

Workers' Rights Under Starmer's Labour

16 July 2024

The Labour Party (“**Labour**”) launched its election manifesto, titled ‘Change’, on 13 June 2024 (the “**Manifesto**”).¹ This promised to overhaul “*outdated employment laws [that] are not fit for the modern economy*”, to provide “[g]reater in-work security, better pay, and more autonomy in the workplace [to] improve the lives of working people.”

On 6 July 2024, it was declared that Labour won 411 of 650 seats in the House of Commons, with a majority of 180 seats. This put Keir Starmer into office at 10 Downing Street and, importantly, provided Labour with an overwhelming majority in Parliament’s lower house, which is – at least in theory – large enough to push through its core legislative agenda without significant opposition.

Eyes will now be firmly fixed on next steps, as Labour’s [Make Work Pay Plan](#) articulated Labour’s proposal to “*deliver the biggest upgrade to rights at work for a generation*”, beginning with the introduction of legislation within 100 days of entering government.

Labour did not specify which legislation would be highest on its agenda once it came into office, however, the King’s Speech (scheduled for 17 July 2024) is expected to illuminate the government’s priorities for its first year in office.

This memorandum comprises an overview of the reforms that will be of greatest relevance to employers.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors.

LONDON

Melissa Reid
+44 20 7614 2395
mreid@cgsh.com

Ashley Moss
+44 20 7614 2390
amos@cgsh.com

Caleb-Daniel Oyekanmi
+44 20 7614 2275
covekanmi@cgsh.com

¹ Labour published both [online](#) and [PDF](#) versions of the Manifesto, which differ slightly in content.

1. Employment Rights

The Manifesto's pledges include:

- Banning “exploitative” zero-hours contracts: The Make Work Pay Plan expands on this, by providing that Labour will ensure employment contracts reflect the number of hours people regularly work, based on a 12-week reference period. At present, legislative protection for zero-hours workers is primarily provided by rendering void and unenforceable any clause requiring a zero-hours worker to work exclusively for one employer;
- Ending “fire and rehire” practices: These practices involve dismissing employees who refuse to agree to changes to their terms and conditions, before re-employing them on varied terms. The Make Work Pay Plan makes the ambiguous assertion that the “*inadequate*” statutory code brought in by the outgoing Conservative government, which is due to take effect on 18 July 2024, will be replaced with a “*strengthened code of practice*.” Among other things, the forthcoming statutory code provides that: (i) fire and re-hire should only be used as a last resort (after meaningful consultation with employees or their representatives); and (ii) a threat of dismissal should not be used as a negotiating tactic to put undue pressure on employees in circumstances where the employer is not, in fact, envisaging dismissal as a means of achieving its objectives. An unreasonable failure to follow the statutory code will be able to be taken into account by Employment Tribunals, and may result in an uplift to an employee's compensation of up to 25%;
- Making Parental Leave a day one right: The Make Work Pay Plan contains a related commitment to review the current Parental Leave system within the first year of government. The right to take up to 18 weeks² of unpaid Parental Leave per child for caring purposes at any time before their 18th birthday is currently only available to employees with one year of continuous employment;
- Making Statutory Sick Pay (SSP) a day one right: Although there is no minimum continuous service requirement before an employee can claim SSP, eligible employees are those with average weekly earnings of not less than the “lower earnings limit”³ in the eight weeks before they became sick. In addition, SSP is not payable for the first three qualifying days of sickness absence. Labour plans to remove both the lower earnings limit and the waiting period;
- Making unfair dismissal protection a day one right: A qualifying period of two years' continuous service is currently required in most cases. As Tom Waters (Associate Director of the IFS and Head of the Income, Work and Welfare Sector) highlights, one adverse impact of making unfair dismissal protection a day one right could be greater difficulty in reversing hiring decisions: “*unproductive worker-job matches persist for longer and employers are more reluctant to hire workers that they consider riskier (e.g. younger, less experienced ones)*”;
- Creating a single enforcement body “to ensure employment rights are upheld”: This body's remit is not fully articulated in the Make Work Pay Plan, but the proposals include powers to: “*undertake targeted and proactive enforcement work and bring civil proceedings upholding employment rights*”, “*inspect workplaces*” and “*take action against exploitation*”; and
- Equalising National Minimum Wage eligibility: The Manifesto pledges to remove the 18-to-20 and under-18 age bands, pursuant to which lower rates of National Minimum Wage apply. Additionally, the Manifesto notes that Labour “*will change the remit of the independent Low Pay Commission so for the first time it accounts for the cost of living*”, indicating that the

