

UK: Employment Update

In the run up to the imminent General Election all parties have been focussing on workers' rights in their manifestos. In this May Update we highlight some of the key aspects of the main parties' proposals. As is to be expected, the detail is light but the direction of travel is clearly indicated.

Conservative party

Pay gap reporting

- The recently implemented gender pay gap reporting (GPG) regime will be beefed up to require the publication of additional data on the pay gap in relation to different levels and grades of staff. This clearly has the potential to make it much easier for employees to identify whether colleagues performing the same role, or a role of equal value, are being paid at the same rate for the purposes of assessing whether there are grounds for an equal pay claim.
- There will be new reporting obligations on pay gaps across ethnic groups within the workforce; these will presumably mirror the existing GPG reporting regime.
- **National Minimum Wage:** the Living Wage will continue to be increased, to 60% of median earnings by 2020; thereafter it will be increased by the rate of median earnings. The Living Wage is currently £7.05 an hour and is applicable to workers aged 25 and above.

Gig economy, workers' rights and status

- Proper protection will be provided for people working in the 'gig economy'. No further detail is hinted at other than that the final

report of Matthew Taylor's 'Review of Employment Practices in the Modern Economy' is awaited (this is expected in June). No commitment is made to acting on any recommendations made, or, indeed any other recommendations in relation to "gig economy" issues that have been made to date, for example, those made by the House of Commons in the report *Self Employment and the Gig Economy* ([HC 847](#)).

- New legislation will be introduced to provide for Plc's to: nominate a director from the workforce, or, create a formal employee advisory council, or, assign specific responsibility for employee representation to a designated non executive director.
- A new right will be introduced for employees to request information about the future direction of the company subject to sensible safeguards.

Family rights, discrimination and diversity

- An increase in the number of women sitting on boards will be pushed for. It is unclear whether a carrot and/or stick approach will be adopted.
- Steps will be taken to improve the take up of shared parental leave; what these will be is again not hinted at.

Key issues

- Conservative party proposals
- Labour party proposals
- Liberal Democrat proposals

- Protections against discrimination will be extended to individuals who suffer from mental health conditions that are episodic and fluctuating. At present, a mental health condition will only be a 'disability' attracting protection under the Equality Act 2010 if the effect of the impairment has lasted for 12 months, or is likely to last for 12 months. So if an employee is suffering from a condition such as clinical depression, they are unlikely to qualify as "disabled" if they have only suffered depressive episodes for short periods of time with intervening periods of good health.
- As part of their health and safety obligations employers will be required to carry out a 'needs assessment' for mental health.
- A new statutory entitlement to carer's leave will be introduced. The length of such leave, entitlement to pay and qualifying conditions all remain to be seen.
- **Maximum Pay ratios:** there is no suggestion of imposing a

maximum pay ratio, however, it is proposed that Plc's will be required to publish the ratio of executive pay to broader UK workforce pay.

Labour party

- **National Minimum Wage:** to be increased to the level of the Living Wage for all worker aged 18 and above and to be at least £10 an hour by 2020.

Gig economy, workers' rights and status

- Employment rights will be extended to workers. For example, shared parental leave and redundancy pay is currently available to employees but not to workers.
- Equal rights will be available from day one. It is unclear whether it is intended to give workers and employees the right to claim unfair dismissal from the first day of employment rather than after two years' continuous employment as at present.
- A legal assumption that all workers are 'employees' unless the employer can prove otherwise.
- The establishment of a commission to modernise the law around employment status with the possible introduction of new statutory definitions of 'employment status'.
- The imposition of punitive fines on employers failing to meet their employment obligations by exploiting bogus self employment arrangements.
- Making employment agencies and end users jointly responsible for upholding the rights of agency workers.

Family rights, discrimination and diversity

- A civil enforcement system to ensure compliance with gender pay auditing will be introduced.

