

A woman with dark hair, wearing a dark jacket over a grey hoodie and a dark scarf, stands in the foreground of a busy city street. She is looking directly at the camera. In the background, several other people are walking away from the camera, and the street is lined with buildings. The scene is brightly lit, suggesting a sunny day.

Standing Up for Working people

Labour's plan for fairness and decency at work

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1. INTRODUCTION

A strong economy creates jobs. All Labour's policies are aimed at growing and strengthening the economy, because only that way will more citizens share, through paid work, in economic prosperity.

As unemployment falls, we want to see economic recovery translated into better working conditions and improved pay, particularly for low-paid workers.

A decent working life means decent pay and conditions and a decent level of security. People want – and are entitled to – sustainable, secure and reasonably well-paid jobs. Our employment policy must strike the right balance between the needs of business and a worker's right to basic job security and a decent rate of pay.

Because work isn't just about earning a living. It is about personal life and personal finances. It is about being able to plan for a future, for a mortgage, for a family. It is, ultimately, about human dignity and respect.

As we have made clear, we in Labour have no interest in 'jobs at any price', in the spread of casual labour at the lowest wages. We will not preside over a ruthless race to the bottom or the sacrifice of employment rights that are the mark of a decent and progressive society.

It is intolerable that in the 21st century, some employment practices attacked as exploitative in the 19th century still prevail. People providing services on which our society and economy rely can find themselves without the most basic standards of fair treatment in the workplace. And women are disproportionately represented amongst workers in low-paid, precarious employment.

We in Labour believe that good workplaces are not just beneficial for employees: they are good for business and our economy as a whole.

We believe workers must be empowered to bargain for themselves in the workplace. In sectors like hotels, retail and fast food we need a strong, sectoral approach which can raise standards across the board.

We are committed to banning exploitative employment contracts and bogus self-employment and to excluding bullying from the workplace.

Fundamentally, we need employment rights that are fit for the 21st century, so that our citizens can be both secure and productive at work.

As part of this Government, we have achieved a lot. As part of the next Government, we will do more.

- We will increase the minimum wage until it is pegged at 60% of median earnings over the lifetime of the next Government. Tying the minimum wage to general earnings rather than inflation will stop the development of a permanent low-paid sector in our economy.



“A DECENT WORKING LIFE MEANS DECENT PAY AND CONDITIONS AND A DECENT LEVEL OF SECURITY. PEOPLE WANT — AND ARE ENTITLED TO — SUSTAINABLE, SECURE AND REASONABLY WELL-PAID JOBS. OUR EMPLOYMENT POLICY MUST STRIKE THE RIGHT BALANCE BETWEEN THE NEEDS OF BUSINESS AND A WORKER’S RIGHT TO BASIC JOB SECURITY AND A DECENT RATE OF PAY”

- We have also embraced the Living Wage initiative. We will ensure that the State and all State agencies become Living Wage employers by 2018.

And we have plans for further legislation, in support of fairness and decency in the workplace. Fairness and decency at work sums up the aspirations of working people throughout the world. It means productive work, a fair income, security in the workplace and prospects for personal development and social integration.

Fairness and decency cannot be achieved by employer benevolence or codes of practice alone. It must be assisted by effective legislation, to correct the imbalance of power between employers and employees.

For us in Labour, fairness and decency means –

- ending abusive zero hour and low hour contracts
- stamping out bogus self-employment
- confronting the scourge of workplace bullying
- adequate protection for workers who provide contracted services
- an end to arbitrary deductions from wages, contrary to the Payment of Wages Act
- protection for workers who are left without wages when their employer stops trading.

And so, as we spell out in this paper, we are committed to a fair framework of law that promotes fairness and decency in our employment practices – in the way we work for our economy and the way our economy works for us.

We will not permit abusive terms and conditions of employment – low pay, insecure hours, enforced bogus self-employment – to be imposed on the vulnerable, the low paid and those with little social protection.

We will legislate for common and comprehensive definitions of employment and self-employment, that will apply for tax, social welfare and employment protection purposes, and we will crack down on bogus self-employment practices that exploit workers and leave them without legal protections.

We will address abuses of zero hour and low hour contracts, we will legislate to prohibit the casualisation of workers and we will safeguard the rights of workers where firms collapse in 'informal' insolvency.

2. OUR RECORD

Labour in Government has already delivered.

- We reversed Fianna Fáil's mean spirited €1 cut in the hourly minimum wage, we appointed a new independent Low Pay Commission to advise on the minimum wage and we implemented its first recommendation. As a result of these changes, a minimum wage worker now earns €3,000 per year more than in 2011.
- We legislated to enable workers to collectively bargain with employers.
- We commissioned and published Ireland's first report on zero hour and low hour contracts – and we are committed to implementing its recommendations.
- We restored registered employment agreements and we established new sectoral employment orders.

Our collective bargaining legislation at last ensures that Irish law is consistent with judgments of the European Court of Human Rights. It provides a clear and balanced mechanism by which the fairness of employment conditions can be assessed where there is no collective bargaining in the workplace.

