service in the armed forces or cyber defence or carry out the equivalent of 25 days in a year volunteering in the community.

To combat a perceived 'sick note' culture, responsibility for issuing fit notes would be taken away from GPs and given to specialist health and work professionals. This would be integrated with the government's new WorkWell service providing support to help people stay in or return to work. ■

As ever with party manifestos, there is an inevitable lack of detail on how certain proposals would work in practice. For example, to take Labour's plans to give zero hours workers a right to a contract based on their normal working hours using a reference period to determine these, it appears to us that the rules around this could be quite complex and difficult for employers to implement. Whoever is elected, future editions of our Employment Law newsletter will of course report on any changes being made to employment law and how these are likely to affect your organisation.



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