

TRANSCRIPT

UNITED KINGDOM: Workers' Rights in the midst of COVID-19 (with Professor Michael Ford QC)

Natasha Holcroft-Emmess (0:11): Welcome to RightsUp RightNow, a podcast from the Oxford Human Rights Hub. I'm Natasha Holcroft-Emmess. Today I'm speaking with Professor Michael Ford QC, a barrister at Old Square Chambers and Professor of Law at the University of Bristol, who specialises in labour law, public law and human rights.

The spread of COVID-19 has affected many areas of our lives and brought with it onerous implications for our rights and freedoms. Governments around the world are adopting stringent measures in an attempt to tackle the public health emergency created by the virus. The instigation of a UK-wide lockdown entailed particularly heavy repercussions for our rights. It has affected our ability to lead our lives freely and, across many sectors, to work as we normally would, or at all. The impact of this disruption will fall most heavily on those whose livelihoods, health and security were already fragile. Furloughed employees, those who are self-employed, and those who must now seek social security benefits face an unprecedented level of uncertainty. Restrictive measures adopted by the Government must be sufficiently robust to tackle the challenges posed by the virus, while also supporting those whose livelihoods are now at risk. Today we will be discussing the impact of Coronavirus on workers' rights in the UK. Professor Ford, thank you for joining us today.

Professor Ford (1:56): It's a pleasure. Thank you for inviting me.

Natasha Holcroft-Emmess (1:58): Let's begin by setting the scene for workers' rights before the Coronavirus pandemic. How far had the UK come in securing protection for workers' rights prior to the pandemic?

Professor Ford (2:10): Well, that's a big question. The workers' rights in the UK are principally now underpinned by EU law. There's been a pretty long campaign from, principally, the Conservative governments, but also its predecessor Coalition governments, and even before that, New Labour, not to go beyond the minimum of EU protections. So we aren't that great on domestic rights that aren't underpinned by EU law. The most important ones are probably the unfair dismissal protection and the national minimum wage. Virtually everything else in UK law is dependent upon the EU and that includes, especially, discrimination law, duties of work consultation, and so on and so forth. Now all that, even despite Brexit— all that edifice is in place. But I think it's fair to say UK law doesn't provide much protection for those who are placed—on decisions to shed labour. In particular, the rights to redundancy payments in those circumstances are pretty low and are confined to those who are employees with two years' service. There's a possibility of claims for unfair dismissal, but the focus tends to be mostly on whether or not the employer acted "reasonably" in selecting for redundancy, when challenged, the actual decision to make redundancies in the first place. And there are provisions on collective consultation in the— owing their origin to EU law, but those too tend to be more focused on whether or not there was a process of consultation rather than whether or not the actual decisions to make people redundant were justified, and they only

apply when certain minimum numbers are triggered. There are some ancient — I say “ancient”, they’re pretty old provisions — providing for payments in circumstances where people are put on “short time”¹ or no working, but they’re rarely referred to nowadays. So in summary, there’s not really much protection against the management decisions to get rid of workers because of the crisis. There are more protections where people’s wages are cut or they’re placed on short-time working. But their practical impact’s another issue altogether.

Natasha Holcroft-Emmess (4:39): Thank you for that. If you had to pick out a couple of, sort of, big issues in workers’ rights in the UK before the pandemic, what would you say were the kind of hard-hitting issues that were facing workers?

Professor Ford (4:53): Well, you know, everyone’s biased on what they focus on. I’ve focused on two really big issues. One is Brexit, of course, because the— come the end of December, when IP [Implementation Period] completion date is reached, then all of the relevant rights derived from EU law are vulnerable to repeal. So that’s number one big issue: To what extent, once the UK is freed from the EU, is no longer bound by EU law, will these rights be watered down? The other big, big issue that’s come into increased prominence following the decision of the Supreme Court in *UNISON*² is the extent to which workers have effective means of enforcing their rights. That’s an issue that’s taken on a lot more prominence post-*UNISON* because you may have many, many rights on the statute book, but if the enforcement of those rights is dependent upon individuals going to an employment tribunal, and obtaining some form of deterrent compensation, whether or not they actually give effect to those rights at the system level, across the board, is a bigger and much more difficult question. So I think those are the two big, big issues at the moment.

Natasha Holcroft-Emmess (6:19): That’s fascinating, especially the ability of people to enforce their rights and the ability of the courts to make that happen for people.

