The Labour Party’s Manifesto: five key proposals that employers need to know about

The Labour Party’s 2024 Manifesto promises root and branch reform of employment law, with legislation to be launched within 100 days of taking office. In this briefing, we examine the five proposals that we think will have the greatest impact for the majority of employers.

Background:

Following the announcement that the General Election will take place on 4 July 2024, Labour published its “Plan to Make Work Pay”, setting out its extensive proposals for workplace law reform. It promises that Labour *“…will deliver the biggest upgrade to rights at work for a generation”*. This is underlined in the Labour Party Manifesto – published on 13 June 2024 – which says that Labour will implement Make Work Pay *in full* and will introduce legislation within 100 days of entering Government (so by 12 October 2024).

Despite the promise of legislation within 100 days, Make Work Pay attempts to manage expectations about exactly what can be delivered and when. It provides that there will be full consultation with businesses and workers on how to put the plans into practice before any legislation is passed. Only then would the legislation begin the Parliamentary process in both Houses, and once passed, there may be an implementation period. It also points out that much of the detail will be based in regulations and where those regulations are substantial there will be a need for further consultation.

Therefore, while employers need to brace themselves for some root and branch reform of workplace rights, the truth is that it is not going to all come into force with a bang on 12 October 2024. It will probably take many months, and in some cases, maybe even years. In this briefing, we take a look at the five proposals that we think will have the greatest impact for the majority of employers, regardless of size or sector.

Key proposal 1 – the creation of a single "worker" status:

Currently, we have a three-tier approach to employment status in the UK: "employee", "worker" and "self-employed". Worker status covers employees and a wider group of workers who are engaged under a contract where they are required to work personally, and the employer is not merely a client of the individual's business. Workers have some employment rights, but these are inferior to the rights of employees, for example, they do not have the right to claim unfair dismissal or to take various forms of statutory family leave.

The Labour Party argues that this state of affairs is confusing for workers, who often find it difficult to get a clear picture of their status and what employment protections they have. It is also said that some employers do not label staff properly, sometimes inadvertently and sometimes deliberately. To resolve this problem, Make Work Pay proposes that employee status should be abolished, and a new single employment status of "worker" should apply to everyone, save for the genuinely self-employed. Under the proposed new system, all workers would be afforded the same employment rights, for example, sick pay, holiday pay, parental leave, protection against unfair dismissal *“and more”.*

This change would radically alter our employment law landscape. Yet the consultation process is going to take time, not least because the various knock-on effects of the change will need to be addressed, for example:

- Currently, some LLP members qualify as workers, but they cannot be employees. If they are still workers under the new framework, would this mean that they would gain full employment rights?
- Would the tax status framework be aligned? If so, would all workers become subject to PAYE (and surely this must be the logical consequence of giving full employment rights to all workers)? If this happens this would increase employer costs as a result of higher employer NICs.

Key proposal 2 – unfair dismissal to become a Day 1 right for workers:

It is proposed that the two-year qualifying period for unfair dismissal claims should be removed – meaning the right to claim unfair dismissal will become a Day 1 right (for all workers and not just employees as is currently the case). Currently, only “automatic” unfair dismissal for certain narrow prohibited reasons, such as whistleblowing, is a Day 1 right.

Labour says that this will not prevent fair dismissals, nor the use of probationary periods – although it is not clear whether it will, in fact, be easier to dismiss someone within their probationary period, or whether the full rules on dismissal will apply even then. If it is easier to dismiss during probationary periods this could encourage employers to use them routinely, perhaps for longer periods of time than is currently the case. And query then whether Labour would place an upper limit on the length of probationary periods?

Either way, removing the qualifying period is certain to generate more grievances and Tribunal claims, some of which will be justified and some not. But all of which will take time and money to deal with. In terms of impact on claims, we think the most likely outcome is that claimants with automatic unfair dismissal or discriminatory dismissal claims (especially if higher paid) will continue to bring those claims but will plead ordinary unfair dismissal as an alternative or additional claim. In future, employers will wish to be more cautious when it comes to recruitment so as to limit the risk of a bad hire.

Also, as discussed below, the plan is that the time limit for bringing this claim will be increased from three to six months. Therefore, employers will have increased exposure to unfair dismissal claims and will also have to live with the uncertainty about whether a claim will be brought for a longer period of time. However, one silver lining for employers is that the proposal to remove the caps on compensation in employment claims appears to have been dropped. Neither Make Work Pay, nor the Manifesto, makes any mention of this. That said, it may yet appear as a question in any future consultation on the reform of unfair dismissal law.

