

Guide to a
progressive
**Industrial
Relations Bill**

Sarah Glenister & Carolyn Jones

This publication was drafted by Sarah Glenister, IER's National Development Officer and Carolyn Jones, IER's Director.

This publication, like all publications of the Institute, represents not the collective views of the Institute. The responsibility of the Institute is limited to approving its publications as worthy of consideration within the labour movement.

The publication is free of charge, thanks to the generous donations made to IER's Manifesto Project Development Fund by the following organisations:



+ Unite national publishing and media branch (Bromley); Unite the union NW/763.

ISBN 978-1-906703-44-8
September 2019

published by the Institute of Employment Rights
4th Floor, Jack Jones House, 1 Islington, Liverpool, L3 8EG
e-mail office@ier.org.uk
www.ier.org.uk

Design and layout by Upstream (TU) www.upstream.coop
Printed by Rap Spiderweb (www.rapsiderweb.com)

An Industrial Relations Bill

Since its foundation 30 years ago, the Institute of Employment Rights (IER) – an independent think tank for the labour movement – has been committed to the development of transformative proposals for changes to the law at work. In 2016, its popular *Manifesto for Labour Law* was a forerunner for its even more popular *Rolling Out the Manifesto* in 2018. Some of the recommendations included in these publications were adopted by opposition political parties. Now we are proposing (to every political party that will listen), new legislation under the working title of an Industrial Relations Bill.

In this *Guide to a progressive Industrial Relations Bill*, we explain our recommendations for reform in a digestible and easy-to-read format, laying out our vision for an effective framework of labour law fit for the 21st century. We believe this Bill will transform the world of work for millions of people, give workers a voice in parliament, in their jobs, and across the economy at large. With new legally protected powers to speak out collectively against injustice, workers will be provided with a means to protect and improve their job security, pay and conditions; and to further their careers through increased training. Underlying this system will be the reinstatement of collective bargaining as the foundation of workplace relations, together with stronger employment rights such as a higher minimum wage and better protection against discrimination.

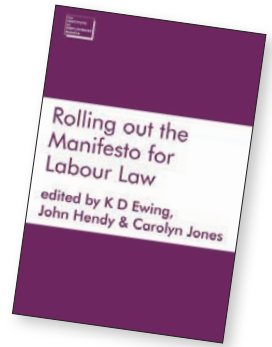
What is the Manifesto for Labour Law?

In 2016, the IER published the *Manifesto for Labour Law*. Drafted by 15 of the nation's leading labour lawyers and academics, the report set out 25 recommendations for reform that would crack down on poverty pay and insecure work. *The Manifesto* won popular support and many of the proposals were included in the Labour Party's 2017 Manifesto *For the Many, Not the Few*. Our proposals on eliminating zero-hours contracts were adopted by the Scottish Nationalist Party.

In 2018, the IER published a more detailed report – *Rolling Out the Manifesto for Labour Law* – which laid out how the proposed reforms could be implemented by a progressive government.



Enthusiastically received by John McDonnell and Rebecca Long-Bailey, key recommendations from *Rolling Out* now make up part of the Labour Party's plan for their next government. The *Manifesto for Labour Law* also influenced the proposals made in the new Social Partnership Bill in Wales – which furthers the success of tripartite working between government, workers and employers in the country. Now, *Rolling Out* has become the basis for the proposed Industrial Relations Bill.



Why do we need reform?

With the emergence of the 'gig' economy, wage stagnation and zero-hours contracts, the issue of workers' rights is never far from the headlines. These trends were borne out of the neoliberal ideology of the 1980s, which imposed deregulation, privatisation and austerity. Thatcher's anti-trade union laws made it difficult for workers to band together to bargain for better pay and conditions. The government encouraged employers to stop negotiating about terms and conditions. As union power was reduced under these attacks, employers took advantage of the now deregulated, de-unionised workplaces and workers' rights were eroded.

As a result, since the 1970s the world of work has dramatically changed. **Britain's workers are amongst the most insecure, underpaid and stressed in Europe.** Today, the average Brit works more hours, more weeks, and more years than their European peers, for a median wage of just £24,000 a year (in fact, 25% of workers – that's 8 million people – earn £14,720 or less!) **Pay is so low that most state benefits go to people who have jobs, and 2.9 million children in working families live in poverty.** The UK has a higher proportion of workers denied employment rights after being misclassified as self-employed by their employer (think Uber drivers), more zero-hours contracts and more people relying on temporary agency work than its European counterparts. All in all, one in ten UK workers do not have guaranteed hours.

And business isn't going well, either. Low-paid and insecure workers have little loyalty to employers who fail to offer education, training or opportunities for progression and will leave their job for the slightest gain – lower travel costs, for instance. Economic productivity has been dragging for years, leaving our economy weak and fragile, and growth has become depressed by the population's lack of disposable income dampening sales of products and services.

.....
Did you know?

In 2019, the United Nations' Global Commission on the Future of Work called on Member States to promote collective bargaining so that workers, employers and governments could pull together to protect citizens from the challenges brought by automation, climate change, and a change in demographics.

.....



“Changes to how our corporations are governed have allowed chief executives to take a larger and larger fraction of the corporate pie, leaving less and less to be reinvested in the company, and less to pay to workers ... Austerity has not only damaged ... the UK, but actually threatens future growth. For instance, when you have young people not learning, or in jobs inappropriate to their skills, they're not increasing their human capital ... Without that human capital, future economic growth will be lower than it could have been.”

**Nobel Prize-winning economist and former World Bank chief economist
Professor Joseph Stiglitz**

What's the solution?

The IER's *Manifesto for Labour Law* team – now totalling 26 lawyers and academics - have developed a comprehensive plan for reform, providing a viable alternative to the failed 'neoliberal' dogma of the last 40 years. The overarching aim is to shift the focus of workers' rights back towards the collective. We believe a priority task for a progressive government is to establish procedures that ensure workers, employers and government work together to build a fairer, stronger and more sustainable economy.

