

10 reasons why ordinary working men and women should not vote for the Tory party

Under the leadership of the Tory party, we have seen billionaires getting richer¹ while child poverty is at record levels.² We see graduates starting their working lives in debt. We have seen the rise of the gig economy, characterised by job security and its poor treatment of workers. We have seen public sector pay freezes while the cost of living continues to rise. We have seen constant under-funding in the NHS accompanied by incremental privatisation and the list goes on.

The Tory party rules for those who love gain and love to hoard at the expense of ordinary workers, families and communities. Despite this the Tory party has the temerity to suggest that it is the party of ordinary working men and women. The following are ten reasons why the Tory party can never be said to be the party of ordinary working men and women:

1. Employment Tribunal Fees

Since the Coalition Government introduced Employment Tribunal ('ET') fees on 29 July 2013, there has been a 68% fall in the number of ET cases being brought.³

This huge drop is unsurprising given that where, for example, an employer unlawfully deducts £100 from a worker's wages, it will cost that individual £390 in ET fees to pursue their claim.

ET fees are higher in more complex claims such as unfair dismissal where someone who has lost their job and source of income is expected to pay a staggering £1,200 in ET fees to pursue their claim.

Put simply, workers up and down the country are not enforcing their basic employment rights because they cannot afford ET fees.

Despite the above, in its much delayed review of ET fees in January 2017, the Tory party refused to abolish ET fees.⁴

2. ACAS Early Conciliation

Most people will agree that ACAS, as a mediation, advisory and conciliation body are an invaluable resource and that resolving disputes prior to litigation is often the best outcome for all sides.

However, the Coalition Government introduced mandatory 'ACAS Early Conciliation'. The mandatory nature of ACAS Early Conciliation means that individuals cannot now lodge most Employment Tribunal claims unless they have first complied with the ACAS Early Conciliation

¹ Sunday Times Rich List , 7 May 2017

² <https://www.theguardian.com/society/2017/mar/16/child-poverty-in-uk-at-highest-level-since-2010-official-figures-show>

³ <https://www.tuc.org.uk/industrial-issues/workplace-issues/government-%E2%80%9Cturning-blind-eye%E2%80%9D-impact-tribunal-fees-says-tuc>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/587649/Review-of-introduction-of-fees-in-employment-tribunals.pdf

process, which is simply another layer of bureaucracy that acts as a barrier to accessing justice.

To make matters worse, if, in the ACAS Early Conciliation process, an individual doesn't cite the correct legal entity, doesn't conciliate on time or e.g. states the wrong reference number, their ET claims can be rejected.

Again, the Tory government has failed to abolish the mandatory nature of ACAS Early Conciliation.

3. Employment Tribunal wing members

One drastic change slipped in by the Coalition government, upheld by the Tory government, was the removal of wing members from most unfair dismissal claims. Unfair dismissal claims used to be heard before a Judge and two wing members: one drawn from businesses and one drawn from trade unions. It was universally accepted that it was the wing members that brought industrial experience to cases. This has sadly been lost in the government's relentless drive to cut costs at all costs.

4. Period of continuous service

The coalition government increased the qualifying period for unfair dismissal claims from 1 year to 2 years. As such, you cannot now bring an unfair dismissal claim unless you have been continuously employed for 2 years, which obviously disadvantages young workers and also women, who are taken to have primary child-caring responsibilities.

5. Trade Union Act 2016

In a ruthless attack on trade unions, the Tory government is responsible for introducing the most restrictive piece of trade union legislation in a generation. We shall highlight just 2 points from the Act:

Previously, all ballots for industrial action required eligible union members to be balloted and a simple majority of votes had to be in favour.

Under the Trade Union Act 2016, however, now, at least 50% of eligible members must turn out for a ballot. For example, where 100 union members form part of the bargaining unit, 50 must now vote in order for the ballot to be valid.

In addition, where the industrial action ballot is taking place in what is considered to be 'important public services', the ballot must have the support of 40% of those entitled to vote. So, for example, where only 50% of eligible members participate in the ballot, 80% of those voting must vote in favour.

Apart from the obvious comparison, that only 37% voted for the Conservative party in the 2015 general election (and one wonders why running a country requires less democratic legitimacy than a strike), it is worth pointing out that the Tory party prioritised this piece of legislation and rushed it through parliament at a time when industrial action was at historically low levels.

The only possible explanation for this is that the Tory party are planning further devastating cuts to the public sector and they wish to make it harder for any cuts to be opposed.

6. Digitisation

The government has proposed a more digitally based system to manage Employment Tribunal claims. At the moment, ET claims can be lodged online. Thereafter, however, claims are processed non-electronically and this is what the government proposes to move to an online platform.

The proposal raises obvious concerns for those who have no internet access, those who struggle with technology, those whose first language is not English and those with literacy issues.

