Can we expect a greater number of unfair dismissal claims from the end of 2024?

By Andrew MacPhail

3PB Barristers

The recent announcement of an election to take place on 4 July 2024 provides a useful prompt to employment practitioners to ensure they are aware of the various changes Labour intends to bring about in the arena of workplace rights.

Labour has not been shy about its intentions; and the planned changes are wide-ranging and significant. Furthermore, Labour has made clear that it intends to introduce legislation within 100 days of taking office. As such, if the polls are to be believed, employment practitioners should prepare for the very real prospect of significant new employment legislation being introduced by October 2024.

The latest iteration of Labour's wide-ranging plans are set out in a booklet titled "Labour's Plan To Make Work Pay: Delivering A New Deal for Working People".

One area which appears likely to see a significant degree of change is that of ordinary unfair dismissal:

Firstly, Labour intends to end "the current arbitrary system that leaves workers waiting up to two years to access basic rights of protection against unfair dismissal….".

Under the plans, dismissals will still be permitted if they are for a fair reason, in accordance with the current regime. However, the current need for employees to achieve two years' service before gaining the right to protection from ordinary unfair dismissal will be removed. There is an indication that employers will have more flexibility during probationary periods, although the extent is yet to be explained.

Secondly, Labour has made clear that it intends to "move towards a single status of worker and transition towards a simpler two-part framework for employment status." It seems that the two remaining categories will be (i) the truly self-employed, and (ii) all others.

An implication would appear to be that those who have to date fallen into the category of "workers" (but not "employees") will gain rights previously reserved for those in employment. Labour has not expressly stated that to be the intention. However, it is hard to see why a new unified category of worker would be created only to have tiers demarcated within it.

Thirdly, Labour plans to lengthen the time limit for bringing unfair dismissal claims from three months to six. It seems reasonable to suggest that various unfair dismissal claims which in the past have been ruled to be out of time will now be heard.

These three changes, when combined, will likely lead to a significant uptick in ordinary unfair dismissal claims. There is no clear data on how many dismissed employees would have brought unfair dismissal claims in recent years were it not for a lack of the requisite period of service; or how many terminated "workers" would have pursued unfair dismissal claims if such protection had existed for them. However, it seems reasonable to suggest that the ETs would have had to have dealt with a large number of additional claims.

It is rare for an unfair dismissal claim be heard in one day; indeed, they often run for more than two days. As such, any significant number of additional unfair dismissal claims would be likely to have a noticeable impact on ET capacity. Practitioners will be all too aware of the delays in the ET system in recent years; as matters stand, it is not easy to see how the ET system would be able to cope with any significant additional strain on capacity.

Labour has explained that it plans to make changes to the wider enforcement system for workplace rights. However, it has given little information on what if anything it intends to do to assist the ET system deal with existing capacity issues and/or the likely additional strain which will arise from the various changes planned, including those covered above pertaining to unfair dismissal.

A fourth area of change set out for the unfair dismissal arena is that pertaining to the practice of "fire and rehire". This is a controversial, but not uncommon, practice. As matters stand unfair dismissal legislation permits it (depending on the circumstances) by virtue of the ability to dismiss fairly "for some other substantial reason".

Labour has made plain its dislike of the practice. That said, it seems that there is no intention to outlaw it in its entirety, given Labour's recognition that businesses need to be able to "restructure to remain viable, preserve their workforce and the company when there is genuinely no alternative".

It therefore follows that practitioners can probably expect modifications to be made to the "some other substantial reason" route currently permitted for dismissals. It will be interesting to see what legislative wording is adopted to provide for the relevant modification. Any attempt to limit the existing permitted route to scenarios where a restructure is "necessary to ensure ongoing viability" would, unfortunately, provide plenty of scope for litigation.

Labour's plans for changes to workplace rights are significant and wide-ranging. They go far beyond the world of unfair dismissal as covered by this article. You may be of the view that Labour's plans go too far; you may be of the view that they do not go far enough. Either way, one hopes that Labour will ensure that it provides ETs with the necessary extra resources to cope with the added strain the changes are likely to create on an already stretched system.

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Andrew MacPhail

Barrister
3PB
Telephone: 01865 793 736
andrew.macphail@3pb.co.uk

3pb.co.uk