Giving workers a voice

At the heart of our recommendations is a drive to give workers a democratic voice across the economy. Workers will be represented in parliament by a Ministry of Labour and a National Economic Forum; at the highest levels of industry through Bargaining Councils (BCs); and in the workplace through better trade union rights, seats on company boards and pension boards, and votes at shareholder meetings.

Why do workers need a voice?

There are 32.7 million workers in the UK who work hard to earn a living. Yet a quarter of us walk away with £14,720 or less a year and 3.9 million of us aren't even given

the security of guaranteed hours. If workers had been given a say in the structure of the workplace, is this a situation they would have chosen? And why, in a democratic country, is it acceptable for only the very wealthiest and most powerful to have a say on the terms and conditions of millions of workers?

Five ways to strengthen workers' voice

1 A voice in Parliament

We propose a new **Ministry of Labour for the UK**. The restoration of this government department, originally set up in 1918, was proposed in the IER's *Manifesto for Labour Law* and was among the first recommendations adopted by the Labour Party. The Ministry of Labour will be headed by a Secretary of State with a seat at the Cabinet table whose job it is to represent workers' (and employers') interests in government. This will include promoting collective bargaining and protecting workers' rights.



.....

Did you know?

Most developed economies already have a government department to represent workers and the UK used to have one too! It was established in 1918 and disappeared in the 1990s

.....

Its ultimate aim will be to create an economy that offers workers secure jobs, an opportunity for career progression and a fair wage and pension. Over time, this will reduce the gap between rich and poor.

It will also have a strategic planning function, ensuring the strength and sustainability of British industry by anticipating future skills gaps and planning how technological innovations and the automation of industry can be employed to everyone's benefit, rather than leading to job losses and inequality.

2 A voice in the economy

A new **National Economic Forum** will bring together representatives of government, employers, unions and independent experts to advise on and promote measures that

create and sustain a fair, efficient and productive economy for the benefit of everyone in the UK.

3 A voice at the negotiating table

An equal number of workers' and employers' representatives will sit on **Bargaining Councils** to negotiate pay and conditions of employment for all workers and employers in their sector. Where the union side does not have industrial muscle to bargain as equals, the Secretary of State will ensure that failures to agree will be resolved by arbitration – this will give the workers' side bargaining leverage.

4 A voice at work

At the moment, being a member of a trade union does not necessarily mean they can represent you in your workplace. Too often workers feel isolated and powerless to speak up. UK laws prevent unions from entering the workplace. We need to **allow trade union officials access to members at their place of work in a dedicated private space provided by the employer**. Because some employers are known to sabotage the efforts of workers to organise, **trade union representatives will be protected from employer surveillance** and **anti-union practices will be made unlawful**. In order to ensure trade unionists have unfettered access to their rights, a legally-protected **right to strike** will be established, including some forms of **secondary action**, with **electronic and workplace ballots** permitted to survey members' support for industrial action. **Facility time will be uncapped** and extended to unrecognised but representative unions.

5 A voice in company structures

Corporate governance policies should include a duty to involve workers in decisions that affect their lives, including placing **workers on the board of directors**; letting workers **nominate at least half of the trustees of their workplace pension**; and giving workers a **vote at shareholder meetings**.

Putting the collective back into the workplace

Perhaps the most transformative idea in the IER's proposals for an Industrial Relations Bill is for the reinstatement of **sectoral collective bargaining**. Sectoral collective bargaining structures are the foundation on which the rest of the IER's *Manifesto for*

Labour Law proposals are built. But what is sectoral collective bargaining and how can it help workers?

.....

Collective bargaining is when a trade union negotiates pay and conditions of employment with an employer for all of its workers. Sectoral collective bargaining is when trade unions and employers negotiate pay and conditions for all those working in a whole sector of the economy – like social care, retail, agriculture or hospitality.

We all know that on our own we are weak and vulnerable but when we join together we are strong.

.....

Why do it?

Unions make us strong. Workers in workplaces that are union organised enjoy better pay, better conditions, better prospects, better health and safety protections and better rights. The question then is, why not do it?

Agreements negotiated at a sectoral level (sectoral collective agreements, or SCAs) set minimum conditions for each sector, according to each sector's needs. What's more, they're flexible! Negotiators can meet regularly to monitor their industry and discuss any tweaks that are needed to ensure their agreement delivers for both workers and employers.

Some workers (a little more than 20%) are still covered by collective agreements at workplace level. Those agreements can remain in place. But under the Industrial Relations Bill, **all** employers will be legally bound to meet at least the standards negotiated by unions at the sectoral level. Setting sectoral standards will prevent bad employers from undercutting good, stop the race to the bottom in wages and replace the current system which prioritises profits over pay.



Five reasons for change

1 To create a more equal UK

In 1979, things looked very different – 82% of workers were covered by collective agreements, resulting in a bigger share of the cake going to workers. But with the decline of collective bargaining, **more of the money made in the UK now goes into the pockets of shareholders**, leading to a massive widening in the gap between rich and poor. While 65.1% of national Gross Domestic Product (GDP) went to wages in 1976, only 49.4% went to wages in 2018. Meanwhile, the proportion of GDP going to profits has increased year-on-year for nearly four decades. The increase in inequality mirrors almost exactly the fall in trade unions' influence in the workplace (See Figure 2).

MYTH #1 – Sectoral collective bargaining will 'take us back to the 1970s'

While it's true that many more workers benefited from collective bargaining in the 1970s than they do today, the idea that this means it is old-fashioned is a myth. In fact, the UK is unusual among developed countries in its rejection of collective bargaining. While little more than 20% of UK workers are covered by a collective agreement, the EU average is 60% and in many booming economies – like Sweden and Denmark – it is over 80%!

.....

