

Employment law matters post-election

By [Thomas O'Donohoe](#)

As the political shockwaves of the snap general election continue to reverberate around Westminster it remains to be seen what will become of the Conservatives' manifesto commitments in the absence of a Parliamentary majority with which to implement them. With that caveat in mind it is worth briefly reviewing what such employment law-related measures were promised during Theresa May's campaign as a guide to what may lie ahead for practitioners.

The manifesto

In the Conservative manifesto the headline promise was to “*not only guarantee but enhance workers' rights and protections*”. The main proposed policy commitments were:

- To confront the gender pay gap, racial disparity, stigma of mental health and disability discrimination.
- To ensure worker representation on Boards.
- To protect workers in the “gig” economy.
- To double the penalties on companies employing migrant workers to £2000 and to feed the money back into training for UK workers.
- To preserve all workers' rights in UK law by domesticating relevant EU law but then also to allow Parliament to “correct laws that do not operate appropriately”.
- To provide “carer's leave” for people caring for relatives with dementia and other illnesses.
- To extend Equalities Act protections against discrimination to mental health conditions that are episodic and fluctuating.
- To get one million more people with disabilities into employment over the next ten years.

A change of direction

The 2017 manifesto represented a big change of tune from the 2012 Beecroft Report commissioned by David Cameron which had recommended “no fault dismissals” and also recommended making it easier to hire foreign labour. The report was not well-received by the Liberal Democrats and only parts of it were implemented including mandatory ACAS conciliation, tribunal fees and greater use of cost orders.

Implementation

The offer to include people with episodic mental health conditions within the Equality Act definition of “disability” - which currently requires the effects of the relevant impairment to

have lasted or be likely to last for 12 months - could bring many more people within the scope of the Act provided that those effects have an adverse effect on normal day-to-day activities which is more than trivial. As for protecting workers in the gig economy, the tribunals and courts have arguably been doing the government's job for it recently with a run of decisions determining claimants to be workers rather than self-employed contractors for the purposes of various forms of statutory protection and we will see in due course if the government does in fact feel the need to take steps of its own in this direction following the publication of the Taylor report into this growing sector of the labour market.

Similarly, since 6 April 2017 employers with more than 250 staff have been required to publish gender-based pay data and so formal measures to address the gender pay gap are under way amongst larger employers. The Conservative manifesto however did promise to require such companies to publish 'more' (unspecified) data on the pay gap between men and women and to work for more public and company board appointments for women. Finally, given the political situation, Parliamentary changes to workers' rights set out in EU law seem some way off at present.

However, in addition to the political obstacles to enacting the Conservatives' proposals, even if implemented the need to pay employment tribunal fees of £1200 for most claims including discrimination claims may remain a significant disincentive for would-be claimants. At present the government has left open its response on employment tribunal fees – the MOJ webpage up since 31 January 2017 says "we are analysing your responses" despite the recommendation of the Justice Committee report in Parliament to reduce fees substantially as well as other measures to mitigate their effects on access to justice. The question of fees in particular seems therefore likely to raise its head again before long in a way which, if the Justice Committee's recommendations are adopted, could have significant implications for workers, employers and employment law professionals alike.

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