

# **IER: Employment Law Update, 2011**

Employment law changes: a view from  
Unite

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# Media blackout

- European Committee of Social Rights concluded that for 2010 the situation in the UK was not in conformity with European Social Charter Article 6§4:
  - the complexity of the law when taking industrial action
  - the excessive procedure of giving notice to the employer
  - the limited protection offered to those workers taking industrial action
- Government's own changes also hardly noticed:
  - not enacting the right to request time off to study or train for people working in organisations with less than 250 employees
  - moratorium on new employment regulations for employers with fewer than 10 staff and for new businesses during their first two years of operation

# Setting the scene - 2010

- Tax Payers' Alliance – end trade union facility time in public sector [www.taxpayersalliance.com/unionfunding.pdf](http://www.taxpayersalliance.com/unionfunding.pdf)
- Policy Exchange – 14 point plan, including use of agency labour during disputes and 14 days notice of action – remarkably no assumption of right to strike – plus end facility time; “contract in” to political funds; ending check off [www.policyexchange.org.uk/publications/publication.cgi?id=203](http://www.policyexchange.org.uk/publications/publication.cgi?id=203)
- CBI – 11 point plan including mandatory ballot in recognition claims even when provable majority and turnout threshold in industrial action ballots

# Setting the scene – IoD – 2011

[www.iod.com/mainwebsite/resources/document/policy\\_paper\\_growthplanreview2\\_290911.pdf](http://www.iod.com/mainwebsite/resources/document/policy_paper_growthplanreview2_290911.pdf)

- a simple majority of those balloted as well as those voting should be necessary in order for strike action to take place
- an Employment Tribunal reform that “really delivers for business”
- micro business exemptions from a number of European Directives
- introduce “no-fault dismissal”
- allow employers to exempt from 2012 all newly taken-on employees from being covered by non-EU employment regulation
- introduce legislation that would ensure that all maternity leave employees are required to give at least 3 months’ notice of their intended departure; remove the “unfairness” of accumulated annual leave allowance at the end of a period of maternity leave; remove the need to pass on organisational bonuses to maternity leave staff
- immediate reviews should be undertaken to remove “gold-plating” from the UK interpretations of the EU Directives

# The Coalition in action #1

- Disgraced “Enterprise Csar”, Lord Young made a number of recommendations:
  - in health and safety (i) a weakening of Reporting of Injuries, Diseases and Dangerous Occurrences (RIDDOR) Regulations and (ii) introducing “low risk” workplaces;
  - in employment raising the qualification period for unfair dismissal Employment Tribunal application from 1 to 2 years
- There is now a review of health and safety legislation being conducted by Prof Ragnar Löfstedt  
[www.dwp.gov.uk/docs/lofstedt-tor.pdf](http://www.dwp.gov.uk/docs/lofstedt-tor.pdf)

# The Coalition in action #2

- Government published its consultation paper *Resolving Workplace Disputes* which concentrated exclusively on the Employment Tribunal system, posing such questions as:  
[www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-511-resolving-workplace-disputes-consultation](http://www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-511-resolving-workplace-disputes-consultation)
  - raising the qualifying period
  - the introduction of fees that they would consult on at a later date
  - allowing employment judges to sit alone
- Government also published the *Employers' Charter* reminding employers how the law supported them in dismissal and disciplinary matters [www.bis.gov.uk/assets/biscore/employment-matters/docs/e/employerscharter](http://www.bis.gov.uk/assets/biscore/employment-matters/docs/e/employerscharter)
- Ministers made further calls for lessening rights at work:
  - a cap on compensation for discrimination case awards by ETs, which by September had progressed to 2<sup>nd</sup> Reading
  - reforming Collective Redundancy and TUPE Regulations - BIS started pre-consultation with the unions, via the TUC, in October.

# The Tory right wing #1

- Boris Johnson called for a 50% turnout threshold in industrial action ballots.
- Tory backbenchers :
  - Dominic Rabb, MP – 10 minute Bill on 50% threshold in industrial action ballots
  - David Morris, MP – EDM 1799 on TU facility time in public sector

# The Tory right wing #2

- In October 2011 Tory right winger Priti Patel MP tabled a written question on trade union facility time quickly followed by an Adjournment Debate on the same subject led by Aiden Burley MP, PPS to Philip Hammond – the new Defence Secretary.
- In the same month details of Adrian Beecroft's (a Prime Ministerial private advisor) ideas to abolish "unfair dismissal" and introduce "no fault dismissal" were leaked. No fault dismissal is said to be being pushed hard by Steve Hilton, Cameron's policy chief but being blocked by Vince Cable.



# Conservative Party Conference - 2011

Osborne announced the Govt would

- raise qualifying period for unfair dismissal claim at ET to 2 years; and,
- introduce fees (i) for lodging and ET1 and (ii) extra when case is listed for hearing

Pickles and Maude

- went after trade union facility time in the public sector, Maude alleged that there were 150 civil servants on full time union duties; he was consulting on facility time because "this can't go on." It transpired that his figures, if not quite made up, had been supplied by the Tax Payers' Alliance

# Autumn 2011

- Immediately after its Conference and before it had published its own response to *Resolving Workplace Disputes* consultation, the Government published draft proposals to change to ET Regulations on deposits, costs and witness statements and expenses.
- It also published further consultation document *Flexible, Effective, Fair: promoting economic growth through a strong and efficient labour market* [www.bis.gov.uk/assets/biscore/employment-matters/docs/f/11-1308-flexible-effective-fair-labour-market](http://www.bis.gov.uk/assets/biscore/employment-matters/docs/f/11-1308-flexible-effective-fair-labour-market)
- Both of these measures the Government ran into trouble with the Administrative Justice & Tribunals Council
- BIS opening consultation on 6 December on review of statutory enforcement agencies

# Late 2011 - into their stride

## Headline issues:

- Unfair dismissal and Employment Tribunals; “protected conversations”
- Facility time
- Collective redundancies and TUPE

## Where next:

- Industrial action threshold turnouts
- Gangmasters
- 163 employment related Regulations

# The view from Unite

- Shift in focus from TUC Comp 1 trade union rights to TUC Comp 2 Red Tape Challenge, but don't lose sight of collective rights
- The most effective way of resolving workplace disputes is the presence of recognised trade unions not the reduction of rights at work
- There is no evidence that any of the Government's proposed reform of employment law will lead to investment and growth
- Want Labour to oppose the Govt now, but we also need to work with Labour to develop a new framework of fairness at work that guarantees trade union freedom