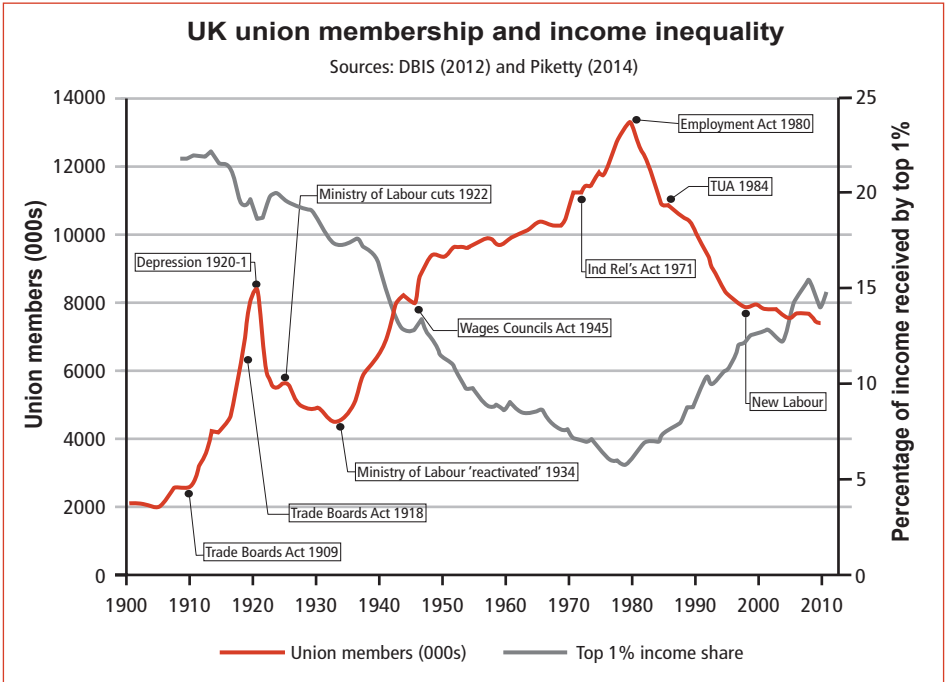
Did you know?

Salaries have now fallen so low that in-work poverty is rising at a faster rate than employment, with one in eight workers living in poverty.

.....

2 To reduce the deficit and fund public services

As wages have fallen below inflation, workers have been forced to rely on State benefits. Today, most benefit recipients are in work! This has increased the proportion of taxes that have to fund welfare payments like Housing Benefit and Universal Credit. In this way, the payrolls of low-paying employers are subsidised by the public purse – i.e. the taxpayer! And because lower-paid workers are also contributing less to the State in taxes, the need to continually support those whose wages don't cover the basic cost of living is one of the principal reasons for the increase in the government deficit. **By reintroducing sectoral collective bargaining, thereby raising wages and**

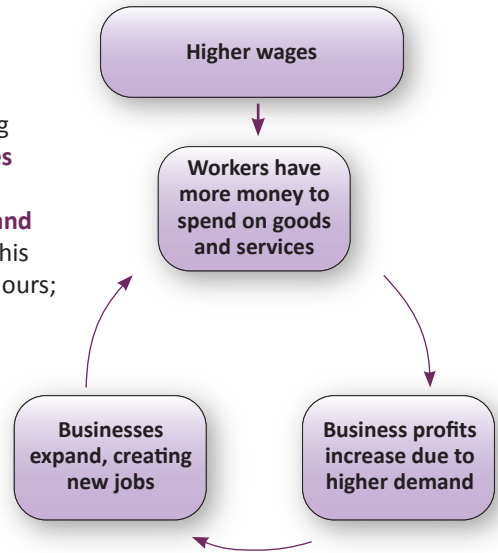


ensuring that employers contribute their fair share to the economy, we can reduce the need for such a high benefits bill, as well as collecting more income tax that can be put towards our underfunded public services.

3 To boost the economy

With so many workers on austerity-driven low pay, **there is less money around to spend on products and services**, which has led to a depressed economy. **By raising wages, which is what collective bargaining does, we can raise demand for products and services, and in this way fuel a recovery** that will deliver more, higher-paid jobs. Indeed, this is exactly how the Western world returned to prosperity after the Wall Street Crash of 1929 and the Great Depression that followed. Governments then encouraged trade union involvement in the workplace to lift wages and stimulate the economy.

Productivity is generated by investment in research, development and upskilling staff. The shape of the economy today provides an incentive for employers to compete via cutting labour costs. **Collective bargaining encourages competition based on innovation, increasing productivity through investment in training and equipment and efficient working practices.** This does not mean working harder or for longer hours; on the contrary, firms across the world which have introduced a four-day week have found productivity to rise. Workers are also more committed and loyal to their jobs when their wages and conditions are collectively agreed, because they are getting more back in return for their hard work. It has also been shown that individual workers are more productive in workplaces with collective bargaining, and this has a knock-on effect on the economy as a whole.



.....
Did you know?

Modern research, including that conducted by the International Monetary Fund, has found that collective bargaining is the best way to improve economic productivity.

.....

4 To democratise the workplace

It is a matter of principle that **workers should have a say in the environment where they spend much of their lives.** Democracy should not stop at the door to the workplace, but because of the inherent imbalance of power between employers and their staff, workers often feel too powerless to speak up. By organising together to speak collectively, workers are able to approach their employers with more confidence. After all, employers couldn't survive without workers and vice versa!

5 To comply with international law

Collective bargaining is classed as a fundamental human right in international law and is protected by Convention No.98 of the International Labour Organization (ILO) – part of the United Nations – which imposes a duty on nations ‘to encourage and promote the full development and utilisation of [collective bargaining] machinery’. The UK has long been criticised by the ILO for failing to maintain this standard, which anti-trade union laws have undermined.



“Unions ...bring people together, negotiate through change, keep the eyes of all on the dignity of the human person. To do that, they must be present, have members in the affected parts of our economy, which will be almost all of it.”

Archbishop of Canterbury, Justin Welby

FAQs

Aren't workers already represented in Parliament? Why do we need a new department?

We are all represented as individuals through our local MP, but unlike employers – whose interests are represented by the Department for Business, Energy and Industrial Strategy – there is no Cabinet Minister tasked specifically with looking out for the interests of workers. The vast majority of the adult population spend a huge proportion of their lives at work, so their rights in the workplace should be a priority for a democratic government.

