



Legal update — June 2017

## Employment

### General election manifestos; the lowdown



**With a general election looming on 8th June, what employment reforms might we expect from the new Parliament? Here is a summary of the commitments set in the manifestos of the Conservatives, Labour and the Liberal Democrats.**

#### What will happen post-Brexit?

The Conservatives have promised that all workers' rights derived from EU law will be protected after Brexit. The Great Repeal Bill will convert EU law into UK law at the point of Brexit. No mention is made in the manifesto of the measures that will be amended or repealed as a result of exiting the EU.

The Labour Party has pledged to ensure that all rights guaranteed under EU law are protected after Brexit. The Great Repeal Bill will be abandoned and an EU Rights and Protections Bill will be produced which will guarantee all existing protections afforded under EU law.

Meanwhile the Liberal Democrats have declared that they oppose a hard Brexit and would commit to making the final Brexit deal subject to a referendum. Their priority for Brexit negotiations would include to unilaterally guarantee the rights of existing EU nationals in the UK and to urge the Government to secure the same rights for UK citizens elsewhere in the EU. The Lib Dems would also guarantee the right of all NHS and social care staff from the EU to stay in the UK.

#### Equality and Human Rights

The Conservatives have declared that if they remain in power the EU Charter of Fundamental Rights will not be brought across into UK law. While the process of Brexit is underway the Human Rights Act 1998 (HRA 1998) would be retained, but once the process of leaving the EU concludes, the Conservatives would "consider our human rights legal framework".

A Labour government would preserve the HRA 1998, and the Lib Dems would oppose any attempt to withdraw from the EU Charter of Fundamental Rights or to water down the HRA 1998.

There would be an extension under the Equality Act 2010 (EqA 2010) to cover discrimination against those suffering from mental health conditions that are "episodic and fluctuating" under Conservative plans. Health and safety regulations would also be amended so that employers would be required to provide appropriate first aid training and needs-assessments for mental health, as they currently do for risks to physical health. Finally, the Conservatives would give employers one year's relief from employer's National Insurance contributions as an incentive to employ certain vulnerable workers (e.g. those who are disabled, who suffer from chronic health problems, or former wards of the care system).



Source: Fotolia

The Labour Party also has plans to make changes to the EqA 2010 and would make it easier for disabled workers to challenge discrimination at work. The Party's manifesto pledges to gender audit all proposed legislation and policy to assess its impact on women before making it law. In addition Labour would strengthen protections for women against unfair redundancy to avoid them being penalised for having children, and would consult on and reform the Gender Recognition Act and the EqA 2010 to offer transgender people better protection.

The Lib Dem manifesto outlines the party's commitment to outlaw caste discrimination, to guarantee the freedom to wear religious or cultural dress, and to extend discrimination law to protect gender identity and expression, not merely gender reassignment.

Published by  
Trowers & Hamblins

Trowers & Hamblins LLP  
3 Bunhill Row  
London  
EC1Y 8YZ

t +44 (0)20 7423 8000  
f +44 (0)20 7423 8001

[www.trowers.com](http://www.trowers.com)

Trowers & Hamblins LLP is a limited liability partnership registered in England and Wales with registered number OC337852 whose registered office is at 3 Bunhill Row, London EC1Y 8YZ. Trowers & Hamblins LLP is authorised and regulated by the Solicitors Regulation Authority. The word "partner" is used to refer to a member of Trowers & Hamblins LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Trowers & Hamblins LLP's affiliated undertakings. A list of the members of Trowers & Hamblins LLP together with those non-members who are designated as partners is open to inspection at the registered office.

Trowers & Hamblins LLP has taken all reasonable precautions to ensure that information contained in this document is accurate but stresses that the content is not intended to be legally comprehensive. Trowers & Hamblins LLP recommends that no action be taken on matters covered in this document without taking full legal advice.

### Working families

Under Conservative plans we would see a new statutory right to unpaid time off for workers whose family members required full-time care. It is thought that this would allow workers to take between 13 and 52 weeks off work, while retaining their employment rights and allowing a return to the same job at the end of the period. A new right to child bereavement leave would also be introduced and proposals are set out in the manifesto which are designed to help women and carers acquire the skills and experience needed to return to the workplace after taking time out to look after children or support an elderly relative.

Labour would commit to increasing the scope of the current 30 hours of free childcare to include all two-year-olds, and would consult on extending childcare provisions to include one-year-olds. It would introduce mandatory workplace risk assessments for pregnant women and review the support offered to women in the workplace who have suffered miscarriages. The Party details plans to increase the rate of paternity pay and double paternity leave to four weeks, extend the period of maternity pay to 12 months and introduce legislation on statutory bereavement. Finally the Labour manifesto outlines plans to introduce four new bank holidays.