² In blocks of at least one week, with no more than four weeks being taken per child in any particular year.

³ Currently £123 per week.

Commission will support Labour in making sure the minimum wage is a “*genuine living wage*.”

2. Equality

The Manifesto claims that the Make Work Pay Plan will “*transform the lives of working women, including by strengthening rights to equal pay and protections from maternity and menopause discrimination and sexual harassment*.” In particular:

- Equal pay: Rachel Reeves, the newly appointed chancellor, has stated she will close the gender pay gap “*once and for all*”. According to the Make Work Pay Plan, Labour intends to enact measures to: (i) ensure services can no longer be outsourced to avoid equal pay; and (ii) allow a comparator from another establishment to be used where their terms and conditions can be attributable to a “*single source*”;
- Extending dismissal protection for pregnant women: Labour has pledged to outlaw the dismissal of women while they are pregnant, and for six months following their return to work. Since 6 April 2024, the period during which women are entitled to be offered a suitable alternative vacancy to avoid redundancy has been extended beyond the period of pregnancy and maternity leave, to 18 months after the birth;
- Menopause: Labour has stated that it will: (i) require employers with more than 250 employees to produce ‘Menopause Action Plans’, setting out how they will support employees through menopause; and (ii) publish guidance, including for small employers, on measures to consider relating to uniform, temperature, flexible working, and menopause-related leave and absence; and
- Sexual harassment: Legislation passed by the prior government will, from 25 October 2024, impose a statutory duty on employers to take “*reasonable steps*” to prevent the sexual harassment of employees in the course of their employment. Labour has pledged to go further than this, by: (i) requiring employers to take “*all reasonable steps*” in this regard; (ii) updating whistleblower protection for women who report

sexual harassment at work; and (iii) holding employers liable for the harassment of their employees by *third parties* (e.g., clients or customers) in certain circumstances. Employer liability for third party harassment was removed under section 40 of the Equality Act 2010 by the coalition government, and was removed from the draft version of the forthcoming legislation during the legislative process.

The Manifesto makes the following additional pledges aimed at promoting equality on other grounds:

- Race Equality Act: Labour promises to introduce a landmark Race Equality Act, enshrining the full right to equal pay for Black, Asian, and other ethnic minority people, strengthening protections against dual discrimination, and rooting “*out other racial inequalities*”;
- Equal pay for disabled employees: The Manifesto pledges “*the full right to equal pay for disabled people*” (though this is not further elaborated); and
- Ethnicity and disability pay gap reporting: Labour has committed to introducing disability and ethnicity pay gap reporting. The Make Work Pay Plan clarifies that, in line with the gender pay gap reporting obligations that have been in force since 6 April 2017, disability and ethnicity pay gap reporting will become mandatory for employers with more than 250 employees.

3. Trade Unions

The Manifesto pledges to “*strengthen the collective voice of workers, including through their trade unions*.” The Make Work Pay Plan describes a range of measures aimed at achieving this, including:

- Repealing the legislation that: (i) requires at least 50% of those entitled to vote, to vote on ballots to take industrial action, and at least 40% of those entitled to vote on ballots take industrial action in the health, education, transport, border security and fire sectors, to vote ‘yes’; (ii) allows the government to pass regulations to set minimum service levels that must continue to be met in certain services despite industrial action; and

(iii) enables employment agencies to supply agency workers to businesses with striking workers;

- Updating existing trade union legislation to remove “*unnecessary restrictions on trade union activity*” and ensuring “*industrial relations are based around good faith negotiation and bargaining*”;
- Allowing workplace ballots to be conducted electronically;
- Simplifying the process of union recognition and the law around the statutory recognition threshold;
- Introducing a new duty on employers to inform new employees of their right to join a union; and
- Strengthening protections for trade union representatives against unfair dismissal, and for union members from intimidation, harassment, threats and blacklisting.