Professor Ford (6:26): Yes. Well, *UNISON* kind of showed, first of all, the problems people had in getting to court. Secondly, if they did, the compensation levels tended to be very, very low — not surprising, lots of these claims are small sums of money. And thirdly, perhaps most alarming of all, that even when people did win in the tribunal, often they didn’t actually ever get paid anything. There was a BIS survey in 2013,³ I think it was, that showed approximately half of those who won some money in the tribunal didn’t get paid. So yeah, big issues.

Natasha Holcroft-Emmess (6:59): And do you think that, of the issues facing workers, are they the same but more extreme due to the public health crisis? Or has the onset of the virus generated novel challenges for workers’ rights?

¹ According to the UK Government website, “short-time” working refers to a situation in which an employee’s hours are cut in the context of a situation in which the employer does not have enough work for the employee. ‘Lay-offs and short-time working’ *Gov.UK* <https://www.gov.uk/lay-offs-short-timeworking>

² *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51. Full judgment available here: <https://www.supremecourt.uk/cases/docs/uksc-2015-0233-judgment.pdf>. See also Abigail Adams and Jeremias Prassl. ‘A good day for the Rule of Law.’ *Oxford Human Rights Hub* (26 July 2017) <https://ohrh.law.ox.ac.uk/a-good-day-for-the-rule-of-law/>

³ Department for Business, Innovation and Skills (BIS), ‘Findings from the Survey of Employment Tribunal Applications 2013’ (Research Series No. 177) (June 2014) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316704/bis-14-708-survey-of-employment-tribunal-applications-2013.pdf

Professor Ford (7:12): Well, some of them have— some of them are the same, but they're also novel. I mean, you won't be surprised to hear me say that. In a way you can see there's two broad issues here. There's the protection for those in the shutdown sectors; that's estimated to be, by the Resolution Foundation, who have done a lot of tremendous work in this area, to be about 6.3 million workers.⁴ And secondly, there's the protections for those who are still at work, particularly those called “*key workers*” in areas such as health, retail and personal services, estimated at about 8.3 million according to the Resolution Foundation.⁵

Now, to some extent, we're seeing the same issues arise that have arisen in the past; I mean, both groups, that is those who have to work and those who are in the shutdown sector, tend to be dominated by the low paid, by the young, and by— disproportionately by women. So you see a familiar pattern emerging that the most vulnerable workers, both in terms of those who've lost their income stream and in terms of those who are forced or required to carry on working, are those who are at the most— tend to be at the most vulnerable sectors of the labour market. In addition, in both sectors, you find disproportionately large numbers of those working on zero-hour contracts.⁶ It won't surprise you that those in the service sectors are often on zero-hour contracts, in retail and health and the like. But equally those in the shutdown sectors are also— tend to have a disproportionately high number of zero-hours workers.

Now, these are kind of familiar problems to us in labour law, because the extent to which labour law protects those who are— don't work on the standard full-time permanent contract of employment is a familiar issue. Zero-hour contracts exemplify it. And equally, it's a familiar issue that various groups, in particular women and the young, tend to be disadvantaged in the labour market. So those are familiar.

But then we've also got a whole new set of issues arising because of things like the Coronavirus Job Retention Scheme that the Government has just put in place, probably the biggest State intervention in the labour market in my lifetime, maybe since the Second World War. And then other issues, such as, you know, the provision of PPE — personal protective equipment, that is — to those continuing working, so no surprise, both sets of issues have arisen here.

Natasha Holcroft-Emmess (9:49): Let's turn now to the impact of the pandemic, and the measures adopted to try and control the spread of the virus, some of which are restrictive of our normal activities. Which measures would you say are having the biggest repercussions for workers?

Professor Ford (10:03): Probably again, you look at those— that division I've talked about. First of all those who've lost their jobs. I don't know the precise figures for those off the top

⁴ Jack Leslie and Charlie McCurdy. 'The economic effects of coronavirus in the UK' *Resolution Foundation* (30 April 2020) <https://www.resolutionfoundation.org/publications/the-economic-effects-of-coronavirus-in-the-uk/>.

⁵ Jack Leslie and Charlie McCurdy. 'The economic effects of coronavirus in the UK' *Resolution Foundation* (30 April 2020) <https://www.resolutionfoundation.org/publications/the-economic-effects-of-coronavirus-in-the-uk/>. See also Maja Gustafsson and Charlie McCurdy. 'Risky business: Economic impacts of the coronavirus crisis on different groups of workers' *Resolution Foundation* (28 April 2020) <https://www.resolutionfoundation.org/publications/risky-business/>.

