

# Executive Insights:

## Understanding and navigating the reality of Labour's proposed changes to employment law

**With the next general election on the horizon and given the Labour Party's position in the polls, it's important to understand and prepare in advance for what a potential change in government could bring.**

Labour's manifesto was published recently, and as they had already hinted in the run-up to its release, they intend to make some significant changes to existing employment law legislation. Their proposed plan to 'Make Work Pay' will come as welcome news for thousands of employees and if followed through, will likely improve the lives of many.

However, understanding what these changes will look like in practice is crucial. Such significant changes will come with great implications and impact for all employers – not only the global corporates, but also start-ups and SMEs, including those in the charity, education, hospitality, and healthcare sectors.

As such, I wanted to share some thoughts on some of the proposed changes to employment as confirmed in their manifesto and provide some suggestions and recommendations for employers on how to navigate these changes best and minimise organisational impact as much as possible. I will provide further updates as it becomes clearer if and how these changes will come into effect, but based on what we know right now, here are my thoughts.

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# “Banning exploitative zero-hours contracts”

## The proposal:

- Banning zero hours contracts and contracts without a minimum number of guaranteed hours
- Ensuring anyone working regular hours for 12 weeks or more will gain a right to a regular contract
- Ensuring all workers get reasonable notice of any change in shifts or working time, with wages for any shifts cancelled without appropriate notice being paid to workers in full

In reality, zero-hours contracts shouldn't be seen as a 'dirty phrase' but, if adopted in the right way, can be a highly flexible employment model that can benefit both employers and employees alike.

Where the zero-hours contract model is properly adopted and respected by organisations, it provides better flexibility all round, which many workers enjoy. For example, fitness instructors working at multiple gym facilities usually prefer not to be 'locked in' to a fixed-hours contract with a single employer.

The issues arise when zero-hours contracts are misused by employers, and legislation on this has already been tightened to help reduce this misuse.

Certain sectors, for example, hospitality and care, rely heavily on this model and the ability to flex their resource planning around the business need. Most of these sectors have already been hit hard by the impact of COVID-19, Brexit, and the increase in minimum wage, so this potential commitment to a fixed-cost employment model when resource may not even be required will come as another challenge.



**Employers likely to be impacted by a ban on zero-hours contracts, simply due to the nature of what they do, may want to consider revisiting contracts to create ongoing flexibility around the scheduling of working hours.**

**This would essentially enable them to have the ability to flex *how* those guaranteed hours are spread across each week, depending on the resource need.**

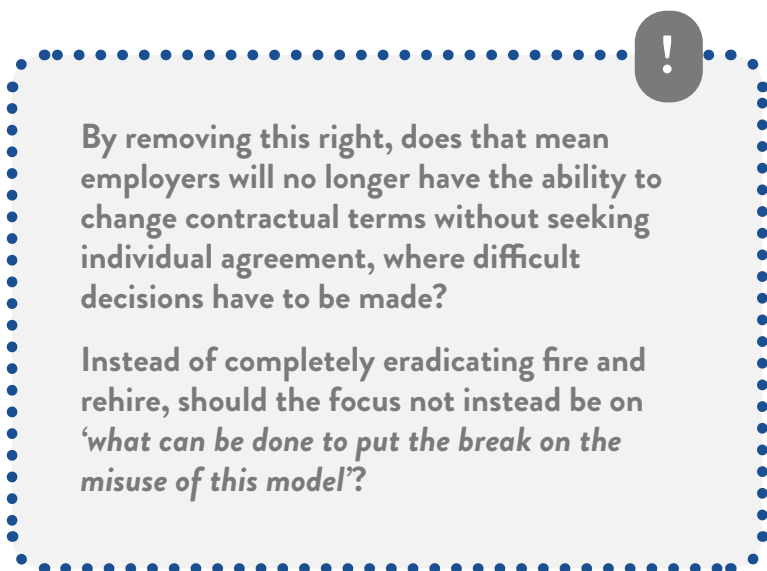
# “Ending fire and rehire”

## The proposal:

- Improving information and consultation procedures, to make employers consult and reach agreements about contractual changes with their workforce
- Adapting unfair dismissal and redundancy legislation to prevent workers being dismissed for failing to agree a worse contract

Firstly, let's be clear on what this practice means. Fire and rehire, also known as 'dismiss and re-engage', is where an employee refuses to accept major changes to their employment contract, so their employer effectively gives notice to end that contract and instead issues them a new contract with revised details. It is then up to the employee to either accept this new contract, seek employment elsewhere, or possibly make a claim of unfair dismissal. The employer would then have to demonstrate that the reason for the change was a fair or reasonable one.