The Lib Dems would make flexible working, paternity leave and shared parental leave "day one" rights, and introduce a one month "use it or lose it" period of shared parental leave for fathers to encourage greater take up among men. They would also extend the 15 hours a week free childcare provisions to all two-year-olds and to children of all working families from the end of paid maternity, paternity and shared parental leave.

### Employment status and the gig economy

The Conservatives have pledged to act to ensure that, once the Taylor review has reported back, the interests of employees on traditional contracts, the self-employed and those working in the gig economy are all properly protected.

Meanwhile Labour has promised a ban on zero hours contracts to ensure that every worker receives a guaranteed number of hours a week. It plans to legislate against short hours contracts to ensure that workers who work "regular hours" for more than 12 weeks have the opportunity to switch to a "regular hours contract".

Labour has also pledged to extend the employment rights of employees to workers, and to create an independent commission to modernise the law on employment status. The Party would implement protection for those who are labelled self-employed but are not in reality. It would shift the burden of proof so that it is up to the employer to prove that a worker is not an employee as well as outlawing all umbrella

companies which are aimed at limiting workers' rights, and introducing legislation to give end-user organisations and agencies joint responsibility for ensuring that the employment rights of agency workers are upheld and protected.

The Lib Dems' manifesto promises to stamp out the abuse of zero hours contracts and to create a right for workers to request a fixed term contract. They would modernise employment rights to make them "fit for the age of the gig economy" by building on the forthcoming Taylor report. They would also consult on introducing a right to make regular patterns of work contractual after a period of time.

### National Minimum Wage

The Conservatives have stated that the national living wage (NLW) will be increased in line with the current target (for the rate to reach 60% of median earnings by 2020). It will then continue to increase in line with median earnings. No mention is made of similar increases for other rates of the national minimum wage (NMW).

Labour plans to raise the NMW to the level of the NLW for all workers aged 18 or over. There would be a crack-down on employers that refuse to pay the NMW by increasing the number of prosecutions. The Agricultural Wages Board would be reinstated to ensure that the wages and other general employment standards are maintained in the food manufacturing, farming and fisheries industries.

### Gender pay

Under the Conservative manifesto there are plans to extend the remit of gender pay reporting to require large employers to publish more data on the pay gap between men and women. A new mandatory reporting requirement would be introduced for large employers on the "race gap" (pay disparities between people from different ethnic backgrounds).

Labour would introduce an independent body to ensure compliance with the gender pay gap reporting obligations. It would reform pay ratios for public sector employers and those that bid for public contracts. Finally it would close the ethnicity pay gap by introducing further pay audit requirements on large employers.

The Lib Dems would commit to building on the gender pay reporting scheme in the private sector to include a requirement to monitor and publish data on gender, BAME and LGBT+ employment levels and pay gaps.

### Migrant workers and modern slavery

The Conservatives would increase the Immigration Skills Charge (this is levied on companies employing migrant workers) from £1,000 to £2,000 a year, with the

revenue being used to invest in high level skills training for domestic workers. The Party has also promised a review of the Modern Slavery Act 2015, focussing on the exploitation of vulnerable men, women and children for their labour.

Labour pledges in its manifesto to work with trade unions to ensure that there are fair rules at work to prevent the exploitation of migrant workers. It would introduce legislation to limit employers that have an overseas-only recruitment policy, and would work with business leaders to ensure that the provisions of the Modern Slavery Act are fully respected.

#### **Employment tribunal fees**

Both Labour and the Lib Dems would abolish these. The Conservative manifesto is silent on the matter despite recent criticisms of the fee regime.

#### **Reforms to TUPE and trade union matters**

These issues are only covered in the Labour manifesto which promises to reform TUPE to protect workers' rights and introduce a "right to own" policy that would make employees the "buyer of first refusal when the company they work for is up for sale".

Labour declares that the Trade Union Act 2016 would be repealed and "sectoral collective bargaining" would be introduced. All workers would be given the right to receive union representation and all unions would be given access to the workplace to speak to current, and recruit new, members. Public contracts would only be awarded to employers that recognise unions in the workplace.

#### **Now it's a case of wait and see...**

Until the results of the election are in we will just have to speculate on which package of measures we're likely to see actually coming into force.

Employment status will clearly be a key issue, particularly in the context of the Taylor review which is currently expected to report next month. These are interesting times and the coming months are bound to herald change, though of what sort is yet to be seen!

#### **June 2017 © Trowers & Hamlins**

For more information please contact

Emma Burrows  
Partner  
t +44 (0)20 7423 8347  
e eburrows@trowers.com

Rebecca McGuirk  
Partner  
t +44 (0)121 214 8821  
e rmcguirk@trowers.com

Nicola Ihnatowicz  
Partner  
t +44 (0)20 7423 8565  
e nihnatowicz@trowers.com

John Turnbull  
Partner  
t +44 (0)1392 612370  
e jturnbull@trowers.com

Helen Cookson  
Senior Associate  
t +44 (0)161 838 2081  
e hcookson@trowers.com