Key proposal 3 – changing the trigger for consultation on collective redundancies:

Currently, collective redundancy consultation is triggered when there is a proposal to dismiss as redundant 20 or more employees assigned to one "establishment" within a 90-day period. The question of what an establishment has been ventilated in litigation, with employees arguing it should mean the business as a whole rather than the local place of work. This would mean that collective consultation would be triggered more frequently as redundancy numbers would have to be counted across the whole business. After some to-ing and fro-ing the senior Courts concluded that establishment means the local unit where the employee works, not the business as a whole.

Labour proposes to reverse this, so that collective consultation is triggered where there are 20 proposed redundancies within 90 days across the entire business rather than in just one local workplace. If taken forward, this will mean that multi-site employers will need to have a system in place to ensure that they keep track of proposed redundancies across the business. It will also mean that:

- Collective consultation will be triggered more frequently.
- The process will be administratively more burdensome as employers would need to have appropriate representatives in place for all affected workers no matter where they are based.

- The consultation itself may be more disjointed as employers may be consulting about several small pockets of unrelated redundancies.

If employers get it wrong, they are exposed to protective award claims of up to 90 days' gross pay.

Key proposal 4 – introducing a new right for workers to disconnect outside of working hours:

For the first time, it is proposed that UK workers be given the "right to disconnect" from work outside of normal working hours and to not be contacted by their employers. Make Work Pay says that this is needed in response to the growth in flexible and remote working practices which has *"inadvertently blurred the lines between work and home life".* Are these concerns justified? To some extent, yes. That said, this right is clearly potentially very disruptive to employers, especially if implemented badly.

The plan is to follow similar models to those that are already in place in Ireland or Belgium. In fact, the models used in these two countries are quite different and it is not clear where the Labour proposal will sit on this spectrum. In Belgium, since 1 April 2023, private sector employers with 20 or more employees have been required to implement a right to disconnect for all employees via either a collective bargaining agreement or work rules. In Ireland, a voluntary Code of Practice on the Right to Disconnect has been in place since April 2021. Although only voluntary, workers who regularly work outside their agreed hours may refer to the Code of Practice before the Labour Court or Workplace Relations Commission.

Make Work pay does state clearly that *"We will bring in a right to switch off"*, which suggests that the Belgian model is the one that we will mirror. A consultation would, of course, be needed, including on important issues such as:

- Whether workers will be permitted to "opt out" of the right.
- What, if any, exceptions there might be (e.g. by reference to job role, sector and/or size of employer).
- What the consequences would be if a worker was mistreated or dismissed for asserting the right to disconnect.

Key proposal 5 – extending the time limit for bringing Employment Tribunal claims:

It is proposed that time limits for employment claims will be increased from three to six months. It appears that this will be for all statutory employment claims. Labour says that this will allow more time for internal procedures to be completed (and also settlement discussions), potentially decreasing the number of Employment Tribunal claims. We think that employers may well see a drop in claims as a result of employees not being forced to act quickly to protect their position. Of course, the downside is that employers will have the threat of claims hanging over their heads for a significantly longer period of time.

Conspicuous by its absence is the question of introducing fees in the Employment Tribunals. Earlier this year, the Conservative Government opened a consultation on the question of bringing back "modest" fees in the Employment Tribunal and EAT. That consultation closed in March 2024 and the response is awaited. However, it seems very unlikely that a Labour Government would reintroduce Employment Tribunal fees, even at a modest level.

What else is proposed?

While these five proposals are important, they are merely tip of the iceberg. Make Work Pay promises wide-ranging reforms in almost all areas of employment law as follows:

- **Employment status:** introducing better rights for the self-employed and regulating internships.
- **Contracts:** banning "exploitative" zero-hours contracts, giving zero-hours workers the right to a regular hours contract after 12 weeks and requiring employers to give reasonable notice of changes to working time.
- **Pay:** reflecting the cost of living in the national minimum wage rate, removing the national minimum wage age bands so adult workers receive the same rate,

legislating to ensure the fair allocation of tips and making changes to the treatment of travel time as paid working time in certain circumstances.