It ensures that workers, aided by a trade union, can advance claims about pay and conditions and can have these decided by the Labour Court, based on comparisons with similar companies.

Workers can feel exposed when seeking to improve their terms and conditions. Simply making themselves known may have unwanted and unwarranted consequences. This legislation provides significant protection against such consequences.

We in Labour support enterprise level and sectoral negotiation and agreement. We re-introduced a constitutionally robust negotiation framework, which will benefit both workers and employers. It will provide certainty about pay and conditions into the future and it will provide the very real pay-off of industrial peace.

It will also help maintain skill standards and help avoid the race to the bottom that, in the end, does not benefit either side.

The passing of this and the minimum wage legislation in the last Dáil session has brought about the most significant shift in the industrial relations landscape we have seen in many years.

As a result of our legislation, workers are now well equipped to seek to better their terms and conditions, through collective bargaining and agreement.

And trade unions that can demonstrate the benefits of collective negotiations are well placed to attract new members.

3. PAY

Work must always pay. People in full-time work should be able to provide their families with a decent standard of living without having to depend on State supports. Labour is committed to raising the threshold of decency. Under this Government, we increased the minimum wage by €1.50 an hour, or €3,000 a year, for those who need it most.

Labour will ensure that the next Government leads by example. We will ensure that the State and all State agencies become Living Wage employers by 2018.

In the wider economy, we will direct the Low Pay Commission to target a National Minimum Wage of 60% of median earnings by 2021.

A second pillar pension system

A comprehensive worker's rights agenda needs to make special provision for the protection of working people once they reach retirement. As many as three in five Irish workers are currently without an occupational pension.

According to the Pensions Authority, these figures mean that many Irish workers will be unable to access an adequate income in retirement. In addition, less women have access to an occupational pension than men – and the average savings rate and total duration is less for those that do. Bold action is required now to ensure all workers can count on reliable, adequate support in retirement. Labour is committed to introducing a new auto-enrolment pensions system to ensure proper pension provision for every worker in Ireland.

This system will see an occupational pension scheme created for each worker when they take up employment, which will follow them through their working life if and when they change jobs or careers. By retirement, they will therefore have built up their own personal pension pot to complement the State pension. We will begin by introducing the occupational pension scheme for those working for large companies, and then move on to the rest of the workforce.

Our plan will have a transformative effect on pension coverage over time, not alone driving up pension coverage, but driving down costly administration charges currently associated with individual pension plans.

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4. EMPLOYMENT LAW REFORMS

Ending abuse under 'if and when' contracts

There is a serious problem of growing casualisation of employment, which can entail exploitation of the least protected workers. An 'if and when' contract is an employment arrangement where the employee is not guaranteed any working hours at all and is paid only for work carried out. Some contracts may fix a very low number of set hours, with the rest unspecified.

These contracts can involve high levels of insecurity, because hours can fluctuate on a daily or weekly basis. Varying hours and unstable income mean that workers have problems meeting bills, applying for bank loans, organising childcare, planning ahead – even when applying for social welfare for days not at work.

These contracts are said to offer employers and workers flexibility. But they can also be used to keep wages down. A minority of workers might be attracted to flexibility but there is no evidence that these arrangements benefit the wider body of workers covered. These contracts are mainly associated with low pay and are not entered into as a matter of choice by most workers. The imbalance of power means that employers get all the benefits of flexibility, while all the financial and insecurity risks are transferred to workers.

We are committed to legislating to protect workers against abuse and exploitation.

As part of that package:

- Where an individual works regular hours for a certain period, the employer will be legally required to issue a written contract guaranteeing their existing working pattern on an ongoing basis. The only exception would be where the individual requests to remain on flexible hours.

- Employers will be required to provide workers with express notice, within a reasonable time, of their rosters and shifts.
- Generally, employees will not be called into work for shifts of less than four hours.

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Combatting bogus self-employment

Bogus self-employment is used to disguise contractual relationships which should be properly registered as employment, in order to avoid both the protections and the costs associated with the ordinary employment relationship.

Workers engaged in bogus self-employment miss out on rights such as:

- Paid sick leave
- Holiday pay
- Overtime rates
- Redundancy pay
- Travel allowances
- Pension contributions
- Employment protections



It is used by employers to evade taxes and to engage workers without having to respect their employment rights. This not only leads to exploitation of people who are clearly employees, it also costs the Exchequer – and us taxpayers – millions of euro. The practice also creates unfair competition, by undercutting reputable employers who comply with basic standards.

It is wrong that the bogus self-employed should be denied the legal protections enjoyed by employees. Employment rights are at present assigned using a complicated and outdated system that requires urgent review. We will reform the legal definitions of employment status, to include a test determining that status in line with the guidelines of the Revenue Commissioners, and in full conformity with the judgments of the Court of Justice of the European Union.

It goes without saying that independent undertakings, genuinely carrying on business on their own account, will not be affected by these reforms; they will quite properly continue to be treated as self-employed.

Freelance workers and the right to collectively bargain

Under competition law every self-employed person is considered to be a separate, independent economic undertaking. If one self-employed person combines with others to set prices, they can be accused of an illegal anti-competitive practice. At its most extreme, freelance journalists in a newsroom would be barred from bargaining collectively with their common employer about wages.