There is little doubt that this proposal is designed to put additional hurdles in front of those who are seeking justice in respect of workplace issues.

7. Online Determination of Cases

The government is also considering whether it may be appropriate for some ET claims to be decided without a hearing i.e. a judge would make a decision on the basis of a review of the papers only.

The suggestion so far seems to be that, for example, simple wages claims may be suitable for online determination whereas complex claims such as discrimination or whistleblowing would be wholly unsuitable.

Key will be what constitutes a 'simple' claim. However, employment disputes are rarely simple; both the facts of any particular case and the law behind it are often complex. Additionally, witness evidence is central to Employment Tribunal hearings as is the current requirement for such evidence to be given and examined under oath and it is difficult to imagine how contested cases could be fairly determined without this.

Most worrying, however, is that justice in employment disputes may soon be replaced with how well parties conduct the online process. Individuals who are not members of the trade union movement and those who are not legally represented are likely to be most disadvantaged by the proposal.

8. Taxation of injury to feelings compensation

The Tories have scheduled new legislation to be introduced in April 2018 under which payments on termination of employment for 'injury to feelings' in e.g. discrimination claims, will no longer be exempt from tax. The exemption will only apply where the injury to feelings is sufficient to cause the employee to be unable to perform their job properly.

Injury to feelings awards are made to compensate an individual for the mental damage they have suffered as a result of poor treatment in the workplace. Any attempt on the part of the government to tax such damages is therefore immoral.

The Tory party's contempt for workers is also startling. On the one hand, their record shows that they are seeking to restrict access to justice and deny workers' rights. On the other hand, where claims are settled, they want a slice of the award.

9. Holiday Pay

It was established by the European Court of Justice, upheld by the Supreme Court that holiday pay during annual leave had to take into account not only basic pay but also contractual supplements that formed part of normal remuneration.⁵

A subsequent Employment Appeal Tribunal ruling, known as the Bear Scotland litigation, confirmed that non-guaranteed overtime that claimants were obliged to work but which employers were under no obligation to provide had to be taken into account in the calculation of holiday pay.⁶

The rulings meant that workers could potentially claim back pay, in some cases going back to 1998, for their holidays, which employers had been underpaying for years.

Immediately following this ruling, however, the Coalition government set up a task force of representatives from government and businesses to look into the effect of limiting the effect of the judgment on businesses. No union or employee groups were on the taskforce. Legislation was then drawn up and laid before parliament just before the 2014 Christmas recess and became law just after the Christmas recess with the days in between coinciding more or less exactly with the parliamentary recess. There was no formal consultation about the proposed legislation.⁷

The legislation that subsequently came into force essentially provided for a 2 year limit to claims for back pay. So, where workers had been underpaid by their employers for years, their claims were suddenly and arbitrarily, without due process, limited to 2 years.

10. Brexit

In view of the above it is difficult to see any basis for the assertion on the part of the Tory party that they are the party for ordinary working men and women. What's more, things will get a lot worse for workers if the Tories maintain power. In particular, one of the main reasons why the Tory government has not further eroded employment rights has been because they have not been allowed to under European Union law. If and when we come out of Europe, however, we can be sure that the Tories will either erode or abolish such rights if they maintain power including EU based rights relating to:

1. TUPE;
2. Agency workers;
3. Protective awards;
4. Discrimination law;
5. Fixed term workers;
6. Parental leave;
7. Part time workers;

⁵ <http://www.bailii.org/uk/cases/UKSC/2012/43.html>

⁶ <https://www.judiciary.gov.uk/wp-content/uploads/2014/11/bear-scotland.pdf>

⁷ <https://www.gov.uk/government/news/government-tackles-businesses-concerns-over-holiday-pay-ruling>

8. Working time protections;
9. Payments out of the national insurance fund where an employer is insolvent.

Conclusion

In conclusion, if the Tories hold on to power, there will be devastating times ahead for working men and women up and down the country.

The Labour party's draft manifesto, on the other hand, promises to:

1. Scrap Employment Tribunal fees;
2. Give all workers equal rights from day one, whether full or part-time, temporary or permanent;
3. Repeal the Trade Union Act 2016;
4. Maintain EU-derived laws for workers;
5. Scrap the public sector pay cap;
6. Ban zero hours contracts;
7. Shift the burden of proof in the 'gig economy' so that the law assumes that a worker is an employee unless the employer can prove otherwise;
8. Guarantee trade unions a right to access workplaces, ensure rights to trade union representation at work, only award public contracts to companies that recognise trade unions and consult with a view to permitting online balloting for industrial action;
9. Raise the minimum wage to £10;
10. Strengthen redundancy laws;
11. Increase paternity leave and pay;
12. Reinstate protection against third party harassment.

Viewed in the clear light of day, the Tory's track record on the rights of workers is damning and undeniable. On the other hand, there is hope for a fairer economy with the Labour party – one that benefits the many and not the few.

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