ILG Support

Legal Update

July 2024 – New Government, what's on the horizon for employment law?

On 5th July 2024 the Labour party has been elected to form Government. Labour have pledged various changes to the employment landscape and here we break down some of the potential changes to be expected.

Ban on exploitative zero hours contracts

For those unfamiliar with them, a zero hours contract is one which promises no work from the employer and following a change to the law in 2021 means that a worker is not bound to exclusively work for that employer; in practice the worker can refuse work when it is offered.

As there is no promise of work under a contract like this there is a lack of security for the worker, no predictability of work pattern or earnings. The Government seeks to address these issues by ensuring workers have a contract which reflects the number of hours they regularly work based on a 12-week reference period. In addition, Labour's Plan To Make Work Pay proposal states an intention to implement reasonable notice for worker's for shift changes and working time with compensation that is proportionate to the change made.

The right not to be unfairly dismissed to be a day one right

At present a worker must have been employed for two full years in order to have the right not to be unfairly dismissed. The current exception to the rule is if the dismissal is due to those listed in the Employment Rights Act 1996 as automatically unfair and when the worker has been discriminated against. The Government proposes to not to have the grace period of two years for employers and unfair dismissal claims will be an option from day one, dismissal of any kind will need to have a thorough and fair process without the need for any service history.

It is still likely that a probation period will be acceptable. A probation period acts like a trial period, once the probation is passed the role becomes permanent. Employer's have the right to assess a worker's suitability for the role during the probation period and terminate the employment if it isn't working out. Presumably a dismissal for this reason will still be permissible under any new rules however it is essential to ensure that employers are prepared to issue contracts with clearly defined probation periods clearly defined, by day one of employment and be ready to properly address issues in performance in good time.

Changes to fire and rehire code of conduct

Fire and re-hire means a worker's contract is terminated and they are re-instated on new terms. This practice typically benefits the employer who is forcing a change on workers. It is understood that a strengthened code of practice will be implemented and whilst no details are yet known, it is likely

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that any changes made to employee's terms will require consultation and agreement which will take time and a careful process.

Single status of worker

In the UK we currently have three types of worker: Employed, worker, and self employed. Self employed individuals have almost no employment rights, employed people have the fullest package of employment law rights and worker's (often casual, zero hours and agency workers) have some but not all rights.

There is a considerable body of judge made law which sets out various legal tests to determine whether someone is employed or a worker. The Governments recognises the impracticality of businesses and workers having sufficient awareness of these rules to be able to properly provide workers with adequate protections and as such proposes to consult upon and introduce a single status of worker as distinct from those who are self-employed.

Greater protections for the self-employed

Labour's Plan to Make Work Pay states an intention to strengthen the rights of the self-employed. Points of concern include: the right to a written contract, action to tackle late payments, extension to health and safety provisions and blacklisting protections. Trade unions will also have greater ability to support the self-employed.

Family friendly rights

Parental leave

Parental leave to be a day one right. There are various forms of leave available to parents some of which require the worker to have been in the service of the employer for up to 26 weeks before the right to leave exists. The Government seeks to strengthen rights for parents to take time away from work from day one of employment.

Bereavement Leave

Many employers have a willingness to support bereaved workers, yet employment law to date only provides one type of such leave, which is for two weeks due to the loss of a child. Considered to be out of date with current practice, the Government seeks to implement greater rights for individuals who suffer the loss of a loved one.

The right to 'switch off'

The Government will consult to introduce the 'right to switch off' which aims to support a healthy work life balance. Details won't be known until the consultation concludes however the intention is to establish good working practices which may include elements such as:

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- The right not to routinely perform work outside of working hours
- The right not to be penalised for refusing to attend to work outside working hours
- A duty to respect a worker's right to switch off, for example by not sending routine emails or communication outside of work time

Flexible working

There have been some interesting developments in the right to flexible working over the last year. Further proposals are being considered to make flexible working a default position (unless employers have a very good reason to refuse) from day one of employment rather than something that must be achieved through a process of request and consult.

Sick pay

To qualify for statutory sick pay an employee must meet a minimum earnings level, which currently sits at £123 per week, and they must have been off sick for more than three days. The Government seeks to remove both provisions making sick pay available from day one.

Increasing time to make a claim

The best route to seeking a legal remedy for a worker is by an application to an Employment Tribunal. Statutory claims brought via this route include but not limited to unfair dismissal, unlawful deduction from wages and discrimination claims.

Most claims must be brought within three months of the event complained of. This short time frame can be difficult for worker's who are potentially going through a difficult time trying to find and settle into alternative employment whilst also taking legal proceedings against an ex-employer. The Government proposes to extend the timeframe from three months to six months.

Collective Grievances

All worker's have a right to raise a personal grievance with their employer and ultimately use the early conciliation process with ACAS to help settle a dispute prior to formal legal proceedings. It is proposed that the Government will introduce the ability for worker's to collectively complain to ACAS. It will be interesting to see if the proposal will extend to amendments to the ACAS Code of Practice on disciplinary and grievance procedures which sets a framework for employers to follow for their own internal procedures.

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