

June 2024

# Employment Newsletter

## General Election Special

Given the 24-hour media coverage, it is very likely that all ECIA Members have realised that a **General Election will take place on 4th July 2024.**

From the moment that Rishi Sunak announced the Election would take place on 4th July 2024, 'normal' politics went into hibernation to be replaced by a sustained period of electioneering that will conclude with the Election itself.

The major political parties have now published their manifestos, and these give the voting public some forward vision about what a Party might do should they be elected to power.

One needs to remember that **manifestos are really just advertising and promotional materials** for the electorate with the Parties aiming to secure as many votes as possible. Manifestos usually mention a considerable number of items and in many cases the items are more in the form of a statement of intent, rather than a detailed time-bound commitment. Only the party that is elected to power will be held to account over what manifesto pledges they have delivered on.

But what do the Party manifestos say about those items which are likely to have a significant impact on Employers? In this edition of the Employment Newsletter, we will attempt to **highlight the elements of the manifestos that relate to the employment landscape.** Whilst having no political 'axe to grind', we will focus on the manifestos of the three main parties, as the other parties are either unlikely to be forming a Government in Westminster or their manifestos focus predominantly on issues away from the employment arena. Manifestos contain different degrees of detail and sometimes explicit detail behind a statement of intent is deliberately lacking. This article cannot attempt to fill those gaps if a Party has not fully declared how it intends to deliver on a pledge.

Current opinion polls suggest that Labour could win the election and secure a sizable majority in Parliament. A deep dive into their manifesto will give employers an idea of what the future might hold should the opinion polls be proved correct.



## Labour Manifesto pledges

Unsurprisingly, the Labour Party manifesto contains a considerable number of employment related pledges. The manifesto builds on a planning paper released earlier in the year entitled "Make Work Pay" and commits the party, if elected, to laying a new Employment Bill, which will start the process of implementation some of the pledges, within 100 days of coming to power. The Labour manifesto is an aspirational document with much of the fine detail still to be finalised, it does however acknowledge that there will be a need to release further White Papers and hold public consultation exercises around many of the pledges.

### Claiming Unfair Dismissal

The Labour manifesto pledges to remove the current 2-year qualifying period on claiming Unfair Dismissal at an Employment Tribunal (ET). If elected, Labour state that the Right to claim Unfair Dismissal would become a day one right (although the manifesto suggests that employers may still be able to dismiss during a probationary period).

The Labour manifesto has rowed-back on a previous idea of lifting the cap on unfair dismissal financial awards that ETs could make, however, the manifesto does pledge that claimants will have 6 months, rather than the current 3 months, in which to lodge claims with the ET. The removal of the qualifying period (and the increase in time limits) are likely to lead to an increase in claims through the tribunal system.

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### Fire and rehire

Labour is pledging to end the practice of employers being able to dismiss workers and then rehire them on lesser terms. However, the manifesto acknowledges employers should be allowed to continue this practice where there is no alternative if the business is to survive, so clearly an absolute ban is not envisaged. The Acas 'code of practice on fire and rehire' (which doesn't come into force until 18th July) is described as "weak" and will be revised. Labour have described fire and rehire as a 'scourge'. Such strong language indicates this is a key manifesto pledge to be acted on rapidly.

### Redundancy rights

Labour has pledged to strengthen redundancy rights and protections, for example, by ensuring the right to collective consultation is triggered by the number of people impacted across the business rather than, currently, in one "establishment" (usually a workplace). This will make the requirement for collective consultation more common as employers will have to take a UK-wide view, rather than a localised one, when counting up the numbers of redundancies being contemplated.

### Gender, disability and ethnicity pay gap reporting

Labour claims that progress on closing the gender pay gap has slowed in recent years. The manifesto pledges to require large firms to produce, publish and implement action plans which will close their gender pay gaps. The publication of ethnicity and disability pay gap information will also be made mandatory for employers with more than 250 staff, mirroring current arrangements for gender pay gap reporting.