⁶ According to the UK Government website, “zero-hours contracts” are also known as casual contracts and are usually for “piece work” or “on call” work. 'Contract types and employer responsibilities.' *Gov.UK* <https://www.gov.uk/contract-types-and-employer-responsibilities/zero-hour-contracts>

of my head, but you may have seen the press announcement, for example, that British Airways is just about to make 12,000 people redundant.⁷ There are also an awful lot who have been “furloughed”, as it’s called, that’s the new term that we’re having to become familiar with as labour lawyers; that means, the workers are instructed to cease all work — they’re not even working from home, they’re told to cease all work — and then the Government, under this enormous and unprecedented intervention, guarantees 80 per cent of their wages up to a maximum two and a half thousand per month. So that’s had an enormous effect because huge, huge numbers have been furloughed. Original estimates were of 8 or 9 million I saw from the Office of Budget Responsibility and the Resolution Foundation.⁸ So that’s measure one, those who have lost their job or been placed on effectively no work and are subject to a compensation scheme.

And the other big issue, of course, is well, what about those who are carrying on working? To what extent are they being given proper protection in relation to their working practices? And as I’ve said, they’re often low paid workers and they end up working in workplaces where isolating themselves isn’t easy. You think of the people working in warehouses arranging to deliver goods, arranging for goods to be delivered to households. And you think especially if those in the health service who’ve received— and care homes who’ve received an awful lot of attention. To what extent are they being provide with proper equipment to protect them, either from the virus or to ensure that they don’t transmit the virus to others for whom they may be responsible and coming into contact with. So yeah, I’d see those as the two main issues.

Natasha Holcroft-Emmess (12:20): What role does human rights law play in ensuring that workers are protected in the ways that they need to be protected during these times?

Professor Ford (12:29): As always, it depends what you mean by human rights. I mean, if you’re talking about a broad conception of human rights, as extending beyond narrow rights against the State, to express political opinions, as embracing socio-economic sort of rights, then it has some— I mean, the— in a sense, you could see even the duties about safe work equipment, you can see those as going back to protection of bodily integrity, and other such fundamental human interests. There have been some attempts to argue that, in addition to the various regulations on personal protective equipment for those working, which again owe their origin to EU law and we have specific legislation designed to require the provision of that equipment—There’s the potential for arguments based on Article 2 of the Convention,⁹ in relation to the right to life, because of course, coronavirus, regrettable as it is, ends up generating the potential for affecting the right to life. So there have been arguments raised

⁷ Rupert Neate. ‘British Airways plans to make up to 12,000 staff redundant.’ *The Guardian* (28 April 2020)

<https://www.theguardian.com/business/2020/apr/28/british-airways-plans-to-make-up-to-12000-staff-redundant>

⁸ As at 11 May 2020, the total numbers of jobs furloughed was 7.5 million. ‘HMRC coronavirus (COVID-19) statistics’. *Gov.UK* (12 May 2020) <https://www.gov.uk/government/collections/hmrc-coronavirus-covid-19-statistics>.

⁹ Article 2 of the European Convention on Human Rights provides:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

that, in the sphere of workplace health and safety, the duty would not just be imposed on the employer under the relevant regulatory framework, one might have scope for arguments based on Article 2 to the effect that the State owes duties to ensure that proper protective equipment is provided for people.

And secondly, of course, you've had the invocation of the kind of arguments based upon minimum income levels and protection of work that figure in the more — the socio-economic ends of the human rights argument. I'm thinking of instruments such as the European Social Charter, and so on and so forth, and the extent to which those broader socio-economic rights ought to be protecting people against job losses, loss of income, and so on and so forth.

I should say that there's another aspect, of course, which is those who have been sent home on sick leave are often only entitled under UK law to statutory sick pay, which is set at pretty low levels, and there's another issue there as to the extent to which those people are being given sufficient or adequate income. And there's an ongoing debate as to whether or not those who are sent home on statutory sick pay, which is, as I've said, as at very low levels, are eligible to be furloughed, and therefore receive 80 per cent of their full wages. I don't want to get into the technical details of the Scheme here, but you can see that there's potential for a big discrepancy, that if you're sick or required to be "*shielding*", as it's called to protect yourself from the virus, you may only be entitled to the very low levels of statutory sick pay, whereas if you're sent home on no work, potentially under the furloughing scheme, you're entitled to 80 per cent of your wages, so there's a big issue there about protecting people's basic level of income.

