

U.K. General Election 2024: Labour and Employment Law Proposals

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If the opinion polls are to be believed, on 5 July 2024 the United Kingdom will have a new Prime Minister from the left-leaning Labour party following a landslide victory. A central Labour party pledge is its *"Plan to Make Work Pay – Delivering a New Deal for Working People"* which sets out its proposals for substantial legal reforms in the workplace. Two key themes emerge: a significant expansion and strengthening of individual employee rights; and a new emphasis on collective and union rights.

While some of the proposals are complex and will inevitably take time to assess, consult and implement, for example creating a single status of "worker," others can and should be expected to be implemented in the much shorter term, with a Labour commitment to legislate within 100 days (i.e., by 13 October 2024). We take a look at some of the proposals, what they might mean for those having employees located in the United Kingdom, what steps employers can take now to prepare, and our impact assessment.



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Day One Protection From Dismissal and Extended Time Limits

Employees will be granted protection from day one against being dismissed unfairly as opposed to the current two-year wait. The Plan does say that employers will still be able to terminate if a fair and transparent procedure is used and states employers can still use probation periods. But it is unclear what this will mean in practice and whether an employer can still dismiss without a full process being required during or at the end of the probation period.

This proposal may cause employers to introduce greater rigour to their recruitment processes and a renewed focus not just on skills fit but also the cultural fit of prospective employees to avoid hiring mistakes. Longer probation periods also seem a sensible step to implement now as well as ensuring that performance progress is documented and assessed during probation, and any issues are identified and addressed.

One possible unintended side effect of this proposal is to increase labour force mobility with employees being prepared to change jobs more frequently and easily on the basis that they will accrue dismissal protection rights much more quickly.

For employers who have a claim made against them it is inevitable that the already clogged up and at times barely functioning Employment Tribunal system is likely to bear the brunt of lots of new claims and so parties face even longer waiting times.

All Tribunal time limits will be aligned to six months to bring a claim up from, generally, three months.

Impact 5/5.

Collective Redundancy Consultation

Requirements for collective consultation would be triggered not by looking at numbers at each establishment (usually being a single location or workplace), but rather if redundancies hit the 20-employee threshold across the employer as a whole within the 90-day period. While there is no mention of changes to either the period or threshold figures, given Labour's close union affiliation this cannot be ruled out. What is unclear is if the threshold will apply cross-border where a single employer proposes large scale redundancies only part of which are in the UK and whether this would trigger collective consultation even if the majority were outside the UK.

Impact 3/5.

Unpaid Internships

Unpaid internships will be banned except when they are part of an education or training course (e.g., secondary school work experience week). Outside sectors known to place heavy reliance on unpaid interns, particularly fashion and media, this is unlikely to have much noticeable effect.

Impact 1/5.**AI, Technology and Right to Switch-off**

Labour says it will work with employees, unions, and employers to examine what AI and new technologies mean for the workplace with a focus on safeguarding against the invasion of privacy through the use of surveillance technology, spyware and algorithmic decision making.

While short of detail beyond this, there is a specific requirement that where an employer proposed to introduce surveillance technologies that would be subject to consultation and negotiation, with a view to agreement of unions or elected staff representatives where there is no union. While the details would be announced in due course, conceivably having to run a staff election and ballot could become commonplace for determining the sites of routine security cameras.

The "right" to switch-off is vague as to what it would actually involve and seems to stop short of being a legal right and seems to anticipate an employer implementing a workplace policy and not much more.

Impact 2/5.**Pay**

The age-related bandings (currently, under 18, 19 and 20, and 21 and over) for the National Minimum Wage will be abolished and, in future the minimum wage will be linked to the cost of living and so significant future rises should be anticipated. In addition, workers will be entitled to statutory sick pay from the first day of absence rather than from the fourth day as is currently the case.

Impact 2/5.**Family and Related Rights and Flexible Working**

Parental leave will become a day one right as opposed to the current one-year wait, and with a commitment to review the scheme more generally within the first year in office. This could include making it paid in whole or part, increasing the period from the current 18 weeks, and removing or restricting the employer's ability to postpone leave.

A statutory right to bereavement leave will be established for the first time as well as making carer's leave paid.

In relation to flexible working, the preface to this section of the Plan is instructive: *"It is right that working people are given the chance to fit some work around their family conditions."*

Flexible working will become the default except where it is not reasonably feasible to accommodate. Quite how this will differ in substance from the current need for an employer to identify a statutory reason for refusal (itself a "good" reason why the request could not be accommodated) remains unclear but the Plan does make specific reference to term-time work contracts and to embracing technology in assisting with work flexibility. This does not sit very well with, on the one hand, using technology to assist flexibility and on the other restricting or limiting its use through the right to disconnect.

