

NEW GOVERNMENT: NEW EMPLOYMENT LAWS

The election of a new Labour Government heralds the prospect of a number of employment law reforms as signposted in the Labour Party's [Manifesto](#) and associated policy documents ([Plan to Make Work Pay](#) and [A New Deal for Working People](#)). What form they will take, and when, is as yet unknown as much detail is currently lacking.

This briefing takes a high-level look at some of the key employment law proposals, the potential implications for employers, current areas of uncertainty and the preparatory steps that should be considered.

SINGLE EMPLOYMENT STATUS

What: A single status of 'worker' will be created for all but the genuinely self-employed with all workers to be afforded '*the same basic employment rights and protections*'.

At present individuals are either employees, workers, or self-employed contractors for the purposes of statutory employment rights (such as unfair dismissal, minimum notice entitlement, the right to redundancy pay, discrimination protection and so on). Subject to meeting the necessary qualifying conditions employees enjoy the widest statutory employment rights. Unfortunately, the distinction between employee and worker is not always clear resulting in much uncertainty for individuals and employers alike as well as generating considerable case law.

Implications: A single employment status of 'worker' could significantly expand the number of individuals entitled to statutory protection and rights, such as minimum wage, holiday pay, and protection from unfair dismissal. At this stage it is unknown what 'basic employment rights and protections' are envisaged.

If all workers will benefit from unfair dismissal and statutory redundancy pay rights will the 'service' of individuals who were not previously categorised as employees count for the purposes of these new rights? If so, companies will have to cost the potential for a broader scope of statutory continuity with the retrospective application of 'service' potentially pushing up termination costings.

Key issues

- [Single employment status](#)
- [Unfair dismissal](#)
- [Flexible working](#)
- [Zero hours contracts](#)
- [Family leave](#)
- [Employment Tribunal claims](#)
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UNFAIR DISMISSAL

What: Unfair dismissal protection will become a day one right. Employers will however be permitted to dismiss for fair reasons: capability, conduct or redundancy and will be permitted to have probationary periods.

Implications: A day one unfair dismissal right has the potential to give rise to more traffic in the employment tribunal. To mitigate against this employers can:

tackle any serious performance issues before any new laws come into force.

review recruitment processes and due diligence to improve selection processes and move away from reliance on probationary periods.

make greater use of probationary periods for new recruits.

refresh training on performance management to support capability dismissals from day one of employment.

conduct thorough termination procedures supported by a clear document trail to evidence the permitted reasons for dismissal, potentially necessitating a change in mindset.

Employers should audit template contracts to assess what amendments are needed to reflect permitted probationary periods and consideration given to shortening contractual notice periods (subject to the statutory minimum) as this could have an impact on the level of compensation that is payable.

FLEXIBLE WORKING

What: Flexible working will become a day one right for all workers, except where it is not reasonably feasible.

Implications: It is unknown at this stage what an employer can rely upon to demonstrate that a flexible working arrangement is 'not reasonably feasible' (NRF), how an employer's NRF assertion can be challenged and what remedies will be available. In due course companies are likely to have to revisit their flexible working request (FWR) policies and ensure a clear document trail for refusals based on feasibility.

ZERO-HOURS CONTRACTS

What: Exploitative Zero-hours contracts will be banned, and employers will be required to offer contracts that reflect regular hours worked over a twelve-week reference period.

Implications: What will 'exploitative' mean for these purposes? Unknown at the moment is whether there will be a transitional phase or immediate ban and how the latter would work in practice? If zero hours contracts are terminated, would it trigger collective redundancy obligations if more than 20 such contracts are terminated?

For companies that make significant use of zero hours contracts consideration will need to be given to how workforce flexibility can be retained and an assessment of the impact on cost base?

FAMILY LEAVE

Maternity leave: It will be unlawful to dismiss a woman within six months of returning from maternity leave, except in specific circumstances. The exact scope of these circumstances remains to be clarified.

Bereavement leave: A right to bereavement leave will be introduced. The details on duration and pay level have yet to be determined.

Carers' leave: The existing right to 1 week's unpaid carers' leave will be reviewed, with consideration given to introducing paid leave. No timeframe or details have been provided.

Parental leave: A review of the parental leave regime will be conducted within the first year of government, with parental leave to become a day one right for all workers.