- **Harassment:** strengthening the new duty to take reasonable steps to prevent sexual harassment at work (due to come into force in October 2024) and introducing protection from harassment at work by third parties.

- **Discrimination and equal pay:** enacting the dual discrimination provisions in the Equality Act 2010, changing equal pay law so that comparisons in pay may be made with outsourced workers and introducing the right to bring equal pay claims based on race and disability (in addition to sex).

- **Work life balance:** strengthening flexible working rights so that it becomes a "genuine default" and regulating the surveillance of workers.

- **Family leave:** reviewing the entire parental leave framework, removing the qualifying period for parental leave (it is unclear whether this means the one-year qualifying period for unpaid parental leave only or any parental leave rights which have a qualifying period), introducing a statutory right to bereavement leave and consideration to be given to introducing paid carer's leave.

- **Other workplace rights:** strengthening whistleblowing and TUPE rights, reviewing health and safety law and guidance and improving access to Statutory Sick Pay.

- **Mandatory employer reporting:** requiring employers to publish and implement gender pay gap actions plans, introducing ethnicity and disability pay reporting and requiring employers to publish Menopause Action Plans.

- **Disputes and dismissals:** giving workers the right to raise collective grievances via Acas (this proposal is unclear as it stands), restricting the dismissal of pregnant workers and maternity leave returners and restricting the use of fire and rehire practices, save in limited circumstances.
- **Enforcement:** introducing a state Single Enforcement Body to enforce certain areas of employment law and introducing a new enforcement unit for equal pay.
- **Collective rights:** wide-ranging measures aimed at strengthening the role of trade unions and introducing sectoral collective bargaining on pay.

To learn more about all of these proposals, you can view our recent webinar, Labour's Big Plans for Employment Law, presented by BDBF's Managing Partner Gareth Brahams and Principal Knowledge Lawyer Amanda Steadman. You can view the webinar here.

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EAT holds that future discrimination claims may be waived in a settlement agreement

In *Clifford v IBM UK Ltd* the EAT upheld a decision to strike out a discrimination claim, holding that a waiver of future discrimination claims contained in an earlier settlement agreement was effective.

What happened in this case?

The claimant, Mr Clifford, started working for IBM in 2001 and began a period of extended sick leave in 2008. In 2012, he raised a grievance about the fact that IBM had not increased his salary or paid holiday pay to him during his sickness absence. He said this amounted to disability discrimination and he asked to be moved onto IBM's disability plan (**the Plan**). Under the Plan, Mr Clifford would be paid 75% of his former salary until the earlier of recovery, retirement or death.

In 2013, Mr Clifford and IBM entered into a settlement agreement under which IBM agreed to:

- pay a sum to settle the complaint about the unpaid holiday pay, however, no payment was to be made in respect of the unawarded pay rises;

- place Mr Clifford on the Plan, under which he would receive around £54,000 per year until retirement (and the terms of the Plan stipulated that any pay increases were to be at IBM’s discretion); and
- pay employer pension contributions based upon his full salary of around £72,000.

In exchange, Mr Clifford agreed:

- to waive his rights to bring claims about the matters raised in his grievance or any other claims that he had against IBM;
- to waive his rights to bring any *future* claims that he may have connected to the matters set out in the grievance and/or the transfer to the Plan; and
- to waive his rights to bring a long list of other possible claims;

Yet, in 2022, Mr Clifford brought claims against IBM, alleging that it was discriminatory (and also a breach of working time rules) to have paid only 75% of his previous salary to him throughout the year. He said he was entitled to 100% of pay in respect of periods of annual leave, which meant that IBM owed him around £69,000. He also claimed that it was discriminatory not to have awarded pay increases to him while he was on the Plan. He argued that the Plan was intended to give security to disabled employees, but inflation had reduced the real value of the benefit.

IBM applied to have the claims struck out arguing, amongst other things, that they were precluded by the waivers contained in the settlement agreement, which extended to *future claims* concerning similar matters raised in the grievance or the transfer to the Plan. Mr Clifford sought to resist the strike out, pointing to the EAT's decision in Bathgate v Technip UK Ltd, which said that settlement agreements *cannot* settle unknown future claims. Mr Clifford also argued that both the blanket waiver (which purported to waive all and any claims) and the kitchen sink waiver (which purported to waive all claims set out in a long list of claims) were ineffective. Therefore, Mr Clifford said that the waivers in the settlement agreement were invalid and did not prevent him from pursuing the claims.