Natasha Holcroft-Emmess (15:37): It just seems like some people might be subject to quite arbitrary differences, but significant differences in their take home pay.

Professor Ford (15:46): Yeah, and there's a big issue arisen, interestingly enough, in relation to pregnant women. There was an announcement on the 16th of March saying that the best thing for pregnant women was to go home and not be in contact with other workers, as a result of which many employers sent them home and paid them simply statutory sick pay. Now, that meant those women received extremely low levels of money effectively. Now, under the relevant UK legislation, if you suspend a woman from work because she's pregnant, you're supposed to pay her pretty much full pay; there are some technical wrinkles, but that's pretty much the position. Now, an advice that Karon Monaghan QC and I did addressed this whole issue, and we ended up concluding that this was all actually a big legal error, that those women weren't eligible for statutory sick pay, should have therefore been — if they were sent home, should have been suspended for safety reasons, but in which case they should have received full pay, rather than the extremely low level of statutory sick pay that they were in fact receiving.¹⁰ So there you can see the effect of coronavirus has had a particularly serious impact on pregnant women, who, as we know already — see the enormous piece of research done by BIS and the Equality and Human Rights Commission¹¹ — are especially vulnerable to being treated disadvantageously or badly at work.

¹⁰ 'Advice: Statutory sick pay, the Coronavirus Job Retention Scheme and pregnant workers' <https://maternityaction.org.uk/wp-content/uploads/Ford-Monaghan-Advice-on-SSP-CJRS-21-04-20.pdf>.

¹¹ Department of Business, Innovation and Skills (BIS) and the Equality and Human Rights Commission. 'Pregnancy and maternity discrimination research findings.' (May 2018) <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>.

Natasha Holcroft-Emmess (17:24): Yeah, obviously you've got the, sort of, gender issue there as well, and it's interesting that workers, employers rather, would be classifying pregnancy as something that entitles you to sick pay. Strange sort of categorisation...

Professor Ford (17:37): Well it was partly— they got confused, partly because of what the Government initially told them. I mean, one of the whole aspects of this, from a lawyer, which at an intellectual level is fascinating, but at a personal level is often distressing to see, is that the laws almost, or the policies, are almost having to be made up overnight. So on the one hand, employers were told the best thing for pregnant women is to send them home. On the other hand, the later legislation that came out indicated they weren't eligible for sick pay, even though that was the indication that had been given beforehand. So you're seeing an awful lot of confusion in what the actual legal protection of people is, partly because these schemes and changes to legislation are being introduced so quickly, that often you can't quite work out what the actual effect of them is until it's too late, because there's no consultation going on, there just isn't time.

Natasha Holcroft-Emmess (18:41): Could we drill down a bit into some particular issues facing specific kinds of workers? One category is employees who are being put on furlough leave. What's the position of furloughed employees, and how effective do you think the furlough arrangements will be in avoiding large scale redundancies?

Professor Ford (19:03): Yeah, I think they are going to be effective to an extent. I think there's a big problem in applying them to zero-hour or agency workers, which Alan Bogg and me have highlighted in some pieces we've written on the UK Labour Law Blog.¹² The real problem with agency and zero-hour contract workers is that, if there's no work to be given for them, there's no duty to pay them, so an employee can simply say, "all right, there's no work for you; by all means, if it picks up, we'll give you some work", but in the meantime, they have no duty to pay. So there's a big problem for them in relation to the extent to which employers are going to bother to take the decision to furlough them, because the decision is ultimately for the employer. Now, the employer may be kind and say, "all right, we are going— we'll take a positive decision to furlough you and we'll claim 80 per cent of your pay back", but an employer equally may just think, "well, you know, I don't really want this ongoing problem on my hands; we don't need to furlough them because we don't owe any liability to pay them any money, so long as we don't— so long as there's no work for them." Now, that's very different from an ordinary employee, because an ordinary employee, if they're ready, willing and able to work, you have to pay them, even if you haven't got work to give them. So there the employers do have an incentive to furlough. But with zero-hours type workers there isn't. So I think that's one gap in the scheme. There are others.