Implications: It remains to be seen whether both employees and workers (as those terms are currently understood) will come within the scope of any new parental leave regime. Details on the form, duration, and pay are also unknown. There is the potential for greater staffing challenges for employers and in particular smaller employers if a larger section of the workforce comes in scope of the right and the duration of leave is expanded. Employers will need to review existing family leave policies, and in particular whether leave and pay policies will need to be revised. Enhanced schemes that previously looked generous may cease to do so.

EMPLOYMENT TRIBUNAL CLAIMS

What: The time limit for all claims will be increased to six months, and enforcement through tribunals will be improved.

Implications: The extension to the limitation period will reduce the number of occasions where internal proceedings are still ongoing when a claim is filed thereby reducing 'holding claims' and potentially enhancing the prospects of the parties reaching a resolution.

TRADE UNIONS

What: Trade union legislation will be updated to: (i) simplify the process of, and reduce the thresholds for, union recognition; (ii) permit electronic balloting; (iii) strengthen the protection of trade union representatives against unfair dismissal; (iv) introduce rights for trade unions to access workplaces in a regulated and responsible manner, for recruitment and organising purposes subject to appropriate notice and compliance with reasonable requests of the employer; (v) require employers to inform all new employees (in their written statement of particulars) of their right to join a trade union and to notify staff of this on a regular basis; (vi) introduce statutory rights for trade union equality representatives in order to strengthen equality at work.

The new Government will consult on whether trade unions should automatically be entitled to statutory recognition once a specific percentage (lower than at present) of workers support recognition.

Implications: In due course it seems likely that greater trade union recognition will result in some sectors if current recognition procedures are modified.

RIGHT TO SWITCH OFF

What: The introduction of a 'right to switch off' giving workers and employers the opportunity to have constructive conversations and work together on bespoke workplace policies or contractual terms that benefit both parties, following similar models to those in Ireland and Belgium.

Implications: There is no detail on employer obligations or available remedies. In practice this may amount to nothing more than the right to have a conversation; if so, will there be a remedy if constructive conversations do not occur? In Ireland, failure by an employer to follow the Code of Practice on the Right to Disconnect is not an offence in itself. In Belgium, there are no specific sanctions for employers who have not (yet) implemented the right to disconnect.

AI/SURVEILLANCE

What: Employers will be required to consult and negotiate with trade unions or elected staff representatives before introducing surveillance technologies.

Implications: What form this consultation/negotiation obligation will take remains to be seen; will an employer be compelled to reach agreement and/or subject to sanctions if negotiations are not undertaken and/or agreement is not reached?

FIRE AND REHIRE

What: The practice of fire and rehire will be outlawed other than where there is genuinely no alternative to restructuring to keep the business viable. In addition, the information and consultation procedures that employers must follow to reach agreement on contract changes will be improved by replacing the new [statutory code](#) on dismissal and re-engagement (Fire and Rehire Code) that comes into effect on 18th July, with a strengthened code of practice. It is also proposed that unfair dismissal and redundancy legislation will be amended to provide for effective remedies against abuse of fire and rehire.

Implications: What a strengthened statutory code will add to the existing Fire and Rehire Code in terms of process and/or the implications of non-compliance (freestanding claims, nullity of termination etc) remains to be seen? In the meantime, employers must familiarise themselves with the Fire and Rehire Code and adapt their practices accordingly whilst being mindful that this may only be for an interim period prior to any new statutory regime coming into effect.

EQUAL PAY

What: Measures will be implemented to prevent outsourcing from being used to avoid equal pay obligations.

Implications: Companies that routinely outsource activities must keep a watching brief on proposals. There may be implications for existing outsourcing arrangements and new outsourcing agreements may need to address this once the shape of the proposals is clearer.

PAY GAP REPORTING

What: "Large firms (i.e. with more than 250 staff) will be required to develop, publish and implement action plans to close their gender pay gaps".

Outsourced workers will have to be included in the gender pay gap and pay ratio reporting. In addition, there will be mandatory publication of ethnicity and disability pay gaps for large firms, to mirror gender pay gap (GPG) reporting.

Implications: The policy document refers to 'staff' and makes it clear that outsourced workers will be included in the reporting. The use of the term 'staff' suggests that elements of the workforce who are not currently included in GPG data will come in scope. This plus the requirement to include outsourced workers will mean that many companies currently not in scope of the GPG reporting regime will be subject to the new gender, race and disability pay gap reporting regimes.

