

JO CARBY-HALL

PROFESSOR, DIRECTOR OF INTERNATIONAL LEGAL RESEARCH,
CENTRE FOR LEGISLATIVE STUDIES, FACULTY OF BUSINESS, LAW AND POLITICS,
UNIVERSITY OF HULL

WORKERS' RIGHTS UNDER A BRITISH LABOUR GOVERNMENT

The parliamentary elections held on 4th July 2024 returned a victory¹ for the Labour Party which defeated the previous Conservative Government. In the Labour Party election manifesto entitled « Change » the Labour Party stated that it intended to « overhaul outdated employment laws (...) not fit for the modern economy » and replace these by better « in-work security, better pay and more autonomy in the workplace » with the principal aim «to improve the lives of working people »². The Labour Government proposes to do so by banning « exploitative zero hours contracts, ending hire and rehire and introducing basic rights from day one to parental leave, sick pay, and protection from unfair dismissal ». The Government also proposes to create a single enforcement body to ensure employment rights are upheld. These changes will improve the lives of working people across the entire United Kingdom³.

All these promises are optimistically and naively stated in the Manifesto to be implemented by legislation within 100 days from coming into government. A moronic statement indeed, for no government is enabled to make such fundamental legislative changes in « one fell swoop »⁴. This factor has been clearly demonstrated in the King's Speech⁵ where only two Bills are (so far) *prioritised*, namely the Employment Rights Bill and the draft Equality (Race and Disability) Bill⁶ within 100 days.

1 The Labour Party won 411 out of 650 seats in the House of Commons which is the lower House of the United Kingdom Parliament (Source: Official election results published on 6th July 2024).

2 *Labour Manifesto*, p. 44, « Making Work Pay ».

3 *Ibid.*, p. 45.

4 To use Shakespearian language by Macduff in Macbeth where the play likens the murder of Macduff's wife, children and servants to a hawk swooping down on its defenseless prey (in act 4 scene 3).

5 Made on 17th July 2024. The King's Speech (written by the Government and not the Monarch from the throne in the House of Lords) is made at the State Opening of Parliament. This « speech » itemises the Government's legislative program for the coming parliamentary session and is a crucial constitutional event in British parliamentary democracy.

6 Bills take months before becoming *Acts of Parliament*. They need to be scrutinised, debated and changes made to them by both the House of Commons and the House of Lords before they receive the *Royal Assent*.

I - THE CONTENT OF THE OF THE TWO BILLS

A- THE EMPLOYMENT RIGHTS BILL

The King, in his speech said, « My Government is committed to making work pay and will legislate to introduce a new deal for working people to ban exploitative practices and enhance employment rights »⁷.

Parental leave, sick pay and unfair dismissal rights are each proposed to become *day one rights* by mid-October 2024, although employers will still be enabled to use probationary periods for newly appointed employees. Under current laws there is a qualifying period before each of those rights may be exercised. For unpaid parental leave employees qualify if they have the statutory status of employees for a year or more, they are named on the child's birth or adoption certificate or have parental responsibility. They do not qualify if they are self-employed, have the statutory status of « worker » and are not foster parents⁸. Employers can ask for proof such as a birth certificate⁹. *Statutory sick pay* (SSP) eligibility require employees to work under a contract of employment, have performed some work under the contract of employment, have been sick for more than three consecutive days, earn a average of at least £123 per week and give notice and proof of sickness if or when needed¹⁰. Furthermore, employees can qualify for SSP if they work in more than one job. Employees do not qualify for SSP if they received the maximum amount of SSP¹¹, are receiving Statutory Maternity Pay or Maternity Allowance for pregnant women and new mothers who do not receive those payments, took part in strikes or were in custody.

Eligibility to claim *unfair dismissal* under current laws requires a two- year¹² qualifying period with the current employer. This right is only available to those enjoying the status of employee. Those holding the status or « worker » are not eligible to claim unfair dismissal. To be stressed however, is the fact that the Labour Government intends to eliminate the distinction between the statuses of « employee » and « worker » and merge the two statuses into one to be called « workers ».

The self-employed, members of the armed forces and the police, those working on fishing vessels who are paid by the share of the profits or gross earnings of the fishing vessel, independent contractors, employees working under illegal contracts, those taking part in unofficial strikes, those employees who have reached a settlement

7 *The King's Speech 2024*, Prime Minister's Office, Background Briefing, notes p. 20.

8 Unless they have acquired parental responsibility through the courts and the child is under 18 years of age.

9 Employers can extend parental leave to groups which are not eligible to apply subject to the contractual terms of the contract of employment or to collective agreement term incorporate into the contract of employment.

10 An employee's period of incapacity to work is not interrupted if annual leave is taken.

11 Which is 28 weeks.

12 It should be noticed that where the date of employment started after 6 April 2016 employees had to await two years before they may claim unfair dismissal whereas before that date employees were entitled to claim unfair dismissal after the first year of employment.

agreement or compromise agreement with their employers are all unable to make claims for *unfair dismissal*.

