

Employment law under the new Labour Government

What changes can employers expect?

Day-one employment rights

Labour will remove the qualifying period of employment required for certain employment rights:

Unfair dismissal

Currently, employees must work for two years (up until 2012 it was one year) before acquiring normal unfair dismissal rights. Labour says it will make the right to claim unfair dismissal a day-one right, which would be a huge change and could impact recruitment practices (how thoroughly employers interview/vet candidates, and whether you hire contractors instead of employees), and is likely to result in an increased number of claims. It may be that the consultation process results in a compromise being found, and the period moving back to one year or six months, but Labour is placing a lot of emphasis on day-one rights, so we should presume that will be the case.

Labour also says that probationary periods will be excluded from the day-one qualifying period, and employers would therefore still have time to assess and to fairly dismiss new hires during probation, but would need to follow fair and transparent rules and

processes when doing so. There is as yet no clarity about how this probation exception will apply.

It will be important to ensure that your employment contracts are clear about probation periods, their duration, and the other terms applicable. However, as with any performance issue it will also depend on how managers monitor performance/probation, so training managers will also need to be considered.

Flexible working

Labour says flexible working would become a day-one right for all workers (not necessarily just employees) and be the 'default,' except where not reasonably feasible. Recent changes in 2024 already permit employees to apply for flexible working on day one and to make two applications per year. Requests can still be turned down based on business reasons, but Labour is inferring that it may be more difficult for employers to turn down flexible working requests under their approach.

Parental leave

Labour says employees would qualify for parental leave on day one (instead of the current 52 weeks). This could also potentially refer to shared parental

leave, which employees can only take if they have 26 weeks' service by the end of the 15th week before the expected week of childbirth.

Statutory sick pay (SSP)

Employees will qualify for SSP on day one rather than on day four (after the current three-day waiting period). Labour will also remove the lower earnings limit so more people will qualify for SSP.

Extending employment tribunal time limits

Labour's headline change is its proposal to give employees longer to issue employment tribunal claims.

Currently most claims must be lodged within a three-month window (although the mandatory ACAS early conciliation process can extend this to up to five and a half months).

Labour will give employees six months to lodge claims (plus presumably any extension via ACAS), which could increase the number of claims employers face, and might impact hiring practices (such as possibly having to wait longer before recruiting into a similar role where an employee has been dismissed on redundancy grounds).

Gender, ethnicity and disability pay gaps

Currently large employers (those employing 250 or more employees) are required to report annually on their gender pay gap and publish their pay gap information on both their own website and a government website.

Although employers are encouraged to go further and to implement an "action plan" to reduce their gender pay gap, there is no obligation to do so, but Labour says it will require large employers to develop, publish and implement action plans to close their gender pay gaps. It will also require large employers to publish their ethnicity and disability pay gap data, which will involve more administration for employers.

Steps employers could take now to prepare, include:

- Assess your systems for data capture, including obtaining information from employees about their protected characteristics, to allow for smoother implementation of the pay gap reporting requirements in future.
- When gender pay gap reporting was brought in during 2017, a lot of employers ran a dummy report with assistance from solicitors so that it was performed under legal privilege, to help identify gaps and inconsistencies in data and pay before the actual published report was run. This type of process could be repeated for ethnicity and disability pay gap data.
- Consider other measures such as job evaluation schemes to allow for consistency and to help identify gaps in advance.
- Consider what you could do in the near-term to address any issues with hiring, retention and career pathways. Many employers already have gender pay gaps at senior levels and similar gaps may be identified when ethnicity and disability pay gap data is analysed.

Menopause action plans

The previous Government considered ways to help employers support and manage staff experiencing the menopause.

It decided against making menopause an additional protected characteristic under the Equality Act 2010, and instead established a Menopause Taskforce to share best practice and appointed a Menopause Employment Champion to work with employers to keep people experiencing menopause symptoms in work. It also asked the Equality and Human Rights Commission to publish guidance for employers, published in February this year.

Labour says it will require employers with 250 or more employees to produce menopause action plans, explaining the steps they will take to support employees through the menopause. It will also publish guidance, including for small employers, on measures to consider relating to uniform and temperature, flexible working and recording menopause-related leave and absence.