If trade unions have more rights, will that mean more strikes and disruption for the public?

Strikes occur when negotiations come to a total impasse and the trade union is forced to use their only leverage against employers, which is to pull their members out of work. Conflicts like this are more likely to happen when collective bargaining is decentralised and conditions are imposed by bosses without discussion. This also happens when the law favours employers over workers, thus demotivating bosses from finding mutually acceptable compromises. By creating a business culture where it is the norm for there to be dialogue between workers and employers right from the highest level of industry to the ground floor, conflicts are less likely to arise.

Have ideas like this already been tried in any other countries?

Yes – in fact, most developed countries provide workers with a stronger voice than

in the UK. Collective bargaining is the norm among most European countries and most also have workers on company boards. In Europe's largest economy Germany, for instance, almost half of the people on the boards of large companies must be workers (or their representatives).

If we have sectoral collective bargaining, will enterprise bargaining cease to exist?

No. We recommend that sectoral collective bargaining is used to set *minimum* rates of pay and conditions across entire industries, but these minimums should be built upon by further collective bargaining at enterprise level. This is the system that has already been shown to work well in other developed economies, including most of Western Europe.

What types of issues will sectoral collective bargaining cover?

The list is exhaustive! That's the great thing about collective bargaining – it's flexible. Each negotiating body can choose which issues are most important to its sector, but sectoral collective agreements can cover everything from training, to pensions, to holiday pay, to working hours, to health and safety and dispute resolution.

How will employers and unions be persuaded to negotiate together?

Bargaining Councils (BCs) will be set up by a new Ministry of Labour – a new government department representing workers' interests in Parliament. Negotiations will be left up to the real experts: workers and employers operating within the sector. BCs will also advise the Minister of Labour about what support the sector needs in terms of funding, education and training programmes to prepare for future skills gaps.

What if employers do not want to join employers' associations, or workers do not want to join unions? Will collective agreements still apply to them?

It is up to individual workers and employers whether they wish to be a member of an employers' association or union, but regardless of what they decide, sectoral collective agreements will apply to every employer and worker in the sector. The benefit of being a member of a union or employers' association will be that you get to take part in the democratic process of decision making, setting the standards for your sector.

What if my employer hits a rough patch and can no longer afford to provide the terms agreed at a sectoral level?

No one wants to put people out of business or lose people their jobs. If an employer genuinely hits upon problems that risk closures and threaten jobs, then the issue will be negotiated at an emergency committee of the Bargaining Council to discuss terms of a survival plan while the business gets back on its feet.

Equal rights for all

For the last few years, the Labour Party has promised to ensure everybody gets the same rights from day one of starting work. This policy came directly from the IER's *Manifesto for Labour Law* and it can be achieved by making sure everyone in employment is equal in the eyes of the law.

Why do it?

Although the UK has a long-established framework of employment rights, a growing number of people who work hard to earn a living find themselves denied access to those rights. Why?

Most UK workers' protections are aimed at **employees** in full-time, permanent, workplace-based jobs. But those jobs bear little relation to the world of work today. Uber drivers, delivery riders and even care workers are often employed on an hourly basis, through an agency, or receive their work from an algorithm picked up via a mobile app! Not only are these people – nowadays numbering in their millions – among the most vulnerable in the workforce, they are not normally classed as **employees meaning that they have far fewer rights**. This means that the very people most in need of legal protection are often denied access to the law by their employment status!

Trade unions are challenging this problem in the courts and winning cases, but the shortcomings in UK labour law mean millions of workers are trapped in insecure jobs and denied decent working and living standards. Reform is long overdue. **A wholesale revision of workers' rights is necessary to enhance protections, simplify legislation and boost the economy in a way that would assist both workers and employers.**

The changes required are not revolutionary, nor are they difficult to implement. What

is needed, however, is a government with the political will and determination to transform our society.

To help create that society, we propose five fundamental changes that would transform the world of work, promoting decent working conditions for the many.

.....

Did you know?

In October 2018, the UK's Court of Appeal ruled that Uber drivers are 'workers' (as argued by the GMB trade union) and not 'independent contractors' (as argued by Uber). Despite Uber describing the drivers as 'self employed' the Court decided that the relationship was one of worker and employer. This decision means that Uber drivers will in future be entitled to employment rights including sick pay, the National Minimum Wage and holiday. Similar victories have been won for couriers at Addison Lee and at Hermes.

.....

Five easy steps to fairness at work

1 Who is a worker?

We propose that **all workplace rights will be available to all workers**. A 'worker' will be defined simply as a person who is engaged by another to do a job and is not genuinely operating a business on their own account.

Under this new definition, all workers – including part-time and fixed-term workers, agency workers and those currently classified as 'self-employed' – will enjoy employment rights including the minimum wage, paid holidays, redundancy and unfair dismissal protection.

2 Who is the employer?

As employers make more use of new and emerging online platforms to recruit, employ and control their workforce, **the law needs to be modernised to ensure employers take responsibility for those who they employ**. Legal loopholes that allow franchised companies like McDonalds to avoid their liability to their workers need to be closed

and existing laws need to be amended to ensure employers like Deliveroo and Uber can't hide behind technological veils.

To achieve this, **the current definition of 'employer' requires reform.** If a worker is denied their rights, they will be able to take a case against the main employer, the agency, or both. It will also benefit workers in the so-called 'gig-economy' who are offered work through digital platforms or other online intermediaries.

3 Rights from day one

Expecting workers to work for two years with the same employer before rights such as protection against unfair dismissal kick in is inappropriate in today's world of work. Long qualifying periods like these effectively deprive large numbers of vulnerable, precarious, and casual workers from the very protections they need. We propose that **all employment rights will be applicable from day one of employment, regardless of the number of hours worked.**

If it is felt necessary, 'probation periods' may be set through sectoral collective agreements. But to avoid misuse, these should be capped to a maximum of three months.

