

Labor struggles with the sticky paper of penalty rates

Written by The Conversation USA

Normally it is the Coalition that is on the defensive over industrial relations at election time, with Labor claiming workers' rights are under threat from the conservatives. But currently Labor finds itself on the back foot, having to defend itself against the allegation it is not guaranteeing it would protect the existing, tiered penalty rates system.

The issue has been building for some time, but on Monday it tied the opposition in knots.

The independent Fair Work Commission (FWC) is looking at penalty rates. Separately, the Productivity Commission has recommended that Sunday rates in industries such as hospitality and retail should be the same as Saturday rates. Labor some months ago made a submission opposing such a change.

The FWC will not give its findings until after the election, which leaves the matter in limbo land for the campaign.

Last month 3AW's Neil Mitchell asked Bill Shorten whether he would accept the findings of the FWC review. Shorten gave a succinct "yes". Pressed on whether he'd do so even if the finding was to reduce Sunday rates, Shorten replied "I said I'd accept the independent tribunal".

Within Labor at the time, there was some concern at Shorten's unequivocal stand on something so core to its base, including the unions.

The Greens, who are aggressively targeting Labor on many fronts, saw an opportunity. They have pledged to put forward a legislative amendment – which would only be a private member's bill – to enshrine penalty rates including that Sunday rates are higher than Saturday rates.

Labor was hammered on the subject on Monday with opposition industry spokesman Kim Carr grilled on the ABC, and Mitchell returning to the topic to excoriate Brendan O'Connor in an interview in which the shadow workplace relations minister could find nowhere to hide from a fierce interrogation.

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The issue was top of mind at Shorten's news conference, when he tried to sound as if he was guaranteeing no change in penalty rates if Labor was elected without actually being able to do so.

"Labor is the party of penalty rates," Shorten declared.

He'd read the evidence to the review and had "absolute confidence ... that we will win the argument in the independent umpire to protect the penalty rates system of Australia. The case to get rid of penalty rates simply doesn't stack up."

It should be noted that the issue is not getting rid of penalty rates, which would be a very drastic course, but restructuring, in particular to conflate Saturday and Sunday.

Shorten went on to say a Labor government would further intervene in the review before the FWC produced its decision "to strengthen, only as a government submission can, the case to defend our penalty rates".

He argued the idea of the Greens – "from their sideshow position" – of legislation would be "loading the gun" a Coalition government could later use to dismantle the system.

The bottom line is that Shorten can't both promise to abide by the FWC decision and guarantee to preserve the penalty rate system as it is.

The FWC may accept the Labor line, or something relatively close to it. But the Productivity Commission has also put a strong case. There can only be expectations, not certainties, in this situation.

Labor is caught between two imperatives, both of which it regards as important. One is protecting low-wage earners, especially casual workers, many of whom rely on penalty rates. The other is preserving the independence of the FWC, which it sees as vital to workers in the

long term.

While Labor is opposed to legislation to guarantee penalty rates, the former ALP government did legislate to ensure that when awards were reviewed the FWC took into account the need to provide additional remuneration to those working weekends and the like. It may be that a Labor government could strengthen this provision if it felt the need.

Labor sources acknowledge the penalty rates debate has become messy for the opposition. But they argue Labor has a couple of factors going for it.

First, as many as 61 Coalition members and candidates are on the record wanting penalty rates cut or abolished, which leaves opportunity for the sort of tactic the Liberals have used against Labor candidates on asylum seekers. MPs and candidates pressed to spell out their individual stands could be unhelpful to the Coalition, which has used the convenient cover of the FWC review to keep the issue cool.

Second, Labor reckons that in any discussion of the parties' respective positions on protecting penalty rates, it will look better, even with its somewhat untidy position, than its Coalition opponent.

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