Pregnancy dismissals

In April this year, the law was changed to give employees taking maternity leave enhanced and longer protection from redundancy.

Dismissals for redundancy can still occur, but employers must give the employee priority for any suitable available role during pregnancy and in the 18 months following childbirth.

Labour's proposals go much further, making it unlawful to dismiss a woman during pregnancy or

within six months of her return to work for any reason, except in specified circumstances.

It is not clear what the 'specified circumstances' will be.

Collective consultation

Currently employers must collectively consult when proposing over 20 redundancies (or in some cases changes to over 20 employees' terms and conditions) in "one establishment", in a period of 90 days or less.

Case law has often found that an "establishment" is a single workplace/site/office. In this way, large employers with several workplaces can sometimes avoid collective consultation rules applying.

However, Labour say it will change collective consultation laws so that the obligation will be triggered based on the number of employees affected across the whole business, rather than in a single workplace/site/office.

This means that the collective consultation rules will apply more often. Although Labour have not said this, it seems likely that the obligation to notify the Secretary of State will also be changed so it applies that where over 20 redundancies are proposed across the whole business.

Fire and rehire

Labour intends to end fire and rehire as a way of forcing through changes to employees' contractual terms, while recognising the importance of businesses being able to restructure to remain viable where there is genuinely no alternative.

It will replace the Dismissal and Re-engagement Code of Practice (which came into force on 18 July 2024) with a new and tougher Code of Practice.

Worker status

Labour intends to reform the current employment status system whereby we have three categories:

- employees;
- workers; and
- the self-employed.

Instead, it will propose a two-tier framework:

- workers; and
- self-employed.

As a result, those we currently see as ‘workers’ might benefit from more employment rights and protections.

It is not clear how this will be implemented in practice given the significant differences between employees and workers as currently defined.

Zero hour contracts

Labour plans to ban ‘exploitative’ zero hours contracts and give workers the right to a contract reflecting the number of hours they regularly work, based on a 12-week reference period.

Workers will also be entitled to reasonable notice of any change in shifts or working time, with compensation proportionate to the notice given for any shifts cancelled or curtailed. Workers will continue to have the right to be paid overtime and employers

will still be able to offer fixed term contracts, including seasonal work.

It is not clear what ‘exploitative’ will mean, but businesses will need to consider their options if they engage anyone on these types of contracts at present.

Workers are due to acquire the right to request a more predictable work pattern in September this year, under legislation passed by the Conservative Government. It is not clear whether Labour will bring this into force or scrap this in favour of its ban on “exploitative” zero hours contracts.

National minimum wage

Labour will remove the age bands so that young employees will be paid the same as employees aged 21 and over.

It also says it intends to increase the National Minimum Wage to living wage levels and will require the Low Pay Commission to take account of the cost of living when making its recommendations. This will lead to increased wage costs for many employers.

Trade unions and industrial action

Labour says it will allow industrial action ballots to be conducted electronically (instead of postal ballots required currently) and will repeal the Trade Union Act 2016 which introduced restrictions on the organisation of lawful industrial action, including longer notice periods, higher ballot thresholds, restrictions on picketing and the expiry of industrial action mandates after six months.

It will also repeal the Minimum Service Levels legislation which came into force in 2023. This relaxation of the rules could see employers facing more industrial action.

Labour will also simplify the statutory recognition process (making it easier for unions to obtain recognition by employers), give unions a reasonable right of access to workplaces and introduce a new duty on employers to inform workers of their right to join a trade union.

Review of leave rights

Labour says it plans to review the parental leave system in its first year of government, consider whether the recently introduced right to carer's leave should be a right to paid leave, and it will also introduce the right to bereavement leave for all workers.

It is not clear if its review of parental leave will include reviewing the little-used shared parental leave system and/or a review of paternity/ maternity rights as well.

Non-compete clauses

There is nothing in the Labour manifesto or its New Deal for Working People about banning or restricting non-compete clauses in employment contracts, but it is something to keep an eye on.

Recently, the US Federal Trade Commission announced a rule comprehensively banning non-compete clauses in employment contracts across the USA (although this is currently subject to legal challenge by some States).

In recent years, the UK Government has consulted on restricting the use of non-competes with an eye on practices in the USA and to increase competitiveness in the economy, but as yet no formal measures have been forthcoming.