Long-standing Labour Party policy on this issue is now supported by a recent judgment of the Court of Justice. The court has held that a worker is not genuinely independent of his or her employer if the worker acts under the direction of the employer as regards freedom to choose the time, place and content of work, does not share in the employer's commercial risks and in reality forms an integral economic unit within the employer's undertaking. This class of worker is accordingly entitled to trade union membership and to bargain collectively.

We will legislate to permit self-employed persons in this category, who personally

perform work or provide services, to collectively bargain with employers, while continuing to prohibit them from colluding or price-fixing to the detriment of consumers.

Protecting employment standards in public procurement

Given the economic importance of public procurement, the State has power to promote wider economic and societal gains. We will ensure that the Labour Rights social clause in the Directive is transposed into Irish law so as to require contractors to show:

- Compliance with health and safety, equality and employment law;
- Respect for the industrial relations machinery of the State;
- That pay and conditions are in line with collective agreements in the relevant sector;
- Prompt payment of awards where there have been infringements of employment rights.

Our intention is also to ensure that public procurement is leveraged to make the Living Wage a reality in onsite employment, such as the contract catering, cleaning, and security sectors.

Extending Transfer of Undertakings Regulations to services

The Protection of Employees on Transfer of Undertakings Regulations 2003 (the TUPE Regulations) protect employees when the business that employs them is transferred. The employees are given continuity in their contracts under their new employers.

However, a weakness in the regulations is that they do not necessarily protect workers under a service contract, such as contract cleaners or security workers, when the contract is not renewed. Effectively this means that workers in the services sector do not have the same

protections as workers in other sectors of the economy.

The question as to when TUPE applies to service workers and when it does not has generated a lot of uncertainty and case law. Where a contractor loses a service provision contract, workers may find themselves in a legal quagmire.

In the UK it has been made clear that a change in service provision will be covered by TUPE, even though this is not strictly required by the EU Directive. The UK Government has confirmed that going further than is strictly required provides certainty and is beneficial to both sides of industry.

We will change the Irish regulations along similar lines, so that employees in the services sector are given the same protection as those in the rest of the economy. Businesses in the services sector will have certainty and a level playing field when services transfer from one business to another.

Protecting workers in 'informal' insolvency

Between 2012 and 2013, over 3,000 companies went through a formal insolvency procedure such as receivership, liquidation, bankruptcy or the like. The employees in those companies were able to apply to the State's insolvency payments fund for arrears of wages, holiday money, minimum notice and certain other sums.

However, employees in broke companies that do not go through a formal procedure and that simply cease trading and "walk away", cannot apply for payment from State funds. They cannot recover unpaid wages and other due amounts, like their colleagues in employments which have taken the proper formal insolvency routes, and they are left at a severe and unfair disadvantage.

We will amend the legislation to cover informal or "deemed" insolvencies where the employer has ceased trading or where

payments to employees have ceased for six weeks or more.

Statutory redress for bullying and blacklisting

Everybody agrees that workplace bullying is unacceptable. The time has come to incorporate appropriate redress into employment law. To date there has no legislative intervention in this area.

Workplace bullying is a problem which has negative effects for both victim and employer. For the victim there is stress, ill health, low productivity and negative career development. For the employer there can be a dysfunctional workplace, poor morale and costly litigation.

BUSINESSES IN THE SERVICES SECTOR WILL HAVE CERTAINTY AND A LEVEL PLAYING FIELD WHEN SERVICES TRANSFER FROM ONE BUSINESS TO ANOTHER

There is an increased level of complaints but there is no formal statutory channel for resolving bullying complaints. Contrast this with the approach to harassment and sexual harassment claims, which are clearly defined in the Employment Equality Acts and where a complaint procedure is clearly spelled out. The worker making a bullying complaint has no such defined redress under employment law.

The lack of a statutory cause of action has meant that the task of developing and applying appropriate redress has been left to the courts. The route is invariably costly, time consuming and traumatic for all parties involved.





Significantly, the Task Force on Bullying 2006 commented on the lack of formal procedures to deal with bullying and called for legislation to be enacted to give effect to their proposals.

Our legislation will define what workplace bullying is, outline the internal procedures needed to deal with bullying complaints and outline the formal route for adjudication of bullying complaints, which will be legally sound and cost effective.

The Bill will make clear that reasonable management action conducted in a reasonable manner does not constitute workplace bullying.

It will emphasise that bullying complaints must first be aired at local enterprise level, allowing for internal resolution through prescribed formal and informal channels.

Separately, we will legislate to clearly outlaw efforts to compile or supply 'blacklists' of workers who are trade union members or who have taken part in trade union activities or an industrial action, for use by employers when recruiting.

Preventing unilateral pay deductions

Some EAT decisions under the Payment of Wages Act 1991 have held that a "reduction" in wages by an employer, without the worker's consent, can be distinguished from a "deduction" in wages, which is prohibited by that Act.

We will legislate to remove any potential for confusion on this and to ensure that the protection under the Act is properly extended to workers in all circumstances.



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