The Employment Tribunal Judge struck out the claims, holding that future claims about holiday pay and pay increases had been expressly waived in the settlement agreement and that waiver *was* effective. The Judge distinguished the EAT's decision in Bathgate, which was directed at future claims which had not yet arisen and were truly unknowable. By contrast, in this case, the issues of holiday pay and pay increases *were* known about at the time of entering into the settlement agreement and had been raised in Mr Clifford's grievance and subsequent appeal. The settlement agreement was clear that he could *not* bring future claims arising out of similar matters to those that had been settled.

Mr Clifford appealed to the EAT.

What did the EAT decide?

It is worth noting that between the Employment Tribunal and EAT hearings in this case, the EAT's decision in Bathgate(which had been relied upon by Mr Clifford) was overturned by the Scottish Court of Session. The Court of Session held that the Equality Act 2010 permitted the settlement of unknown future claims, provided that the claims are clearly particularised and the objective meaning of the word used encompasses settlement of the relevant claim. However, a general waiver of all claims would not be sufficient. You can read our full briefing on the Court of Session's decision here.

The EAT dismissed Mr Clifford's appeal, holding that his claims were precluded by the waiver in the settlement agreement. The EAT reached the following conclusions:

- The EAT agreed with the Court of Session in Bathgate that there was nothing in the Equality Act 2010 which precluded the settlement of unknown future claims, provided that clear language was used. Here, the waiver wording *had* clearly covered future discrimination claims connected to Mr Clifford's grievance and/or transfer to the Plan.

- Although the Equality Act 2010 stipulates that settlement agreements must relate to "particular complaints", Bathgate (and previous authorities) had made it clear that this requirement does not mean the parties must have known about the complaint or that its grounds were in existence at the time of entering into the agreement. If Parliament had intended to prevent the settlement of unknown future claims then it could have spelt this out in the Act, but it had not done so.

- Nor was there any basis for distinguishing Bathgate from Mr Clifford's case – both concerned future discrimination claims that had not arisen at the time the settlement agreement was entered into. The fact that Mr Bathgate's employment had ended, and Mr Clifford's employment was continuing, was not pertinent.

- The EAT also noted the Court of Appeal's decision in Arvunescu v Quick Release (Automotive) Ltd, where it held that future claims may be settled by way of a COT3 agreement. The EAT held there was no sensible basis upon which to distinguish COT3 agreements and settlement agreements in this respect. You can read our full briefing on the Court of Appeal's decision in Arvunescu here.

In any event, even if the waiver had not been valid, the claims had no reasonable prospect of success on the basis that a failure to increase an already very generous benefit would not have amounted to discriminatory treatment.

What are the learning points for employers?

This decision makes it clear that unknown future discrimination claims may be settled by way of a settlement agreement, provided the claims are particularised in the agreement, either by way of a generic description of the claim or by reference to the relevant statutory provision. Helpfully for employers, this decision is binding on Employment Tribunals, whereas the similar decision of the Scottish Court of Session in Bathgate was only persuasive.

However, employers should take care not to rely on general waivers of all claims – these continue to be unenforceable.

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Clifford v IBM UK Ltd

Failure to consult over proposed redundancy pool meant dismissal was unfair

In the recent case of *Valimulla v Al-Khair Foundation*, the EAT held that an employer's failure to consult with an employee about a proposed redundancy pool meant the dismissal was procedurally unfair. Further, the decision not to pool the employee with four other employees who performed the same role as the employee had to be looked at again by a new Employment Tribunal.

What happened in this case?

The employer is a faith-based charity, with a head office and six branch offices. Team members moved between offices frequently. Mr Valimulla started working for the employer in February 2018 as a Liaison Officer and his role involved fundraising in the community, for example, through schools and mosques. Four other Liaison Officers were employed nationally. Mr Valimulla was the only Liaison Officer who was not branch-based and worked from home.

During the coronavirus pandemic, charitable contributions decreased due to the fact that places of worship were closed. As a result, all Liaison Officers assigned to collect revenue from places of worship were placed on furlough, including Mr Valimulla. Eventually, the charity decided to make redundancies. Mr Valimulla was the only Liaison Officer who was identified as being at risk of redundancy.