Exploitative zero hour contracts will be banned thus ensuring that workers have a right to a contract which reflects the number of hours they work and that they get reasonable notice of shift changes with proportionate compensation where shifts are cancelled or curtailed. This will end one-sided flexibility thus ensuring security and predictability to workers.

The ending of « *Fire and Rehire* » and « *Fire and Replace* » practices will be another provision in the Bill with effective remedies and replacement of the previous Government's statutory Code of Practice. There will be a provision on strengthening protections of new mothers by making it unlawful to dismiss a woman who has had a child for six months after her return to work, unless special circumstances exist.

Establishing a *Fair Pay Agreement* in the adult social care sector and following review, assess how, and to what extent, such agreements could benefit other sectors. The Government intends to reinstate the *School Support Staff Negotiating Body* to establish terms and conditions, career progression and fair pay. Making flexible working the default from day one for all workers with an obligation for employers to accommodate this as far as is reasonable to reflect the modern workplace. Establishing a new Single Enforcement Body, known as « *Fair Work Agency* », to strengthen the enforcement of workplace rights¹³. This Agency will have powers to undertake targeted and proactive enforcement, and bring civil proceedings» to uphold employment rights.

Finally, the Bill will include an updating of trade union legislation. So that it fits the modern economy, e.g. removing unnecessary restrictions on trade union activity and ensuring that industrial relations are based on good faith negotiation and bargaining. Statutory recognition of trade unions by employers will be simplified and ensure that trade union members have a reasonable right to access a union within workplaces.

B - THE DRAFT EQUALITY (RACE AND DISABILITY) BILL CONTENT

This Bill delivers on the Manifesto commitments and proposes to tackle inequality of pay which exists between ethnic minorities and the disabled. The law will give both the ethnic minorities and the disabled the « full right to equal pay » thus allowing them to bring pay discrimination claims in tribunals on grounds of ethnicity and disability¹⁴. Furthermore, there will be the introduction of a « mandatory ethnicity and disability pay reporting for larger employers (those with 250+ employees) to help close the disability pay gaps »¹⁵.

This will be a truly labour focused piece of legislation when, and if, the Bill becomes an Act of Parliament in its present form, it follows religiously the Labour

13 *Labour Party Manifesto 2024*, p. 45, § 2.

14 *Briefing Notes*, p. 77.

15 « Most ethnic minority groups earn less than the White British group and in disability there was a gap of 13.8% in 2021 and 14.1% in 2019 between median pay for disabled employees and non-disabled employees » (Source: *Briefing Notes*, *op. cit.*, p 77).

Party Manifesto and above all, these reforms represent a considerable departure from the current employment laws.

II - OTHER EMPLOYMENT RIGHTS MENTIONED IN THE MANIFESTO AND THE GREEN PAPER

In addition to the proposed changes discussed above there exists a myriad of other changes mentioned in the Manifesto. It is proposed to discuss briefly each of these changes. The Manifesto stated that if the Labour Party is returned in the 2024 parliamentary elections it will introduce « basic rights from day one to (...) protection from unfair dismissal »¹⁶. There is a qualifying two-year continuous service with the employer requirement under the current law. This is a retrograde step because it will make employers reluctant to employ riskier applicants.

The Manifesto states that¹⁷ « Labour will (...) make sure the minimum wage is a genuine living wage. We will change the remit of the Independent Low Pay Commission so for the first time it accounts for the cost of living. Labour will also remove the discriminatory age bands, so all adults are entitled to the same minimum wage, delivering a pay rise to hundreds of thousands of workers across the UK »¹⁸.

The Labour Government¹⁹ is committed to extending the statutory period of maternity leave ending on or after 6th April 2024, and those who are at risk of redundancy, will have priority for any suitable alternative vacancy, if available. This is known as the *Additional Protected Period*²⁰. The Additional Protected Period starts on the day after the last day of the employee's statutory maternity leave and ends 18 months after the date of the child's birth.

Employers who employ 250 employees and over will be required to have *Menopause Action Plans*. The Labour Party Manifesto announced that when in power, employers would have a legal duty to implement and publish annually menopause action plans setting out how they would support their employees through the menopause with special provisions for paid time off, changes of uniforms, flexible working, temperature control in the workplace and menopause-related leave. Guidance will be given with apparent no further legal requirements. Currently, the Equality and Human Rights Commission (EHRC) published guidelines for employers on how to make reasonable adjustments relating to the menopause. Numerous Employment Tribunal cases on discrimination under the *Equality Act 2010* relating to sex, age and disability have been won by female employees.

¹⁶ *Labour Party Manifesto 2024*, p. 45, § 2.

¹⁷ *Ibid.*

¹⁸ Under current law 18 to 20 and under the 18 age band receive less money under the National Minimum Wage. See too what is said in the *Briefing Notes* at p. 45 § 2 regarding the Independent Low Pay Commission

¹⁹ *The Employment Rights Green Paper. A New Deal for Working People*, p. 10; *Labour Party Manifesto*.

²⁰ *Maternity Leave, Adoption Leave and Shared Parental Leave Regulations, 2024* (Laid before Parliament on 11 December 2023 (Conservative Government legislation)).