The availability of the data in relation to outsourced workers may be limited in cases where current outsourcing agreements do not provide for data provision obligations on the part of the service provider. Going forward data provision obligations will need to be factored into such arrangements.

In scope employers will have to address the obligation to produce and publish action plans. Those who do not currently collate data on disability and ethnicity will need to put in place infrastructures and strategies to facilitate this, including workforce comms explaining why the data is being collated to improve response rates.

MENOPAUSE IN THE WORKPLACE

What: Large employers will be required to produce Menopause Action Plans. Amendments to the Equality Act 2010 to include menopause as a protected characteristic are possible.

Implications: Many employers have adopted menopause policies drawing on various pieces of guidance including that from [ACAS](#), [the EHRC](#) and the [British Standard Institute Guide](#). What employers may lack, however, is a formal action plan against which the employer is measured.

SEXUAL HARASSMENT

What: The duty on employers to prevent sexual harassment before it starts will be strengthened. In addition, women who report sexual harassment at work will be given the same protection as other whistleblowers.

Implications: On 27 October 2024 the new obligation on employers to take reasonable steps to prevent sexual harassment of employees during their employment comes into effect. This will require employers to take proactive steps to prevent sexual harassment. How will the new Government expand on this obligation? It is possible that the new obligation will be altered to require an employer to take "all" reasonable steps and/or that the penalty regime for non-compliance will be fortified.

WHISTLEBLOWING

What: Protection for whistleblowers will be strengthened.

Implications: Unclear as there are currently no details on claims that can be pursued, remedies or the procedures that employers must adopt. In due course employers may need to address their internal whistleblowing procedures and provide training as appropriate.

COLLECTIVE REDUNDANCY CONSULTATION

What: The right to collective redundancy consultation will be determined by the number of people impacted across the business rather than in one workplace ('establishment').

Implications: This is likely to lead to collective redundancy exercises having to be carried out (and HR1 forms being submitted) in many more cases than at present as the 20-employee trigger threshold will be attained more readily. Employers will need to factor this obligation into their timeframes and redundancy costings as this will potentially extend redundancy timelines and/or lead to more tribunal litigation for protective awards.

TIMEFRAME

- An Employment Bill within the first 100 days of Government.
- 'Worker' status consultation within the first year of Government.
- Parental leave rights consultation within first year of Government.

TUPE

What: 'the rights and protections for workers subject to TUPE processes will be strengthened'.

Implications: At this stage it is unclear whether it is being proposed that workers (as that concept is currently understood) as well as employees will be in scope of TUPE and its protective regime. Neither is it clear what protections are envisaged here; will this e.g. involve further restrictions in relation to the ability to amend terms and conditions, increased remedies?

If TUPE applies to workers, this will have potentially significant implications for current outsourcing arrangements that were entered into on the basis that on exit TUPE would apply only to employees unless there are transitional provisions to address this.

PREPARATORY STEPS

Although the final form, and timing, of any employment law changes is unclear it is recommended that employers give thought to the following action points:

Workforce Structure/ Composition:	Audit the current workforce to ascertain the makeup and ratio of current employees, workers, and self-employed (and zero-hours workers) to determine the potential impact of the proposed changes and consider alternative staffing models.
Contracts, Policies and Procedures:	Audit current employment contracts, other contract arrangements (including outsourcing arrangements), HR processes and policies, employee benefit schemes, risk, and compliance procedures, working arrangements, and any payroll arrangements to identify areas that may need revision, particularly in relation to the new protections that a merged category of worker would bring.
Pay Gap Reporting/ Data Collection Strategies:	Large employers should assess whether systems are in place to accurately collect and analyse data on gender, ethnicity, and disability (including in relation to outsourced workers) and consider what employee communications can be initiated to optimise data collection and increase employee engagement and what data protection obligations need to be included in outsourcing agreements.
Trade Unions:	Consider whether there is an appetite to strengthen relationships with trade unions to prepare for the possibility of increased union presence and activity within the workplace.
Training:	Consider what training will be required in due course on the implications of the new rights and protections, including the right to switch off and the strengthened protections against sexual harassment.
Consultation Mechanisms:	Establish mechanisms for consultation with employees and trade unions, particularly concerning the use of AI and surveillance technologies.
Monitor Developments:	Keep a watching brief for any consultations on the proposals and any draft legislation.

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