Labour Party announces plans for new equality law

The Labour Party has said it would introduce a new equality law if it wins the next General Election which, amongst other things, would allow black, Asian and minority ethnic and disabled workers to bring equal pay claims for the first time.

It has been reported that Labour Party plans to introduce a new equality law if it wins the next General Election. The new law would:

- extend the right to claim equal pay, which currently exists as between men and women, to black, Asian and minority ethnic (**BAME**) and disabled workers;

- enact the dual discrimination protections which already exist in the Equality Act 2010, but which have not yet been brought into force; and

- require public sector bodies to report on ethnicity pay gaps.

Equal pay

Currently, if a person is discriminated against on the grounds of sex in relation to *non-contractual* terms, for example, a discretionary bonus, she or he may bring a sex discrimination claim. However, if she or he is treated less favourably in relation to *contractual* pay or other benefits (and there is an actual comparator of the opposite sex) the recourse is to bring an "equal pay" claim.

The law achieves this by implying a "sex equality clause" into the contract of employment, which works by replacing the less favourable terms with the more favourable terms of the comparator's contract. The comparator must be employed in the same employment and perform equal work (i.e. like work, work rated as equivalent or work of equal value). Establishing that work is equal work can be a time-consuming exercise, for example, if a "job evaluation study" is needed in order to compare the roles and the Tribunal process for bringing such claims is lengthy. If the work is judged not to be equal work, then the claim fails.

Equal pay claims are usually brought in an employment tribunal, which can require payment of arrears of pay up to six years, although there is no ability to make an award in respect of injury to feelings. The time limit for bringing an equal pay claim is considerably longer than for discrimination claims, standing at six months from the end of the employment contract in which the sex equality clause operates. Further, such claims may be brought as breach of contract claims in the civil courts, where the time limit is six years from the date of breach of the equality clause.

The Labour Party's proposal appears to be that a "race equality clause" and a "disability equality clause" will be implied into the contracts of affected employees, which would require them to bring claims about contractual terms where there is an actual comparator as equal pay claims.

Other than the increased time limit for bringing claims (which is significant), and the ability to bring claims in the civil courts, it is not entirely clear how this proposal improves the position for BAME and disabled workers. Equal pay claims are notoriously complex, and it is easy to see how claimants will get bogged down in questions of who the correct comparator is and whether work is of equal value. Such workers are already able to bring claims about unequal pay as race or disability discrimination claims under the Equality Act 2010, and they do not need to show that the work is "equal" to that of an actual comparator in order to succeed. Further, they are able claim uncapped compensation for lost earnings and may also claim for injury to feelings.

Dual discrimination

Enacting the dual discrimination provisions would mean that workers may complain about discrimination arising out of the combination of two protected characteristics, rather than one as is presently the case.

Just last year, there were calls to bring these provisions into force. Evidence to the Women and Equalities Committee's Inquiry into menopause in the workplace indicated that because menopause is essentially an intersectional phenomenon (i.e. in the main it affects women within a certain age bracket), the dormant dual discrimination provisions in section 14 of the

Equality Act 2010 should be enacted. The Committee took a robust approach on this issue, stating that the existing law *"does not serve or protect menopausal women"* and that section 14 is *"shelf ready"* and should be commenced immediately.

However, the Government rejected this recommendation on the basis that if section 14 were to be implemented, it would create 21 "dual protected characteristics" (this is on the basis that pregnancy and maternity and marriage and civil partnership are not covered by section 14). The Government said this would place a significant additional burden on employers and service providers.

This has not deterred the Labour Party, who consider the change will help BAME workers, as well as other groups, such as menopausal workers. It is also said that the reform could help ease backlogs in the Employment Tribunal system – presumably on the basis that a claimant would be bringing one claim rather than two.

Ethnicity pay gap reporting

It is reported that the new Act would require public sector bodies to report on their ethnicity pay gaps. On top of this, back in September 2023, the Labour Party published a Green Paper entitled *A New Deal for Working People,* which outlined plans to require private sector employers with 250 or more staff to report on their ethnicity pay gaps. The Green Paper said Labour would drive efforts to close pay gaps by forcing employers to not only report on their gender and ethnicity pay gaps, but to devise and implement plans to eradicate any such pay gaps.

It is worth remembering that the Conservative Government consulted on the introduction of mandatory ethnicity pay gap reporting for large employers in October 2018. In March 2022, it concluded that mandatory reporting should not be introduced *"at this stage"* to avoid imposing new reporting burdens on businesses as they recovered from the pandemic. However, businesses were encouraged to report voluntarily on the ethnicity pay gap within their organisations. Guidance to help employers do this was published in April 2023.

Once again, the Labour Party is not deterred by the burden of increased regulation and has committed to drive this new reporting obligation through. However, it remains to be seen how the new rules would be taken forward – will they be rolled out in the public sector first and then to the private sector at a later date? It also not yet clear what the consequences would be for failing to succeed in closing a pay gap. Gender pay reporting was introduced in 2017 under the mantra *"what gets measured gets managed".* But after years of disappointing gender pay gap results, with little movement in the right direction, it is apparent that merely requiring employers to report is not enough.

Next steps?

It remains to be seen whether these announcements will make their way into the Labour Party's election manifesto. Even if they do, a Labour Government would consult before introducing such changes, which may well result in a reshaping of some of these plans. That being the case, there are no action points at present for employers, but it is certainly one to watch.

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.