The Labour Government proposes to create a single status of « worker ». Under the current law, there are three statuses, namely the status of independent contractor or self-employed, the status of employee and the status of worker. Each enjoys a certain number of employment rights. The self employed has virtually no rights, the employee enjoys a great number of employment rights whereas a worker enjoys fewer employment rights than does an employee. The employee is a person who works under a contract of employment whereas a worker is a person who is engaged under a contract under which she/he is required to work personally for the employer and such employer is not a client of that individual's business. The distinction between the status of employee and worker has caused considerable confusion²¹. This is one of the arguments of the Labour Party for simplifying that status. The status of « employee » will be abolished and the status of « worker » would enjoy the same employment rights currently granted to the « employee » status²².

Under the current law on collective redundancies, consultations are triggered when the employer « proposes » to dismiss 20 or more employees in one establishment within a 90 days period²³. The word « establishment » has been held to mean through the case law, the workplace or unit in which the employee works and not the business on the whole. The Manifesto and Green Paper indicate that the law will be changed to include consultations to take place in the business on the whole. Consequently, multinationals, large companies and even SMEs which have workplaces in various parts of the UK or abroad where redundancies would occur, would mean that the system would need to be re-organised thus causing employers additional administrative and financial implications and a major re-organisation.

A *right to disconnect* from work outside working hours will be introduced meaning that employers would not be able to contact workers out of hours. If enacted, this would be a new work-life balance statutory right.²⁴

A new law on *sexual harassment at work* enacted by the Conservative Government is due to come into force in October 2024. It will include third party harassment and will be enforced by the Labour Government.

An extension to the time limit to bring *statutory employment claims* to Employment Tribunals from the current three to *six months* is proposed by the Labour Government. This would give workers more time to prepare their case as well as encouraging them to settle their claims out of tribunal proceedings.

21 For a detailed discussion and analysis on the status of employee and that of worker see J. Carby-Hall, « New Fonciers of Labour Law : Dependent and Autonomous Workers », in B. Veneziani and H. Carabelli (ed.), *Du Travail Salarié au Travail Indépendant - Permanences et Mutations*, vol. 3., Programme Socrate (2003), Cacucci Editore, p. 163.

22 The right to claim unfair dismissal, redundancy payments, holiday pay, parental and paternity leave, sick pay and so on.

23 For a detailed evaluation on collective redundancies see J. Carby-Hall, « Company Restructuring and Collective Redundancies in the United Kingdom », in J. Cabeza et al., *La Negociación Colectiva Como Instrumento de Gestión Anticipada del Cambio Social, Tecnológico, Ecológico y Empresarial* (currently in the process of publication).

24 « Workers to get right to ignore their e-mails under new rules », *The Independent newspaper*, 19th July 2024, p. 1.

Conclusion

Six conclusions stand out in this epitome.

It is abundantly clear in the first instance that the British Labour Government intends to make root and branch reforms to current employment laws in its « Plan to make work pay » policy, and even proposes to create controversial new laws which never existed before, such as the proposed right to disconnect.

Secondly, the reader will readily notice that each of those radical reforms is beneficial to workers solely, with no regard being had to the difficulties created to employers. The « establishment » issue in cases of collective redundancies, the day one employment rights proposals, menopause proposals, those relating to unfair dismissals, to mention just a few, are detrimental to the employer in that it will cause additional administration and expense resulting in the tax payer having to pay higher taxes. Furthermore, there will be the creation of a dangerously unfair balance in the British employment relations system. To add insult to injury there is even a proposal to bring new legislation granting the worker the right to disconnect.

Having pointed out the dangers of a one-sided benefits policy, there is a hope, in the third instance, that the Labour Government will honestly and truthfully keep to its frequently stated phrase in both the Manifesto and the Green Paper that « there will be full consultation with businesses and workers on how to put the plans into practice before any legislation is passed ». This should correct the democratic deficit pointed out above, in British industrial relations.

Fourthly, in its Manifesto the Labour Party states that it will implement « Make Work Pay » in full and that legislation will be introduced in 100 days from the time it came to power following the July 2024 parliamentary election. It is submitted that such a statement is « writ in water ». Some of the legislation will take months and perhaps years to manifest itself!

Fifthly, it will be recalled that the Government proposes to introduce a « genuine living wage ». Within a few days after the election, the Chancellor of the Exchequer announced that most pensioners will cease to receive the Winter Fuel Allowance. Jan Shortt of the National Pension Convention wrote to the Chancellor saying²⁵ « There are 2 million pensioners in poverty in the UK. This means living in damp cold houses, washing in cold water and not using the cooker, all to save money. At least a further million older people live with precarious finances and face growing financial insecurity ». How does that fact tie in with « a genuine living wage? It shows *ab initio* the double standards, hypocrisy and untruths of the current British Labour Government.

Finally, the comment made by the Chancellor of the Duchy of Lancaster, Pat McFadden is most telling: « After fourteen years of Conservative failure, the Labour Party is calling time on the sticking plaster politics of populism ». How very true!

²⁵ *The Guardian*, 2nd August 2024