Impact 3/5.**Harassment, Discrimination and Whistleblowing**

The Equality Act will be amended to require all employers to use "all" reasonable steps to prevent sexual harassment before it starts. While this may seem like a small change, it effectively means employers are likely to again become liable for harassment towards employees by customers, clients and other third parties and which is a particular issue in retail and hospitality.

It is unclear whether a failure by the employer would become actionable in its own right rather than as is currently the case where it is only actionable where there is already a harassment allegation in the complaint.

A complaint of harassment will also qualify as a specific whistleblowing disclosure whereas now it may, or may not, depending on the context and content. While this may seem to be a solution without a problem because a harassment complaint would already amount to a protected act under the Equality Act giving protection from victimisation/retaliation, the devil is in the detail. A dismissal on whistleblowing grounds opens up the ability of the employee to claim interim relief. A successful application for interim relief requires the employee to be paid normally by the employer through to the determination of the claim and without the need for the employee to repay it in the event the claim is ultimately unsuccessful. In the hands of an organised and motivated employee this is a powerful tool in the claim armoury.

Employees returning from maternity leave would not be permitted to be dismissed within six months of returning except in specific (but so far unspecified) circumstances.

Impact 3/5.**Pay Reporting and Menopause Action Plan**

Employers with 250+ employees will in future be required to undertake ethnicity and disability pay reporting, modelled on the current gender pay reporting regime which will also be amended to require the inclusion of outsourced employees. Employers will also be required to implement a menopause action plan.

Given the limited effect of the current gender pay reporting requirements in changing the gender pay gap, the additional pay reporting requirements seem fraught with complexities and uncertainties that will need to be addressed (e.g., how disability is defined, will it be self-identifying and whether meaningful and reliable employee data is held.) The extension of gender pay reporting to outsourced employees seems unnecessary, difficult to implement and overly complex for little obvious benefit.

Impact 3/5.**Status/Classification**

Few would dispute the current three-tier classification of status (employee, worker and self-employed) as being complex, confusing, uncertain, and open to abuse. However, recognising there is a problem is quite different from solving it. Labour plans to reduce this to two classifications: "worker" (being both employees and those currently classified as worker) and the genuine self-employed. Nonetheless it is complex and difficult to do at a multitude of levels, not least the sometimes uneasy and inconsistent tax status between employees (subject to withholding deductions and employee and employer's national insurance contribution) and workers (responsible for their own income tax and with lower individual national insurance and no employer's national insurance).

While Labour has committed not to raise the level of national insurance, a reclassification exercise to align the income tax treatment of those currently designated as workers with employees would substantially increase the tax raising base and amount and additionally allow employer's national insurance to be claimed from the employer. With public finances likely to remain severely stretched for the foreseeable future, this may be an attractive option.

Fairly, Labour accepts this is complex and will require detailed consultation.

Impact 4/5.**Unions**

It is to be expected there will be a significant extension of union related rights. In summary these include:

- Enhanced protection for union representatives.
- Specific rights for unions to access workplaces to recruit and organise.
- Extend collective bargaining to "gig" economy workers.
- Introducing electronic balloting.
- Statutory recognition of unions will be on a straightforward majority of those voting.
- Employer's being obligated to inform new employees in writing of their right to join a union and to remind them of that at regular intervals.

Impact: 2/5.**Other Proposals**

There are a number of other more niche or unspecific proposals including a ban on "fire and re-hire" (that is dismissal and the offered of a new contract on inferior terms) except where necessary to ensure a business can survive, strengthening the protections for employees transferred under TUPE, providing rights to the self-employed to be provided with a written contract by the hirer, a ban on exploitative zero-hours contracts, introducing the ability of employees to raise collective grievances, and a proposal to introduce more government enforcement of rights rather than, as currently, it being largely left to individuals to do so.

Comment

There is no doubt the Plan is very ambitious and on the whole low cost for a government to implement, with costs (both hard and soft) being borne by businesses and employers. How much of this comes to pass will depend at least in part on what other priorities the Government has to deal with, whether economic, security, social, geopolitical or otherwise and whether of its own making or thrust upon it. The old adage "*Events, dear boy, events*" seems most apt.

The full Plan can be accessed at:

<https://labour.org.uk/wp-content/uploads/2024/05/LABOURS-PLAN-TO-MAKE-WORK-PAY.pdf>

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