Large employers may need to start wrestling with how they might collect and process ethnicity and disability data in order to comply with future mandatory reporting requirements. This will not be easy as ethnicity and disability data is not always freely volunteered by employees. Further public consultation may well be required in these areas before changes are implemented.

Labour has also pledged to create new legislation, currently referred to as the Race Equality Bill, aiming to grant full equal pay rights to people from ethnic minority backgrounds. Similar rights to equal pay for disabled people are also promised.

Labour has also said it will require large employers (250+ employees) to produce Menopause action plans, detailing how they will support their employees through the menopause, much like gender pay gap action plans.



### End of exploitative Zero Hours contracts

Labour have committed to banning exploitative zero-hours contracts and giving people the right to have a contract which reflects the regular hours that they work (based on a 12-week reference period) after 12 weeks of employment.

### Low Pay

Labour has pledged to change the National Minimum Wage (NMW) so that the cost of living is taken into account when it is set annually. It has also pledged to remove the current age banding, which it considers discriminatory, so that all adults (age 16+) will get the highest rate (currently only paid to those age 21 and above).

### Trades Unions

Under a Labour Government, the trades unions would be given new rights to access workplaces and the process of obtaining trade union recognition would be simplified making it easier for gig economy/remote workers to organise. The "Make Work Pay" document also proposes significant changes in collective rights, including winding back the rules on industrial action balloting, ballot participation thresholds and how much notice is given to employers of lawful industrial action being called, to their pre-2016 position. This would un-pick much of the Trade Union Act 2016. Statements of employment particulars (section 1 statements/contracts of employment), issued by employers, will be required to inform employees of their right to join a trades union.

### Other pledges made in the Labour manifesto include:

- Making flexible working the day one default option for all workers, except where it is not "reasonably feasible".
- A move towards a single status of worker. This would involve getting rid of the current legal distinction between "workers" and "employees" and leave a revised two-part framework featuring "workers" and the self-employed.
- Removing the lower earnings limit on Statutory Sick Pay, increasing its value and making it payable from the first day of absence.
- Reform of the Apprenticeship Levy to create a "Flexible Growth and Skills Levy".
- Introducing a right for workers to "switch off" outside of working hours.
- The creation of a Single Enforcement Body for employment rights making it easier for workers to enforce their rights and to ensure employers meet their statutory obligations.



## Conservative Manifesto pledges

It is perhaps not too surprising that the Conservative's manifesto is not quite as full of fresh ideas for the employment landscape as the Labour Party one. Changes to employment legislation and policy are not at the core of the Conservative manifesto for this election, perhaps because after 14 years in power the Party have had plenty of opportunity to make the changes that they wanted to UK Employment Law. That said, a few employment pledges do feature in the manifesto.

### Minimum Service Level legislation

The Conservative manifesto pledges to continue and expand the legislation that requires operational cover to be maintained during strikes in certain essential services. This has moved up the Conservative agenda after recent industrial action in the NHS and public transport sectors. The manifesto gives no clues about any new sectors to be brought under the legislation.

### National Insurance Contributions

The Conservatives pledge to continue reducing NICs with a commitment to lower employee NI to 6% by April 2027 and to remove any NICs for self-employed people by the end of the next parliament.

### National Minimum Wage

The Conservatives pledge to increase the National Living Wage (the highest tier of NMW) in line with inflation and the cost of living. Current projections suggest this will lead to £13 per hour for those people aged 21 and over.

### Overhaul the Fit Note system

The manifesto proposes a significant overhaul of the 'fit note' system to help employers better support employees returning to work after illness or injury. With a view to reducing the workload of GP's, fit notes would be provided by other healthcare professionals in the future. Currently 94% of fit notes are signed as 'not fit for work' without the provision of any detailed reasons or guidance for employers. Overhauling the system would aim to provide better, more detailed, guidance for employers about what tasks an employee could perform if they returned to work. The aim being to facilitate easier returns to work and reduce lengthy sickness absences.