4. Additional Pledges

The Manifesto contains Labour’s pledge to implement the Make Work Pay Plan, which includes the following additional pledges that were not repeated in the Manifesto:

- Extending tribunal time limits: This would make the time limit for bringing all claims in the Employment Tribunals six months, thereby doubling the time limit for many statutory employment law claims, and bringing all claims in line with the time limits for statutory redundancy pay and equal pay claims;
- Making flexible working the default: Labour has pledged to make flexible working the “*genuine default*” from day one for all workers, except where it is not reasonably feasible. On 6 April 2024, the outgoing government: (i) introduced an

obligation to consult with an employee before refusing their request, and the ability to make a second request in any 12-month period; (ii) removed the 26-week qualifying period to request flexible working, and the requirement to explain how employers might deal with the effects of the request; and (iii) reduced the employer’s three month decision period to two months. However, the grounds for refusing a request, and the requirement to deal with the request in a reasonable manner, did not change;

- Introducing a right to switch off: Labour has pledged to create a “*right to switch off*”, following similar models already seen in Belgium⁴ and Ireland.⁵ However, Labour’s proposal merely contemplates the right to “*have a constructive conversation and work together on bespoke workplace policies or contractual terms that benefit both parties*”;
- Extending bereavement leave: Labour has pledged to introduce the right to bereavement leave for all workers following the loss of a “*loved one.*” At present, one, two consecutive, or two separate, weeks of paid bereavement leave are available to employees following the death of a child with whom they have a parental or quasi-parental relationship, as a day one right;
- Paid carer’s leave: Labour has promised to review the legislation that provides employees with a statutory right to request one week of unpaid carer’s leave in each rolling 12-month period, which came into force on 6 April 2024. Labour will also examine the benefits of introducing *paid* carer’s leave, while being mindful of the impact of changes on small employers;
- Lowering the threshold for collective redundancy consultation: Labour will seek to “*strengthen redundancy rights and protections*”, for example,

⁴ In Belgium, employers of twenty or more employees had until 1 April 2023 to deposit company-level collective bargaining agreements agreed with trade unions, or amended work regulations, with the Federal Public Service for Employment, to implement the new statutory ‘right to disconnect’ from work (meaning a right not to read or respond to work emails, calls or messages outside of working hours).

⁵ In Ireland, pursuant to a non-statutory code of practice, employers have, since March 2021, been encouraged to engage with employees and/or trade union representatives to develop a ‘right to disconnect’ policy that considers the particular needs of their business and its workforce. Failure to follow this code can be taken into account in employment litigation.

by ensuring the right to collective redundancy consultation is determined by the number of people impacted *across the business*, rather than in one workplace. At present, the duty arises when employers propose to dismiss 20 or more employees as redundant at one “*establishment*” within 90 days, and the term “*establishment*” has been interpreted by the European and domestic courts to mean the “*local unit*” to which employees are assigned;

- Employment status: Labour has pledged to consult on a single status of ‘worker’ (combining the two current statuses of employee and (non-employee or ‘limb B’) worker), which will be contrasted with the “*genuinely self-employed*”; and
- Enabling workers to raise collective grievances with Acas: Labour has pledged to allow workers to raise grievances collectively through [Acas](#).

5. Consultation

The Manifesto contains Labour’s commitment to consulting with businesses, workers, and civil society before passing legislation.

Given the material impact of the extensive portfolio of proposed new legislation, consultation will be key to ensuring the interests of all stakeholders are given sufficient consideration.

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