4 Ending 'beck-and-call' working practices

The **rules on zero-hours, on-call and shift work need to be reformed** to provide certainty, security and economic stability to workers in return for their hard work. Where contracted hours are increased or cancelled, the employer will have to **compensate the worker** as well as cover any additional expenses incurred like travel costs. **Sufficient notice** is required to avoid disruption to the worker's life. Similarly, there is a need to address the specific insecurities affecting agency workers by **limiting the repeated renewal of temporary assignments with the same hirer.**

The changes we propose will reflect the financial dependency of the worker and remove the ease by which employers treat workers like disposable commodities. Workers and employers can agree to modify the rules governing the workplace via a collective agreement, but workers will no longer be at the beck and call of the employer, not knowing

MYTH #2: The government claims to have created a record high number of jobs

Creating jobs is important, but jobs need to offer sufficient hours to generate enough pay to support workers and their families. Remember, one person working 30 hours counts as one job; 30 workers working 1 hour counts as 30 jobs. Not all job creation delivers what is needed for a strong and stable economy.

their working hours or take-home pay from one week to the next.

These changes will also encourage employers to take a realistic view of their business needs, and plan for peaks in demand for goods and services. They will **share the burdens and advantages of flexibility** between employers and workers. But above all, the changes will give effect to the internationally recognised principle that **labour is not a commodity**, providing workers with dignity at work.

5 Employment Rights Commission

Many other rights at work need revision and improvement so we propose the **appointment of a Commission to examine workers' rights**, tasked with introducing a framework of regulation fit for the 21st century.

FAQs

What does it mean that labour rights will be 'day-one rights'?

It means that all workers will be entitled to the full set of labour rights from the first day they start working without affecting cumulative rights which increase the longer you have been working for a company (such as the right to longer holidays, more redundancy pay or more notice).

Will the tax status of the worker, as newly defined, be affected by these reforms?

Our proposals are tax and social security neutral. Our emphasis is on ensuring all workers – regardless of their tax status – receive the protection offered by employment rights.

Will zero-hours contracts be abolished altogether?

Yes. It will be a 'day one' right that all work contracts must specify in writing a minimum number of regular hours of work.

Does the new 'worker' status mean that a householder will have to pay a redundancy payment to their greengrocers or emergency plumbers when their services are no longer needed?

No. Those genuinely self-employed with a one-person business like a greengrocer,

plumber, window cleaner or black cab driver will continue to be treated as an independent business providing a service to their clients and customers. If such a business employs a worker to assist in providing the service to clients and customers, then it will be responsible for the employment rights of those workers.

Will business still be able to recruit staff on a fixed-term or temporary basis?

Yes. We do not propose to abolish these forms of work but we will extend all labour rights to them from day one. It is also envisaged that sectoral collective agreements will play a much greater role in regulating temporary forms of employment.

Aren't these reforms making the labour market too inflexible and will they hurt businesses?

Our reforms seek to introduce a basic floor of rights for all workers in the UK, in order to protect their dignity first and foremost, but also to ensure that businesses compete with each other on a level playing field, invest in their workforces' skills and embrace the high road to productivity, competitiveness, and growth. Our reforms actually build in a degree of flexibility to the rules governing working life – so long as changes are negotiated with and not imposed on workers.

Improving individual rights

Based on proposals in the IER's *Manifesto for Labour Law*, the Industrial Relations Bill will strengthen **statutory rights** – that is, the protections workers have by law. Examples of statutory rights are the National Minimum Wage and holiday pay. While it is envisaged that most working standards will be agreed by Bargaining Councils, it is important to have strong 'default' rights written in the law that set an appropriate base line for the protection of workers.

MYTH #3 Most workers want the flexibility offered by part-time work and zero-hours contracts

While employers and politicians claim that most part-time workers want the flexibility of part-time work, the truth is that the UK now has more part-time workers who want full-time jobs than in other European countries. In reality, people are forced into accepting low-paying, insecure jobs because that's all they are offered – a system made worse by the rolling out of Universal Credit and benefit restrictions that penalise them if they don't accept such jobs.

Why do it?

UK workers have fewer rights than workers throughout Europe, and the rights we *do* have are demonstrably failing to protect our citizens. Although we have a National Minimum Wage (also called the National Living Wage for people over 25), it is not a weekly wage but merely an hourly rate. Even for those who work 40 hours a week, the rate is set lower than the cost of living, which means people on the lowest legal pay rate often have to claim State benefits too, particularly if they can only get part-time work. In recent years, we've also seen evidence of the failure of equality and discrimination laws, with high profile cases of harassment and the use of non-disclosure agreements to silence victims hitting the news.

Five improvements to the law

1 Fair pay

Currently, the National Minimum Wage and National Living Wage are not high enough to cover the basic cost of living; young people are paid even less to do the same jobs; and agency workers are paid less than permanent colleagues. We recommend that a **real living hourly rate** – currently estimated at £10 an hour according to calculations as to the basic cost of living – is implemented and that **workers are paid the rate for the job**, regardless of their age or how they are hired. For the future, the Secretary of State will have power to set a national minimum weekly wage.

2 Protect against unfair dismissal and redundancy

Currently, an 'employee' cannot claim for unfair dismissal until they have been with their employer for at least two years, and a worker who is not classified as an 'employee' never receives that right – so many employers are legally able to hire and fire indiscriminately! We propose that **employers will not be able to fire workers without good reason**. Particularly vulnerable workers – such as trade union representatives, those who have been involved in industrial action, pregnant women, new mothers, whistleblowers and people who have taken prior legal action against their employer – will not be dismissed without the involvement of an independent Labour Inspector. If a worker is found to have been unfairly dismissed, we recommend that they are reinstated in their job and if they are due any compensation this should cover their whole loss.

Workers faced with redundancy will also have more rights. We recommend that **more employers should be required to consult with their workforce earlier over redundancy plans**; that **employers make every attempt to retrain workers faced with redundancy** and that **workers get higher redundancy packages**.