Three redundancy consultation meetings took place. At the first meeting, Mr Valimulla was told that it had been decided that his role would "disappear" with the closure of branches and the retention of just two regional hubs. At the second meeting, Mr Valimulla put forward a business case as to how his role could continue, which was considered but rejected. After the final meeting, Mr Valimulla was dismissed by reason of redundancy.

Mr Valimulla claimed that he had been unfairly dismissed. Amongst several criticisms of the process, he argued that the employer had not identified a redundancy pool nor applied selection criteria before selecting him for redundancy. However, the Employment Tribunal accepted the employer's argument that his role was unique, and he was in a self-selecting pool of one.

Mr Valimulla appealed.

What was decided?

Mr Valimulla argued that the Employment Tribunal had failed to deal adequately with two questions. First, the employer's decision not to pool him with the other four Liaison Officers and, second, the failure to consult with him about the proposed pool of one.

On the decision not to pool him with the other Liaison Officers, the EAT noted that the Tribunal had found a redundancy situation had arisen because the employer had a reduced requirement for employees to carry out Liaison Officer work, but this was not tied to work being performed in a specific location. Yet the Tribunal gave no reasons why it had accepted the employer's assertion that Mr Valimulla's role was unique, meaning he should be in a pool of one, rather than a pool of with all of the other Liaison Officers employed nationally.

Although the EAT accepted that there is no one prescribed process for selecting employees for redundancy, Tribunals must scrutinise an employer's approach when considering the fairness of a dismissal. This requires an assessment of whether the employer had genuinely applied its mind to the question of pooling and to determine whether the chosen pool was reasonable. Here, the Tribunal needed to consider whether the employer's response came within the band of reasonable responses, which required consideration of Mr Valimulla's role, the similarities and differences between the roles of all five Liaison Officers, how the employer had approached pooling and the rationale for its ultimate decision.

On the question of consultation, the EAT held that redundancy consultation needs to be "meaningful". It was unclear how this could be the case here, when consultation had only started *after* Mr Valimulla had been placed in a pool of one. Meaningful consultation does not simply mean informing staff about a decision or proposal, giving them an opportunity to make representations and then putting the original decision or proposal into effect. Instead, it means setting out a provisional proposal, along with its rationale, and providing an opportunity for feedback. The decision-maker should consider such feedback and decide whether to alter the original proposal (and if not, why not) before making a decision.

The EAT upheld the appeal. The question of the failure to pool with the other Liaison Officers was remitted to a new Employment Tribunal to consider. However, the failure to consult about the pool meant that the dismissal was procedurally unfair, although the question of what the outcome would have been had consultation taken place (i.e. would the pool have changed and, if so, what are the chances Mr Valimulla would have still been made redundant?) was remitted to the new Tribunal.

What does this mean for employers?

This decision serves as useful reminder for employers of two essential ingredients of a fair redundancy dismissal.

First, employers must identify the appropriate pool of employees from which to select potentially redundant employees. This involves interrogating which roles are the same or sufficiently similar to justify being pooled together. The fact that roles are different in some ways may or may not be enough to justify different treatment. Importantly, employers must be able to show they applied their mind to the question and reached a reasonable conclusion. Getting the pool wrong may mean any subsequent redundancies are procedurally unfair and it could also lead to claims of discrimination in certain circumstances.

Second, employers must consult with employees on the provisional pool for selection (and any selection criteria to be used) before making the final decision. This consultation should take place when the proposals are still at a formative stage, so that employees have the opportunity to influence outcomes. The need to consult about the proposed pool was critical in this case, given that the employee was to be placed in a pool of one, meaning his dismissal was almost inevitable. However, consultation on the proposed pool should take place in all cases where pooling is being used.

Valimulla v Al -Khair Foundation

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Removal of senior employee's core responsibilities and plan to change her job role without consultation justified constructive dismissal

In a recent case, the High Court decided that a CEO's decision to reassign a senior employee's core responsibilities to others with the intention of moving her into a new role in future amounted to repudiatory breaches of contract entitling the employee to constructively dismiss herself.

What happened in this case?

Dr McCormack was employed by Medivet Group Ltd (**Medivet**) as its Director of Clinical Operations. She reported to directly to the Chief Executive Officer (**CEO**) and maintained responsibility for day-to-day operations and a number of central functions including pricing, procurement, laboratory, practice development and property. Dr McCormack's service agreement provided that Medivet was entitled, through its board of directors, to appoint other persons to act jointly with her or change her executive office or responsibilities.

