

Labour policy plans to create a single status of ‘worker’ and remove qualifying periods for some basic employment rights

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11 August 2021

Labour has announced plans to create a single status of ‘worker’ to include employees and ‘limb b’ workers. This would encompass all workers, from direct employees, to those who are considered part of the ‘gig economy’. For the avoidance of ambiguity, the plan includes the creation of a new legislated definition of ‘worker’ to make sure there is universal application of the protections.

The genuinely self-employed would retain their self-employed status.

Part of the proposal involves removing qualifying periods; this would mean some basic employment rights and protections would be bestowed in workers from day one in the job.

At present, workers are entitled to:

- the National Minimum Wage;
- protection against unlawful deductions from wages;
- the statutory minimum level of paid holiday;
- the statutory minimum length of rest breaks;
- to not work more than 48 hours on average per week or to opt out of this right if they choose;
- protection against unlawful discrimination;
- protection for ‘whistleblowing’ - reporting wrongdoing in the workplace; and
- to not be treated less favourably if they work part-time.

Only some workers are entitled to Statutory Sick Pay and pay for ‘family friendly’ leave; and workers do not currently have any unfair dismissal protection.

Under the policy, these guaranteed rights and protections would be extended to include:

- Statutory Sick Pay,
- Paid parental leave: Maternity, Paternity, Adoption and shared Parental Pay, and
- Protection against unfair dismissal.

The proposal follows the lead of various cases on employment status and gig economy workers concerning companies Uber, Deliveroo and Addison Lee.

Reaction to Covid-19?

The announcement is part of Labour policy proposals that Keir Starmer’s team is unveiling under the banner of a “new deal for working people”.

However, comments from Andy McDonald MP, suggest that the effects of the pandemic on workers may have been a catalyst:

"Millions of workers are in insecure employment with low pay and few rights and protections, particularly key workers whose efforts got the country through the pandemic ... A lack of basic rights and protections forces working people into poverty and insecurity. This is terrible for working people, damaging for the economy, and as we have seen throughout the pandemic, devastating for public health."

What does this mean for employers?

Whilst a number of employers may already provide sick pay and pay for parental leave for workers, these rights have yet to be enshrined in law or public policy for all workers. This proposed change would compel all employers to do the same, as well as widening the scope of those entitled by removing qualifying periods.

The additional protection from unfair dismissal would mean that employers would need to be alert to all/any actions towards workers, surrounding termination of a contract and/or expiry of a limited-term contract, making sure that they have a potentially fair reason for dismissal, follow a fair procedure and act reasonably. Employers would also need to be alert to behaviours towards their workers that could be construed as a breach of contract and grounds for a worker's resignation; ultimately carrying the risk of a constructive dismissal claim.

The Government has not currently shown any appetite to increase unfair dismissal rights, although it has previously confirmed that it would legislate to improve clarity over employment status tests to reflect modern working relationships. Whether this 'clarity' would effectively result in a combined employee/worker status as proposed by Labour remains to be seen.

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