¹² Michael Ford and Alan Bogg. 'Furloughing and fundamental rights: The case of paid annual leave.' *UK Labour Law* (6 April 2020) <https://uklabourlawblog.com/2020/04/06/furloughing-and-fundamental-rights-the-case-of-paid-annual-leave-by-alan-bogg-and-michael-ford/>; Michael Ford and Alan Bogg. 'No legislating in a crisis? The Coronavirus Job Retention Scheme, Part 2.' (31 March 2020) <https://uklabourlawblog.com/2020/03/31/not-legislating-in-a-crisis-the-coronavirus-job-retention-scheme-part-2-by-michael-ford-and-alan-bogg/>; Alan Bogg and Michael Ford. 'Legislating in times of crisis: The Coronavirus Job Retention Scheme.' *UK Labour Law* (23 March 2020) <https://uklabourlawblog.com/2020/03/23/legislating-in-times-of-crisis-the-coronavirus-job-retention-scheme-by-alan-bogg-and-michael-ford/>.

The other fundamental problem is this, that the scheme is, at the moment, due to expire at the end of June.¹³ At the moment, employers are holding back on giving notices of consultation for redundancies — the general period of notice is 45 days — but once that horizon comes into view, it may be that before that employers are going to start giving notice. In other words, they won't make people redundant while they can still recover 80 per cent of their wages, but when they see the expiry of the Scheme coming into view, they will be anticipating making redundancies to take effect after that, because it doesn't need me to tell you, we're anticipating a large recession coming on the back of Coronavirus. So the Scheme is working as a temporary expedient, but exactly how it's going to fit as we approach the cliff edge... There are discussions going on about trying to avoid it having that effect. But you can see that's a potential big, big problem, that effectively the Scheme will work while it's up and running, but it can't go on forever, and the moment employers see the end date coming up, they will say, "well, we're going to get rid of everyone", or large numbers of the workforce with effect from that date. So that's the Scheme cliff edge that is the worrying feature of the future.

Natasha Holcroft-Emmess (22:01): And another group of people who are in a very precarious position are those who are self-employed. There is a Government scheme to preserve a percentage of the income of those who are self-employed. Do you think that the scheme is adequate?

Professor Ford (22:18): I'm not such an expert on the self-employed scheme. There's obviously a problem in it's got income thresholds in it. The aspect that's received most attention is that those who are providing work through their own company, which is not an uncommon means of the provision of labour these days — So instead of doing it — you're not doing it — you're not employed by the institution for which you're working, you're not a direct employee, nor are you simply providing as an individual, so you're not in the capacity of self-employed. Rather, you're providing your labour through a company, which you've incorporated, and the company may end up paying you something of a salary, but you, in a sense, end up falling between the two schemes. Now it may be you can recover under the employee Scheme 80% or so much of the salary you pay yourself in your capacity as Director or employee of your own company, if you follow. But you will — these people will often end up recovering much, much less than they would do under either Scheme. So they end up not entirely excluded — they go into the employment Scheme — but they don't recover as much as they would do under the self-employed Scheme, they don't recover as much as they would under the employee Scheme, and this is a problem that's been pointed out a lot, but at the moment there's no suggestion of addressing it. So you get people who fall between both schemes. I mean, you see a similar problem with zero-hours and agency workers in a sense, because they end up, if they're not furloughed, getting no benefits at all.

Natasha Holcroft-Emmess (24:08): And I guess in a similar kind of bracket is gig economy workers, because they are notoriously in quite a precarious position. Are the current measures having a substantial impact on gig economy workers?

¹³ See Show Notes for further details regarding the extension of the Job Retention Scheme to the end of October 2020.

Professor Ford (24:22): I've not seen figures for specifically the gig economy, but you could see they exemplify some of the problems I've talked about already. One problem is, they won't be entitled to pay unless they're provided with work. So if they are, as I've said— if the employer just says, "well, we've got nothing to give you, we're not going to use you", they end up not being— and decides not to furlough them, they won't be eligible under the employee Scheme.

The other aspect that they will confront in relation to the employees Scheme is that the employee Scheme doesn't really work by deciding whether people are *really* employees or not. There's a lot of caselaw in the UK in establishing that, even if you call someone self-employed, correctly, the question is whether they are genuinely, really employees in accordance with the factual way they operate. That's not how the Scheme operates. To be eligible on the Scheme, you actually have to be on— your earnings have to be taxed under what's called the PAYE regulations.¹⁴ If you're not taxed under the PAYE regulations, you're not eligible for the employee Scheme. Many of those who work in the gig economy will not be taxed under PAYE. Consequently, they will not be eligible at all for furloughing under the employee Scheme. Now, it may be they're eligible, in those circumstances, under the self-employed Scheme, but that's another issue. But you can see that's another reason why those in the gig economy may end up not being eligible under the 80 percent employee Scheme.