3 Reduce inequality gaps

Inequalities of opportunity exist not only between rich and poor, but also between different ethnicities, genders, and other characteristics. We recommend a **duty on employers to reduce gender segregation**, a requirement for **public sector organisations to justify decisions that create further disadvantage to disadvantaged groups**, and **strengthening gender pay gap reporting laws** by extending them to more employers and adding a duty to devise and implement action plans.

We also recommend **new protections against discrimination** based on socio-economic class, caste, gender identity, family status (for instance, being single or being married) and being a person with more than one protected characteristic (for instance, being gay and disabled). There will also be a **duty on employers to create harassment-free workplaces**, including by third parties like customers and contractors.

4 Better rights for parents

Parents in the UK have some of the weakest rights in Europe. We recommend **giving fathers a minimum of one month of paternity leave on full pay**; making it easier to **share parental leave flexibly**; creating a **right to flexible working**; and **making it harder for employers to fire pregnant women and new mums**.

5 Make workplaces safe

The last Health and Safety Act was passed by Parliament in 1974 and 45 years later, it is no longer fit for purpose. We recommend **updating the Health and Safety Act to reflect modern working practices like** outsourcing work to third parties, which leaves workers unclear about who is in charge and accountable for on-site safety. We

MYTH #4 – Self-employed people don't need health and safety laws

Self-employed people often work as contractors on sites operated by others and hundreds of thousands of people are misclassified as “self-employed”. As a result, self-employed people – who make up just 15% of the workforce – account for 30% of workplace fatalities.

also need better enforcement of the law, including **more workplace inspections** to identify safety hazards; **stronger powers for safety reps**, including to cease work when presented with a serious and imminent risk; and stiffer **penalties against employers** to ensure it is never ‘worth it’ to put workers in danger.

.....

Did you know?

In 2011, the Coalition government categorised some workplaces as ‘low-risk’ (including docks!) and excluded them from proactive inspection by the Health and Safety Executive. Within the first 19 months of this law being passed, 53% of workplace fatalities had occurred at so-called ‘low-risk’ workplaces.

.....



“The UK is the world’s fifth largest economy, it contains many areas of immense wealth ... it thus seems patently unjust and contrary to British values that so many people are living in poverty. This is obvious to anyone who opens their eyes.”

United Nations Special Rapporteur on extreme poverty and human rights, Philip Alston

FAQs

If we improve individual rights, do we even need collective rights?

Yes. Individual rights are an important starting point, but collective rights are more flexible to worker and industry needs. It doesn’t make much sense to have the same set of rules for all workers in the economy when they do such different jobs. Employment rights set national minimums that employers must not fall below; collective bargaining allows employers and workers to build on this basic framework to create the best set of rules for them and their industry.

Will equality laws make it harder for people in the majority?

It’s a common misconception that equality laws only protect people in minority groups, when actually the Equality Act 2010 protects us all. Employers are not allowed to treat someone less favourably because of their personal characteristics,

such as race, gender or sexual orientation – and that includes for being straight, white or male!

What about industries that rely on zero-hours contracts and youth rates – like hospitality, retail or care work?

Some industries have taken advantage of the weakening of employment laws and now habitually use insecure contracts to hire and fire workers or to pay them low ‘youth’ rates. In fact, this behaviour has become so normalised that some people think these sectors would collapse if workers didn’t sacrifice their pay and conditions to hold them up. Fortunately, this simply isn’t true. There are many developed countries that have higher wages, job security and have already banned zero-hours contracts in such sectors without triggering mass insolvency! Plus, a quick glance at the profits of some of the companies in these sectors that deny workers their rights show just how abusive and exploitative these practices have become.

Enforcing the law

If we can’t enforce our laws, they’re not worth the paper they’re written on, so the *Manifesto for Labour Law* proposes that the Industrial Relations Bill should make every single right workers have effectively enforceable.

Why do it?

In the UK today, many employment law breaches are never identified, never mind resolved. The chart shows the obstacles workers currently face when they attempt to access justice.

IDENTIFICATION

Unlike in most Western European countries, **no one is monitoring compliance with employment law**. Basic rights like entitlement to the National Minimum Wage and protection from modern slavery are policed by the HMRC and Gangmasters’ Licensing Authority, but others – such as the right to be protected from discrimination, harassment, unfair dismissal, or to receive holiday and sick pay – must be enforced by workers themselves.

Of course, expecting workers to be familiar with complex laws is unrealistic, so many breaches go unidentified, made worse by **cuts to legal aid**.

ACCESS

Even when law-breaking employers are taken to task, the cost to workers can be extremely high. Tribunal fees may have been removed but there is always the threat of being ordered to pay the employers' costs if you lose and are found to have brought the case unreasonably. And the **government is now looking to bring tribunal fees back**.

Even before fees, many workers would be wary of taking their employer to court – without effective unfair dismissal protection, **enforcing your rights can create more conflict or even lead to job loss!**

JUSTICE

If a worker does take their employer to tribunal and the judges find the employer guilty of breaking the law, there is no guarantee that the worker will benefit.

Only around half of employers obey court orders to pay compensation to wronged workers; even when it is correctly paid, compensation is often capped below the level of the worker's losses so they are still left out of pocket; and there is no enforceable right to reinstatement, so unfairly dismissed workers may be left without a job.

Five ways to ensure laws are enforced

1 To better identify law breaches:

- An **independent Labour Inspectorate** properly resourced and with the power to enter workplaces, issue enforcement notices and reinstate unfairly dismissed workers. Inspectors will become a sword of justice for workers. Similar agencies have already proven their value in France, Belgium and Germany.
- **Stronger trade union rights** allowing trained workers' representatives to enter workplaces to monitor compliance and follow-up on reports of law breaking.
- **Increased funding for the Health and Safety Executive and Environmental Health Offices** – proactive inspections by these agencies fell by 69% and 96% respectively between 2012 and 2015 as a result of funding cuts.
- A new **requirement for companies to demonstrate their compliance with the law**.

2 To ensure access to justice for all:

- A **commitment not to reintroduce tribunal fees**
- Access to **free legal advice for all workers**.
- Powers for the **Labour Inspectorate to bring legal proceedings on behalf of workers**.
- Give workers enough time to organise legal action by **extending time limitations to bring claims** in some areas of the law.

