A&O SHEARMAN

At a glance: key Labour Party employment reform proposals

MORE SECURE WORK AND BASIC EMPLOYMENT RIGHTS

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WHAT'S THE PROPOSAL?	HOW?	WHAT WOULD EMPLOYERS HAVE TO DO?
Extending basic rights		
• All workers would have basic rights not to be unfairly dismissed, to parental leave and to statutory sick pay (SSP) from day one of their employment. • Employers could use probationary periods "with fair and transparent rules and processes" (still to be clarified).	• Qualifying periods for these basic rights, and the lower earnings limit for SSP, would be removed. • Dismissals could still be made for the statutory fair reasons – there is no proposal to remove the cap on unfair dismissal awards.	• Apply the same fairness considerations when dismissing any employee, regardless of their length of service. • Review procedures (eg. disciplinary, redundancy, capability) to ensure that they are fit for purpose. • Consider probationary periods (as permitted) and possibly shorter notice periods (subject to statutory minimum requirements). • Budget for extra compliance costs. Statutory parental leave is unpaid but, if you offer an enhancement, consider whether to extend this from day one.
Simplifying employment status		
• A simpler two-tier framework for employment status ("workers" and "self-employed") would replace the current three-tier framework ("employees", "workers" and "self-employed"). • All "workers" would be given the same rights and protections, including sick pay, holiday pay, parental leave and unfair dismissal protection.	• Labour would "consult in detail" on the design of this framework, giving employers time to implement it. • Other measures could include rights to information on employment status.	• Review arrangements and documentation to ensure that staff are correctly categorised and given the necessary rights. • Budget for the extra cost of extended "worker" rights and tax costs (eg. employer NICs) if "workers" will be taxed as employees. • Potentially beneficial in reducing worker status litigation.

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		• Anticipate shift towards self-employed arrangements – consider response and compliance burden under the off-payroll working rules for those with personal service companies.
Curbing the use of "fire and rehire"		
• Restrictions would be tightened on the lawful use of "fire and rehire" to change an employee's contractual terms. • The practice would not be banned, as previously suggested, but its availability restricted to restructurings where there is genuinely no alternative for a business to survive.	• The statutory Code of Practice would be strengthened to require a more prescriptive process with workers. • There would be new and effective legal remedies against abuse.	• Continue to use "fire and rehire" with extreme caution, given the higher thresholds, and the scrutiny and reputational harm that it could attract. • Fall back on other lawful means of changing contractual terms, such as with employees' express/implied consent. • Conduct cost/risk analysis to identify alternative cost-saving measures, particularly in a large workforce.
Stronger whistleblowing protection		
• There would be stronger protection for whistleblowers, including updated protection for women who report sexual harassment at work. • Note that Labour has announced separately that it would introduce a new financial reward scheme for whistleblowers who expose stolen assets, sanctions breaches and recover misappropriated funds.	• There is no further information about these reforms. Possibilities could include a change in the law to provide that a disclosure of sexual harassment would be deemed a "qualifying disclosure" without the victim needing to show that it is "in the public interest", or further restrictions being placed on the use of non-disclosure agreements in these cases.	• Wait and see what these reforms entail. Update whistleblowing policies and dignity at work training, as necessary.
New "right to switch off"		
• Workers would have a right to disconnect from work and not to be contacted by their employer outside of working hours. There could be exceptions.	• The rules would be modelled on those in Ireland and Belgium. Broadly, these provide for proactive discussion of the issue with workers and/or representatives and the adoption of a policy (or of a collective agreement or work rules in Belgium).	• Introduce policies and contractual terms providing for the "right to switch off". Consult and collaborate with workers to find an approach that is mutually beneficial, which could include some exceptions to reserve flexibility for the business. • Treat this right as part and parcel of overarching duties to ensure workers' health and safety.

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More effective enforcement		
◆ Time limits for bringing any Employment Tribunal claims would be increased from three to six months. ◆ A Single Enforcement Body (**SEB**) would be formed, with powers to inspect workplaces, act and litigate to enforce workers' rights.	◆ The infrastructure for an SEB would need to be created, so this change could be some way off. The SEB's remit is unclear, save that it would have a focus on tackling worker exploitation. ◆ These reforms would require considerable resourcing to work effectively.	◆ Be prepared for more Tribunal claims given extended time limits. ◆ Wait for clarity on the role and remit of the SEB, given the potential for inspections and enforcement action. Legal compliance would be the best way of mitigating risk.