Natasha Holcroft-Emmess (26:07): It's really interesting. It's kind of an indirect way that they may lose out because of the structure of their arrangements of employment.

Professor Ford (26:18): Yeah. Well, I think, to give some sympathy to the Government, they had to find a way of making this Scheme easy to operate that wouldn't involve fraud. Because if they just said, "well anyone working for anyone can claim 80 per cent of their wages", it would potentially be open to forms of fraud. So the way they've tried to do that, I think, is by saying, "well, you have to be paid via PAYE". If people are paid via PAYE, and the employer can point to records of that, then it can claim for them — that's a crude summary. So they had to have a sort of system that was easily administratively workable, but the effect of that is that those who are what we sometimes call "bogus" self-employed — that is, people who are really in a dependent labour relationship even though they're described as independent contractors or self-employed — they often won't be paid by PAYE. Why? Because the employer will try— want to make them appear as if they're not employees. So, paying them via PAYE is almost an admission they're really employees. So, you could see various aspects of labour law working unhappily together here, because in an attempt to stop people being employees and having all the rights of employees, employers won't pay them via PAYE, with the consequence that they won't be now eligible to claim under the furlough Scheme in respect of them.

Natasha Holcroft-Emmess (27:51): Some of the measures that have been brought in — such as staying at home, isolating ourselves — these have resulted in an increase in flexible working methods. I wonder if this transition has highlighted any gaps that may have already existed in accommodations for workers, such as people with disabilities or caring responsibilities? Do you think that we might move to a flexible working model moving forward?

¹⁴ "PAYE Regulations" refers to the Income Tax (Pay As You Earn) Regulations 2003.

Professor Ford (28:20): I'm not sure about that. I mean, one of the things that's happening under the furlough Scheme is you— to be eligible, you have to be given no work at all.

Natasha Holcroft-Emmess (28:30): Why is that?

Professor Ford (28:32): I think— I'm not really sure. I think, in a way, the Government again needed a sharp dividing line. It couldn't— It was probably meant to be a— some sort of anti-fraud thing. They didn't want people effectively working, and the employer then recovering 80 per cent of their wages, or some percentage, on the basis they were only doing some of their duties. You can see the real problems in working out how much they were or weren't doing. On the other hand, there's similar problems in working out whether people are actually doing nothing. Because of course, even though the Scheme says, you've got to be doing nothing, it's very hard to see how it's going to debar people who will end up checking their emails or doing other things. So that's issue one. The Scheme itself, in a sense, is not in favour of flexible working, because the idea under the Scheme is all or nothing — you either do no work and claim under the Scheme; if you do some work, the Scheme ceases to bite.

Now, the other thing you're asking, the bigger question is, well, "what about— is this going to prompt new forms of flexible working in the future, working from home?" Maybe, who knows? I mean, the thing I've got most experience, of course, is with the court systems. And the courts have come on light-years overnight — in that extent, it's like a war in terms of the technological developments in how they're now doing hearings online or remotely, and everything, that they've been discussing the years. Suddenly all that has come to fruition.

What I would say is a note of caution about flexible working, if by that you mean— in the sense of working from home. It's a nice label, but again, there's evidence to suggest that, in the current epidemic, it's mostly the high paid workers in secure jobs who are able to work from home. So they may be— "flexible working" has many, many meanings — but in the sense of whether or not it means you can work at home, fulfil caring responsibilities and the like, the beneficiaries of that tend to be those in the higher paid sectors, whereas those in the lower paid sectors, the ones that in the coronavirus have been most exposed to shutdowns, or having to carry on working, those workers often can't work at home. So flexible working can end up being very much to the benefit of the high paid but not those at the most vulnerable end into the labour market.

Natasha Holcroft-Emmess (30:57): It's interesting to think about how the pandemic might affect social attitudes to things like social security, and working conditions, and workers' rights ultimately. I think the pandemic has made us realise this is something that affects all of us, and societal attitudes to, for example, working conditions and workers' rights might change as a result of the pandemic. Do you think that's overly optimistic?

Professor Ford (31:23): Who knows. I mean, you know— I'm a lawyer, not really someone with the crystal ball. But I think, one of the very interesting things you've seen is the recognition that the people that we are most dependent upon, when it comes to it, for providing the essential services that we all need, such as healthcare, are often the lowest paid. I mean, that's just so stark in the current crisis, that the key workers, the workers who

it turns out, who are essential for the actual delivery of the most vital social goods, turn out to be those who are often paid at or close to the national minimum wage. And I wonder whether that fundamental social injustice will retain its relevance after this pandemic, because the pandemic has really shone a bright light on that issue.