3 To avoid unnecessary litigation:

- **Dispute resolution procedures to be agreed by Bargaining Councils** as part of the sectoral collective bargaining process, providing a template for an effective, fair and standardised procedure for resolving disputes without the need for litigation.
- Powers for the **Labour Inspectorate to issue enforcement notices** at the workplace.

4 To ensure justice is done:

- Establish an **improved system of labour courts** that involves industrial parties (i.e. bosses and workers' representatives) as well as legal experts (i.e. lawyers and judges). Those who work within a given industry are the real experts on how their workplaces operate and can provide important context to disputes that are heard by the court.
- Powers for the **Labour Inspectorate to bring criminal prosecutions for the worst offenders**, such as employers who blacklist workers or who are found guilty of corporate manslaughter.
- **Greater investigative powers for employment tribunals** to ensure unrepresented parties are not disadvantaged.
- **Make directors and shareholders personally liable for their actions** where they have caused or contributed to harm done to workers.

MYTH #5 Offering higher compensation to workers increases vexatious claims

Tribunals have strong powers to penalise claims that have no merit. The proportion of claims going to tribunal that are found to be vexatious has always been very small. An important aim of compensation is to discourage employers from engaging in dangerous and exploitative practices. Without such discouragement, employers are more likely to engage in bad employment practices.

5 To ensure victims are fairly compensated:

- **Compensation should reflect losses**, so that workers are not left out of pocket after a successful claim.
- **Failure to pay court-ordered compensation should lead to financial penalties** and criminal ones for the worst offenders.

.....

Did you know?

Statistically, funding cuts mean that the average workplace will be inspected for health and safety standards just once every 50 years.

.....

FAQs

Why is employment law so poorly enforced in the UK?

In the 1970s, more workers were covered by collective agreements and these provided most of their rights at work. Collective agreements were policed by the industrial parties themselves – employers and workers. During Thatcher’s government in the 1980s, collective agreements and trade union rights were systematically dismantled, destroying this enforcement mechanism, but little was put in its place. We are now reaping the consequences of this legal Wild West, with businesses increasingly flouting our laws without punishment.

Won’t this just wrap businesses up in red tape, making them costly and inefficient?

Because the UK has been so heavily deregulated, it’s easy to forget that our proposals simply raise the UK to international standards. What is ‘red tape’ to the employer may be a vital legal protection to the worker. The myth of ‘red tape’ nowadays gets used to undermine any attempt to restrain dangerous, cost-cutting employment practices undertaken by profit-driven employers. In reality, employers have responsibilities to their workers, to the community, and to the nation. At a fundamental level, those responsibilities must include following the law of the land.

Conclusion

For the first time in 40 years, there are leading politicians in the UK who are prepared to take steps to revolutionise the collective rights of workers and trade unions. In the UK, the proposals of our *Manifesto for Labour Law* – later refined and adopted for the Industrial Relations Bill – may seem radical to some, but this only goes to show how far removed our economy and workplace culture has become from that of most other developed countries.

Where the UK, since the 1980s, has followed a uniquely hostile Anglo-American model of neoliberalism, our peers in Europe and countries farther afield – such as New Zealand – have adapted to the modern world whilst retaining strong social partnerships and workers' rights. **The decision to protect workers is an ideological choice, not an economic one, and it hinges on the way we view our workforce – as people or as commodities?** IER upholds the internationally agreed principle that workers are people, not statistics, and that, as such, every single one deserves to live a life of dignity and mutual respect. This is the world we believe we can create through our proposed reforms.

We are about to live through some dramatic shifts in our economy, our culture, and our environment: Brexit, climate change, automation. It is inescapable that the way we work in the UK will have to change – and quickly. The economy will be drastically reshaped after we leave the EU, industrial strategy must focus more and more on greener business and cleaner working, and the interminable march of the machines will see some professions dropping out of the labour market altogether.

The choice is not whether or not the UK should change – that's an inevitability; the choice is whether that change should benefit us all, or only those born into privilege. It's time to rebalance our society, and IER's research – based on strong evidence of success from historical and international realities – guides the way.

25 recommendations for reform

To enhance democratic participation:

1. **A Ministry of Labour (MoL)** with a seat at the Cabinet table will be established to give workers a voice in Parliament, acknowledging the fact that more than half the population are workers.
2. **A wide remit for the MoL**, including overseeing a new collective bargaining framework; ensuring full employment in secure, high-quality jobs; ensuring wages remain high enough to minimise reliance on state benefits; and developing strategies to provide appropriate training and education to fill present or future skills gaps.
3. **A National Economic Forum** will be established by the MoL on which unions, employers, government officials and independent academics will sit to plan for industrial challenges and scrutinise the impact of policy on all sections of society.
4. **Bargaining Councils (BCs)** will be established and rolled out across all sectors of the economy, probably beginning with the worst paid such as the adult social care sector. An equal number of employers' and workers' representatives will sit on BCs to negotiate sectoral collective agreements on everything from wages, to apprenticeships, to dispute resolution procedures. BCs will also represent the interests of their industry to government.
5. **Stronger trade union rights** to recognition, access and inspection of workplaces will be introduced to provide workers with a voice at work and a genuine choice as to whether they are represented by a union rather than forcing them to fight for the privilege. A right to strike will be stated, some forms of secondary action permitted - and anti-trade union actions taken by employers will be made unlawful. Individual trade union representatives will be protected against unfair dismissal and surveillance.
6. **The repeal of the Trade Union Act 2016** to ensure workers can negotiate on a level playing field with employers.
7. **Enterprise bargaining** will build on sectoral collective agreements, falling below these only by agreement of the BC.

- 8. Enterprise governance and worker capital** – a minimum of two workers on boards, as well as votes at company general meetings, better representation of workers as pension fund trustees, and greater worker control over pension funds.