- Paternity leave to be doubled to four weeks and paternity pay increased.
- Reinstating the right to claim discrimination in relation to third party harassment (for example from customers or clients).
- Strengthening protection for women against unfair redundancy: this appears to be aimed at protecting women who are made redundant during or after having taken maternity leave.
- A consultation will be carried out on the introduction of bereavement leave.
- **Maximum Pay ratios:** a maximum pay ratio of 20:1 to be introduced both in the public sector and in private sector companies bidding for public contracts.
- **Takeover Code:** to be amended to require every takeover proposal to have a clear plan to outline pensioner and worker protection.

Trade Unions

- Public contracts will only be awarded to companies that recognise trade unions.
- A consultation will be conducted with trade unions on redundancy arrangements to bring them more in line with European counterparts. It is not entirely clear what is envisaged here; perhaps higher redundancy pay and/or greater protection against dismissal for employers with families to support, or possibly the requirement to offer new vacancies to redundant employees where they become available within a set period following termination?
- **Internships:** all interns to be entitled to be paid.
- **Zero hours contracts:** these will be banned with all workers to be guaranteed a minimum number of hours a week. In addition where a worker is engaged on a short hours contract guaranteeing only a few hours a

week but in practice they regularly work longer hours for more than 12 weeks such workers will have a right to a contract reflecting those hours.

- **Employment tribunal fees:** to be abolished.
- **Bank holidays:** four new public holidays for all workers in addition to the statutory holiday entitlement of 5.6 weeks.
- **TUPE:** reversing changes made to the TUPE legislation in 2010. It is assumed that this refers to the reinstatement of the right to claim automatic unfair dismissal if dismissal is 'in connection' with a transfer. At present the transfer must be the 'sole or principal' reason for the dismissal in order for it to be automatically unfair. Similarly it is understood that the old provisions rendering changes to terms and conditions void if made 'in connection' with the transfer will be reinstated.

Liberal Democrats

- **National Minimum Wage:** there will be a consultation on establishing a Living Wage across all sectors. It is unclear whether private sector employers will be required, or merely encouraged, to pay the Living Wage. A new requirement on larger employers to publish the number of people paid less than the Living Wage.

Gig economy, workers' rights and status

- Modernising employment rights to make them fit for the 'gig economy' and building on the forthcoming Taylor report. This manifesto pledge is rather vague indeed. What rights and how they will be modernised is unknown; it could be the statutory definition of 'employee', and/or the extension of certain rights (such as to claim unfair dismissal) to 'workers' more generally or something else entirely.
- Promoting employee ownership by giving staff in Plc's with 250+ employees a right to request

shares to be held in trust for the benefit of employees.

- Legislating to provide for a German style two tier board structure to include employees. In Germany when a company is required to form a supervisory board to oversee management decisions employees have the right to elect a member to the board.
- Providing for employee representation on remuneration committees and representation on the board of Plc's.

Family rights, discrimination and diversity

- An additional month's paid paternity leave to be made available as a day one right.
- Shared parental leave to be a day one right.
- Encouraging employers to provide more flexible working and to make this a day one right so there is a presumption that work is flexible, unless there is a clear business reason it cannot be.
- Pushing for at least 40% female board members in FTSE 350 companies.
- Implementing the Parker Review recommendations on increasing ethnic minority representation

(See our [Briefing](#)).

- Requiring companies with more than 250 employees to monitor and publish data on gender, BAME, LGBT+ employment levels and pay.
- The use of name blind recruitment in the public sector and active encouragement of its use in the private sector.
- Internships:** good employer kite marks to be awarded for good employment practices including the avoidance of unpaid internships
- Maximum pay ratios:** No maximum is proposed, however, larger employers will be required to publish the ratio between top and median pay.
- Zero hours contracts:** the introduction of a formal right to request a fixed contract. It is unclear whether zero hour contracts will be completely banned and/or whether employers have to accede to a request for a fixed contract the meaning of which is not entirely clear. In addition there will be a consultation on the introduction of the right to make regular patterns of work contractual.
- Employment tribunal fees:** to be abolished.

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