Natasha Holcroft-Emmess (32:24): This is a topic that really impacts all of us, whether it's personally, or our loved ones, or people we know, and it's great to have the issues laid out so clearly and discussed in this way. It's definitely a topic worth keeping an eye on, so thank you very much for joining us.

Professor Ford (32:40): I mean, if you want to keep abreast of the labour law issues, there's the UK Labour Law Blog, in addition to your own excellent blog, of course, but the UK Labour Law Blog, which I'm one of the Co-Editors on. We have a lot of up-to-date and informative stuff on labour rights and coronavirus written in an accessible and, you know, I hope engaging way. So that's always a useful source of information if you want more, if you want to learn more about the Job Retention Scheme,¹⁵ duties to provide personal protective equipment,¹⁶ protection of pregnant women,¹⁷ rights to leave the workplace in circumstances of serious and imminent danger.¹⁸ You'll find a lot of information on that.

Natasha Holcroft-Emmess (33:23): Thank you so much, Michael. That's fantastic.

Professor Ford (33:25): It's a real pleasure, thank you Natasha.

Christy Callaway-Gale (33:37): RightsUp is brought to you by the Oxford Human Rights Hub. The Executive Producer is Kira Allmann. This episode was produced and edited by me, Christy Callaway-Gale, and it was hosted by Natasha Holcroft-Emmess. Music for this series is by Rosemary Allmann, and Show Notes for this episode have been written by Sarah Dobbie. Subscribe to this podcast wherever you like to listen to your favourite podcasts.

[See next page for updates and further materials]

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¹⁵ Alan Bogg and Michael Ford. 'Legislating in times of crisis: The Coronavirus Job Retention Scheme.' *UK Labour Law* (23 March 2020) <https://uklabourlawblog.com/2020/03/23/legislating-in-times-of-crisis-the-coronavirus-job-retention-scheme-by-alan-bogg-and-michael-ford/>; Michael Ford and Alan Bogg. 'No legislating in a crisis? The Coronavirus Job Retention Scheme, Part 2.' (31 March 2020) <https://uklabourlawblog.com/2020/03/31/not-legislating-in-a-crisis-the-coronavirus-job-retention-scheme-part-2-by-michael-ford-and-alan-bogg/>; Michael Ford and Alan Bogg. 'Furloughing and fundamental rights: The case of paid annual leave.' *UK Labour Law* (6 April 2020) <https://uklabourlawblog.com/2020/04/06/furloughing-and-fundamental-rights-the-case-of-paid-annual-leave-by-alan-bogg-and-michael-ford/>

¹⁶ James Robottom. 'The legal rights of healthcare workers to personal protective equipment during the COVID-19 pandemic.' *UK Labour Law* (13 April 2020) <https://uklabourlawblog.com/2020/04/13/the-legal-rights-of-healthcare-workers-to-personal-protective-equipment-during-the-covid-19-pandemic-by-james-robottom/>

¹⁷ Michael Ford and Karon Monaghan. 'Statutory sick pay, the Coronavirus Job Retention Scheme and pregnant workers.' *UK Labour Law* <https://uklabourlawblog.com/2020/04/28/statutory-sick-pay-the-coronavirus-job-retention-scheme-and-pregnant-workers-by-michael-ford-and-karon-monaghan/>

¹⁸ Stuart Brittenden. 'The Coronavirus: Rights to leave the workplace and strikes.' *UK Labour Law* (27 March 2020) <https://uklabourlawblog.com/2020/03/27/the-coronavirus-rights-to-leave-the-workplace-and-strikes-by-stuart-brittenden/>. See also Sandhya Drew. 'At Amazon, safety and wellbeing do not come first, Nanterre Tribunal rules.' *UK Labour Law* (21 April 2020) <https://uklabourlawblog.com/2020/04/21/at-amazon-safety-and-wellbeing-do-not-come-first-nanterre-tribunal-rules-by-sandhya-drew/>

UPDATE: EXTENSION OF THE CORONAVIRUS JOB RETENTION SCHEME UNTIL 31 OCTOBER 2020

On 12 May 2020, the UK's Chancellor announced that the Coronavirus Job Detention Scheme (also referred to as the furlough Scheme throughout this Episode) will remain open until the end of October.¹⁹ Within this, furloughed workers across the UK will continue to receive 80 per cent of their current salary, up to £2,500, however "new flexibility will be introduced from August to get employees back to work and boost economy".