In reality, responsible employers only look to use this method if there is a genuine and serious business need to make essential but less favourable contractual changes – and therefore, what many don't realise is that it's often deployed as an alternative to redundancy or in some cases, complete business closure.



**By removing this right, does that mean employers will no longer have the ability to change contractual terms without seeking individual agreement, where difficult decisions have to be made?**

**Instead of completely eradicating fire and rehire, should the focus not instead be on 'what can be done to put the break on the misuse of this model'?**

# “Introducing basic rights from day one to parental leave, sick pay, and protection from unfair dismissal”

## The proposal:

- Workers’ access to basic rights of protection against unfair dismissal, parental leave and sick pay, will not be subject to qualifying periods of work, but instead available from their first day

Although a great benefit for employees, introducing day-one rights to statutory sick pay will be another cost for employers and not something recoverable from the government. This will be especially challenging for small- to medium-sized organisations.

Perhaps of greater concern for some employers, introducing day-one protection from unfair dismissal will, again, bring a significant potential cost along with a greater burden on the employment tribunal system.

Recruitment is not a science. Even when approached using the most professional of recruitment and selection processes, there is no 100% guarantee that an individual will have the skills, attitude, and behaviours required for the job. Therefore, employers still need that flexibility to bring employment to an end where the hiring decisions made at interview are proven to be wrong.

Some might say that having unfair dismissal rights only after two years of service might be too long, but what about reducing that to one year or six months? There are already day-one rights for protected characteristics/discriminatory-based dismissals.

Whilst reducing rights from two years to the first day doesn’t prevent employers from terminating contracts through following fair procedures, it nevertheless significantly increases the risk of unfair dismissal claims.



**Employers may need to consider introducing a more rigorous recruitment process – knowing how crucial it will be to ensure they hire the right person first time – to give them a better chance at understanding the true candidate beyond their sometimes differing ‘interview mask’.**

**This will also highlight the importance of a robust probation period process to justify dismissal decisions should they end up in court. Employers may want to prioritise ensuring these probationary periods are introduced where they aren’t already and consider setting structured objectives for the new hire to achieve before coming to a decision on the continuation of their employment.**

**Some employers may choose to hire individuals initially on short, fixed-term contracts, but whether candidates leaving permanent jobs to join a new employer on this basis will be comfortable with this, remains to be seen.**

# ***“Make sure the minimum wage is a genuine living wage and remove the discriminatory age bands, so all adults are entitled to the same minimum wage”***

## **The proposal:**

- Increasing National Living Wage to at least £10 per hour for all workers
- Removing the age bands for one blanket living wage amount
- Working with the Single Enforcement Body and HMRC to make sure the living wage is properly enforced, including penalties for non-compliance

Of course, increased salaries will be massively welcomed by employees, but in reality, will bring yet another additional cost for employers. But the impact is greater than just a handful of salary increases for those on the current minimum wage. A substantial increase in minimum wage will likely erode the differentials between those on statutory minimum wage and those earning more (for example, team leaders with supervisory responsibilities who manage people on minimum wage).

If this salary margin continues to close, you raise the risk of individuals in higher roles stepping down for less responsibility and near enough the same amount of pay. If employers want that differential to remain, we'll likely see a knock-on effect as all other salaries in their organisation increase in line – adding further costs into the mix.

At first, the plans to remove age bands and set the national minimum wage to a single amount across the board sounds like a great move that will benefit all working adults. However, it's worth asking if it would actually be counterproductive...

What I mean by that is, if you had two individuals apply for the same vacancy (one fresh out of education and one with five years of experience), knowing you would have to pay them the same regardless, employers are likely to go for the more experienced candidate leaving the younger adult disadvantaged.

**In some respects, having that differing minimum wage age banding is an incentive for employers to hire a diverse team with varying levels of experience – including individuals at entry level.**

**We don't yet know whether minimum wage for those completing apprenticeships will be included in this blanket minimum amount, however, if it isn't, this may be a cost-effective solution.**

It remains to be seen whether Labour, if the result on 4th July is as the polls suggest, implements these pledges made in their manifesto on employment.

But, given their commitment to introducing change within the first 100 days, employers need to think now about how these changes could impact their business and what they might need to put in place to minimise the impact.

I will keep you updated as we know more over the coming weeks and months.

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