In October 2021, Medivet was acquired by CVC Advisers Ltd who removed the CEO and appointed a Mr Cools as the company's new CEO. Mr Cools was unimpressed with Dr McCormack, quickly concluding that her role was too broad, she was poorly organised, and that she could not stay on top of the areas for which she had responsibility.

At a meeting on 6 April 2022, Mr Cools advised Dr McCormack that he intended to re-organise Medivet's management structure and showed her a new organisational chart. Under the new structure, she was to be appointed as Chief Clinical Officer (**CCO**). This was quite different to her existing role and would involve the reallocation of her operational responsibilities to other employees. The process of reallocating those responsibilities began straight away.

Dr McCormack was unhappy about the proposed CCO role. She felt that her existing role was more closely aligned to the role of Chief Operating Officer (**COO**), a role which would be created under the new structure. Moreover, she believed that she was not properly qualified to take on the CCO role given that she had not been involved in frontline veterinary practice for a long time. On 16 June 2022, Dr McCormack raised a grievance arguing that she was being forced out of her role and the restructuring was a sham.

The new organisational structure came into force on 1 July 2022, although the CCO was never formally allocated to Dr McCormack, given that she went off sick. On 8 July 2022, she gave notice terminating her employment with immediate effect. She issued a breach of contract claim in the High Court, seeking damages for loss of salary and benefits.

What was decided?

The critical questions for the Court were whether Medivet was in repudiatory breach of contract and, if so, whether Dr McCormack had accepted the breach and terminated her employment in response.

The Court acknowledged that Medivet had expressly reserved rights to vary Dr McCormack's role and responsibilities. However, these reserved rights were not without limit. It was implicit that Medivet would exercise such powers honestly, rationally and for the purpose for which they were conferred (namely, good management). Here, rationality imported a requirement of good faith, a requirement that there should be some logical connection between the evidence and the reasons for the decision and an absence of arbitrariness, capriciousness or perversity.

The Court held that the decision to reallocate some of Dr McCormack's responsibilities with immediate effect exceeded these limitations. The decision was taken on an *ad hoc* basis and had not been properly canvassed with Dr McCormack in advance. No interim solutions were explored with Dr McCormack before the decision was made and no good management reason could be discerned for making the decision at that stage. Mr Cools had only had a limited opportunity to evaluate Dr McCormack's contribution by that point and his assessment of her was based, primarily, on his view of her during their discussions.

Further, the decision to allocate the CCO role to Dr McCormack at an unspecified future date also exceeded these limitations. She was told that the role would be allocated to her, but, in fact, the board's specific decision-making powers could not have been engaged since the role was not allocated or scheduled to be allocated to her before the termination of her employment.

Therefore, the decisions amounted to breaches of contract. The next question was whether they were repudiatory in nature. The Court held that they were. By taking away and transferring core responsibilities to other employees, Medivet had eroded the essential nature of her role. Although the CCO role was never formally allocated to her, the CEO intended to allocate that role to her in future come what may and there was no room for her to resume her original responsibilities since these had already been taken away. Therefore, once it had been communicated that she was to be placed in the CCO role, she was entitled to treat that as an anticipatory breach of contract.

The Court also held that Medivet's conduct overall was likely to destroy or seriously damage the relationship of trust and confidence. This included the failure to consult with her about the proposals prior to the meeting on 6 April 2022, taking away her responsibilities with immediate effect, the way in which the CCO role had been communicated to her and the failure to assess and accommodate her views in the period leading up to termination, including the failure to deal with her grievance. Accordingly, there had also been a breach of the implied term of trust and confidence, which was repudiatory.

Finally, it was held that Dr McCormack accepted these repudiatory breaches and terminated her employment in response. Therefore, she was entitled to damages for breach of contract, which are yet to be determined.

What does this mean for employers?

This decision illustrates the limitations of contractual clauses which purport to give employers flexibility to change an employee’s role. Such clauses are subject to a requirement to exercise them honestly, rationally, for the purposes for which they were conferred and not in an arbitrary or capricious way.

To limit the risk of breaching the contract, employers wishing to rely on flexibility clauses to vary an employee’s role should consider the evidence for making the change, for example, the employee’s performance over time and the needs of the business under the proposed new structure. Further, an employer should conduct meaningful consultation with the employee in advance of the proposed change and consider any responses before making any final decision.

McCormack v Medivet Group Ltd

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