To strengthen statutory rights:

- 9. A real living wage** to replace the National Minimum Wage and the National Living Wage.
- 10. Equal rights from day one for all workers**, through a new universal status of ‘worker’, replacing the current division that makes workers who are not ‘employees’ eligible for fewer rights than ‘employees’. This will remove the confusion over employment status in the gig economy. The onus will be on employers to prove a contractor is self-employed, rather than workers having to prove they are not self-employed.
- 11. A minimum number of guaranteed hours and a premium rate for overtime.** Employers should be able to indicate a limited number of hours in addition to regular hours, allowing them to retain flexibility of the workforce, thereby replacing zero-hours contracts with a fairer alternative.
- 12. Stronger protections against discrimination and harassment** including a new duty to provide harassment-free workplaces and the inclusion of socio-economic status in protected characteristics.
- 13. Stronger rights for families** including one month paternity leave on full pay and two-three months leave to be shared by the parents flexibly, which can be shared when the child is slightly older. Flexible working will also become a day one right, allowing parents to better arrange balancing work and family life, and pregnant women and new mothers will receive stronger protections against unfair dismissal.

To ensure the law is enforced:

- 14. In-house dispute resolution procedures** agreed by BCs will be the first port of call, establishing the principle, *negotiation not litigation*.
- 15. An independent Labour Inspectorate** will be established with the power to enter workplaces, issue enforcement notices and reinstate unfairly dismissed

workers. Where the dispute cannot be resolved, the Inspectorate will have the power to bring legal proceedings against bad employers and criminal prosecutions against the worst offenders.

16. **An improved Labour Court system** the first tier of which will consist of the Central Arbitration Committee and Employment Tribunals, which will be given greater powers to investigate and resolve disputes. Claims can be appealed to the Labour Court, and the Labour Court of Appeal.
17. **Tougher penalties** for those who break the law, including compensation that better reflects the losses suffered by the victim.
18. **Serious consequences for ignoring court orders.** Failure to pay compensation will be treated as an aggravated breach, attracting criminal sanctions for the worst offenders.
19. **Criminal sanctions** for blacklisting, and a new unit of the Crown Prosecution Services to investigate cases of corporate manslaughter.
20. **Personal liability** for directors and shareholders where their actions have caused or contributed to harm.
21. **Supply chain leaders will face joint liability for labour law breaches made by their suppliers including** health and safety regulations and minimum labour standards applied either in law or agreed by BCs in any jurisdiction including domestically and abroad. This will ensure that UK profit cannot be based on exploitation, including of those in other nations.
22. **New powers for health and safety officers to stop the job** when danger is imminent or serve provisional improvement notices for lower-risk breaches.
23. **More health and safety inspections** and the return of proactive inspections in all industries, not just those deemed 'high risk'.
24. **Promotion of fair work by the government** will take the form of limiting public procurement and licensing to contractors that recognise and negotiate with trade unions, and that do not engage in blacklisting or other serious labour law breaches.

Expert contributors to IER's Manifesto for Labour Law Project

Richard Arthur (*Thompsons Solicitors*)

Alan Bogg (*Professor, Bristol University*)

Nicola Countouris (*Professor, University College London*)

Ruth Dukes (*Professor, Glasgow University*)

Keith Ewing (*Professor, King's College London*)

Sandy Freedman QC (Hon) (*Professor, Oxford University*)

Michael Ford QC (*Professor, Bristol University*)

Mark Freedland QC (Hon) (*Emeritus Professor, Oxford University; University College London*)

Lydia Hayes (*Professor, University of Kent*)

John Hendy QC (*Hon Professor University College London*)

Phil James (*Professor, Middlesex University*)

Carolyn Jones (*Director, Institute of Employment Rights*)

Aristea Koukiadaki (*Senior Lecturer, The University of Manchester*)

Aileen McColgan (*Professor, King's College London*)

Ewan McGaughey (*Senior Lecturer, King's College London*)

Sonia McKay (*Visiting Professor, University of Greenwich; University of the West of England*)

Virginia Mantouvalou (*Professor, University College London*)

Andrew Moretta (*PhD Candidate, Liverpool University*)

Tonia Novitz (*Professor, Bristol University*)

Colm O'Cinneide (*Professor, University College London*)

Steve Tombs (*Professor, Open University*)

Peter Turnbull (*Professor, University of Bristol*)

Sarah Veale (*Executive Committee, Institute of Employment Rights*)

David Walters (*Professor, Cardiff University*)

David Whyte (*Professor, Liverpool University*)

Frank Wilkinson (*Emeritus Reader, Cambridge University*)

About the Institute

The Institute of Employment Rights seeks to develop an alternative approach to labour law and industrial relations and makes a constructive contribution to the debate on the future of trade union freedoms.

We provide the research, ideas and detailed legal arguments to support working people and their unions by calling upon the wealth of experience and knowledge of our unique network of academics, lawyers and trade unionists.

The Institute is not a campaigning organisation, nor do we simply respond to the policies of the government. Our aim is to provide and promote ideas. We seek not to produce a 'consensus' view but to develop new thoughts, new ideas and a new approach to meet the demands of our times.

IER
Institute of
Employment
Rights

IER officers

President **Professor Keith Ewing**
Chair **John Hendy, QC**
Treasurer **Geoff Shears**
Director **Carolyn Jones**

For more information and a full list of IER members visit www.ier.org.uk

The Institute of Employment Rights
4th Floor Jack Jones House
1 Islington
Liverpool, L3 8EG
Tel: 0151 207 5265

Email: office@ier.org.uk

Twitter: [@ieruk](https://twitter.com/ieruk)



IER

Institute of
Employment
Rights

In this *Guide to a progressive Industrial Relations Bill*, we explain our recommendations for reform in a digestible and easy-to-read format, laying out our vision for an effective framework of labour law fit for the 21st century. We believe this Bill will transform the world of work for millions of people, give workers a voice in parliament, in their jobs, and across the economy at large. With new legally protected powers to speak out collectively against injustice, workers will be provided with a means to protect and improve their job security, pay and conditions. Underlying this system will be the reinstatement of collective bargaining as the foundation of workplace relations, together with stronger employment rights and better protection against discrimination.