### Diversity and equality

The Conservative manifesto suggests a more cau-



tious approach in this area. It pledges to review current law and obligations falling on employers to find a balance that both facilitates workplace equality and protects employers' needs to maintain operational efficiency. Whilst detail is scant, the focus appears to be on restricting the scope and implementation of diversity and equality programmes. This could lead to streamlined reporting requirements and more flexibility for employers to develop bespoke diversity programmes tailored to their specific business contexts, rather than having one-size-fits-all initiatives imposed upon them.

The Conservatives also pledge to amend the Equality Act 2010 to clarify that the protected characteristic of sex means biological sex. The proposed amendment seeks to provide clarification that an individual "can only have one sex in the eyes of the law". The Conservatives' aim is to clarify some of the ongoing debates around transgender people and alternative gender theories and remove any legal ambiguities. If this were to happen, employers would need to review and possibly update their policies and practices to comply with this amendment, in an area that many members may already find quite difficult.

### Apprenticeships

The Conservatives are pledging to create 100,000 more apprenticeships per year by the end of the next parliament. The focus will be on promoting apprenticeships as a viable alternative to studying full time for a degree at university. This would involve increased funding and simplifying the Apprenticeship Levy system to encourage more companies to participate.

### Childcare

The manifesto pledges to increase access to affordable childcare services to allow more parents of young children to return to the labour market. It pledges to increase free childcare to 30 hours per week, for eligible parents of kids from 9 months old to starting school age, by September 2025.

## Liberal Democrats Manifesto pledges

Whilst unlikely to be elected with a majority, the Liberal Democrats could possibly be involved in a coalition Government should the election prove closer than the polls are suggesting.

The Liberal Democrats' manifesto covers a wide range of employment issues with the main focus being on family friendly policies.

### Family leave

The manifesto pledges to make all parental leave and pay rights apply from day-one of employment and to extend these rights to self-employed parents. It pledges to increase Paternity Pay to 90% of earnings (capped for high earners) and to add an additional "use it or lose it" month of Paternity Leave also paid at 90% of earnings. Large employers will be required to publish Parental Leave and Pay Policies.

The party also pledge to double the value of Statutory Maternity Pay and Shared Parental Pay to £350 a week.

### Carers

The manifesto pledges to make "caring" and "care experience" protected characteristics under the Equality Act, which would then require employers to make "reasonable adjustments" for employees with caring responsibilities. Carers would be given statutory guarantees of the right to take regular respite breaks. The manifesto provides no detail on the definition of "regular" or how long these breaks would be.

### Employment Status

The Liberal Democrats pledge to introduce a new employment status category called "dependent contractor" (with rights to minimum wage rates, sick pay and holiday entitlements), which would sit between employee and self-employed. The manifesto does not detail how this would differ from current "worker" status.

### The Gig economy

The Liberal Democrats pledge to increase NMW rates for people on zero-hours contracts by a further 20%. They also pledge to give those on zero-hours contracts and agency workers the right to request a fixed hours contract after 12 months.

### Apprentices

The manifesto pledges to replace the current Apprenticeship Levy with a "Flexible Skills and Training



Levy" as well as scrapping the lower paying Apprentice tier of the NMW so that all apprentices were paid the appropriate NMW for their age.

### Other measures that the Liberal Democrats propose to introduce, if elected, include:

- Requiring large employers to publish data about their gender, ethnicity, disability and LGBT+ employment levels, pay gaps and progression as well as having to produce aspirational 5-year diversity targets.
- Encourage the use of name-blind recruitment processes in the private sector.
- Allowing everyone the right to request flexible working from day one of employment.
- Introducing Statutory Sick Pay for anybody earning under £123 per week (the current qualifying earnings threshold) bringing about 2 million more people in scope to SSP.

### Conclusion

The manifesto summaries above are intended to give ECIA members a 'heads-up' about what the future might hold dependent on which party is elected on 4th July. Whilst employment matters have not been at the forefront of campaigning, nor subject to a great deal of media scrutiny, the detail within the various manifestos suggest that change will be coming to the employment landscape and employers had better prepare themselves for having to react and comply with any statutory changes. By noon on 5th July, we should know which party will form the next Government and so have a better idea of which manifesto employment pledges are likely to become a future reality for ECIA members.