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FOR ADDITIONAL MATERIALS ON COVID-19, LABOUR LAW AND WORKERS' RIGHTS, SEE:

- UK Labour Law Blog. <https://uklabourlawblog.com>, including:
 - Sandhya Drew. 'At Amazon, safety and wellbeing do not come first, Nanterre Tribunal rules.' *UK Labour Law* (21 April 2020) <https://uklabourlawblog.com/2020/04/21/at-amazon-safety-and-wellbeing-do-not-come-first-nanterre-tribunal-rules-by-sandhya-drew/>
 - James Robottom. 'The legal rights of healthcare workers to personal protective equipment during the COVID-19 pandemic.' *UK Labour Law* (13 April 2020) <https://uklabourlawblog.com/2020/04/13/the-legal-rights-of-healthcare-workers-to-personal-protective-equipment-during-the-covid-19-pandemic-by-james-robottom/>
 - Michael Ford and Alan Bogg. 'Furloughing and fundamental rights: The case of paid annual leave.' *UK Labour Law* (6 April 2020) <https://uklabourlawblog.com/2020/04/06/furloughing-and-fundamental-rights-the-case-of-paid-annual-leave-by-alan-bogg-and-michael-ford/>
 - Michael Ford and Alan Bogg. 'No legislating in a crisis? The Coronavirus Job Retention Scheme, Part 2.' (31 March 2020) <https://uklabourlawblog.com/2020/03/31/not-legislating-in-a-crisis-the-coronavirus-job-retention-scheme-part-2-by-michael-ford-and-alan-bogg/>
 - Stuart Brittenden. 'The Coronavirus: Rights to leave the workplace and strikes.' *UK Labour Law* (27 March 2020) <https://uklabourlawblog.com/2020/03/27/the-coronavirus-rights-to-leave-the-workplace-and-strikes-by-stuart-brittenden/>
 - Alan Bogg and Michael Ford. 'Legislating in times of crisis: The Coronavirus Job Retention Scheme.' *UK Labour Law* (23 March 2020) <https://uklabourlawblog.com/2020/03/23/legislating-in-times-of-crisis-the-coronavirus-job-retention-scheme-by-alan-bogg-and-michael-ford/>

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¹⁹ 'Chancellor extends furlough scheme until October.' *Gov.UK* (12 May 2020) <https://www.gov.uk/government/news/chancellor-extends-furlough-scheme-until-october>

FOR OxHRH DISCUSSION ON BROADER ISSUES REGARDING LABOUR RIGHTS, BOTH IN THE UK GENERALLY AND IN THE CONTEXT OF COVID-19 GLOBALLY, SEE:

- Deirdre McCann. 'Now That We Care About Carers: Temporal Casualisation in *Mencap* and *Uber*.' *Oxford Human Rights Hub* (27 April 2020) <https://ohrh.law.ox.ac.uk/now-that-we-care-about-carers-temporal-casualisation-in-mencap-and-uber/>
- Aradhana Cherupara Vadakkethil. 'Foodora Couriers are "Dependent Contractors" Rules Ontario Labour Relations Board.' *Oxford Human Rights Hub* (15 March 2020) <https://ohrh.law.ox.ac.uk/foodora-couriers-are-dependent-contractors-rules-ontario-labour-relations-board/>
- Aradhana Cherupara Vadakkethil. 'French Court of Cassation rules that Uber Drivers are employees.' *Oxford Human Rights Hub* (15 March 2020) <https://ohrh.law.ox.ac.uk/french-court-of-cassation-rules-that-uber-drivers-are-employees/>
- Fairuz Mullagee. 'Domestic Workers in South Africa Lead the Way in Advancing Social Protection for Precarious Workers.' *Oxford Human Rights Hub* (5 November 2019) <https://ohrh.law.ox.ac.uk/domestic-workers-in-south-africa-lead-the-way-in-advancing-social-protection-for-precarious-workers/>
- Cormac Devlin. 'From contract to role: using human rights to widen the personal scope of employment protections.' *Oxford Human Rights Hub* (1 November 2019) <https://ohrh.law.ox.ac.uk/from-contract-to-role-using-human-rights-to-widen-the-personal-scope-of-employment-protections/>