



## Factsheet: Fire and Rehire in the Employment Rights Bill

### What is the current policy/legal framework?

Employers may sometimes need to consider proposing changes to employees' contracts of employment. If employees do not agree to some or all the contractual changes proposed by the employer, the employer may dismiss employees, before either offering to re-engage them, or offering to engage other employees, in substantively the same roles, in order to effect the changes. This is referred to as 'fire and rehire'. Currently employers can use fire and rehire where they have a sound business reason for seeking to change a contract of employment. This may include responding to economic changes, changing working practices or harmonising terms and conditions. The threat of fire and rehire is often enough to ensure employees 'voluntarily' agree to lower pay and reduced terms and conditions.

### Policy intent

The government wants to end unscrupulous fire and rehire tactics that leave working people at the mercy of bullying threats. It is important that businesses can restructure to remain viable, to preserve their workforce and the company when there is genuinely no alternative, but this must follow a proper process based on dialogue and common understanding between employers and employees. Ending unscrupulous fire and rehire tactics means employees can be safe in the knowledge that terms and conditions negotiated in good faith can't be ripped up under threat of dismissal. Employees will be able to plan and save for the future with security in their pay and terms. Good employers will also know that they will not be undercut by competitors who only engage staff under threat of the sack.

### How will it work?

The bill will restrict employers' ability to use fire and rehire by amending the law on unfair dismissal so that, where employees are dismissed for failing to agree to a change in their contract of employment, or if the employer dismisses the employee to replace, or to re-engage them on varied contractual terms, those dismissals will be treated as automatically unfair unless the employer can show:

- evidence of financial difficulties that were affecting, or were likely to affect, their viability
- the changes were to eliminate, prevent, significantly reduce or significantly mitigate the effects of those financial difficulties; and
- the need to make the change in contractual terms was unavoidable

If an employer can meet that test, the employment tribunal will still have to assess whether the dismissal was fair in the circumstances. They will consider whether the employer consulted with the employee, trade union or other employee representatives, and whether the employer offered the employee anything in return for agreeing to a variation to their contract.

This measure means that employees can be safe in the knowledge that terms and conditions negotiated in good faith can't be ripped up under threat of dismissal. Employees will be able to plan and save for the future with security in their pay and terms. Good employers will also know that they will not be undercut by competitors who only engage staff under threat of the sack.

## Key stats

There is limited evidence on the prevalence of fire and rehire. A 2021 TUC survey<sup>1</sup> revealed that 9% of surveyed workers had been told to reapply for their jobs on worse terms and conditions or face dismissal since the first lockdown. Meanwhile a CIPD survey<sup>2</sup> found that 2.9% of surveyed organisations had engaged in fire and rehire in the year to February 2021. This result should only be treated as indicative because of the small sample size.

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<sup>1</sup> [“Fire and rehire” tactics have become widespread during pandemic – warns TUC](#) TUC (2021)

<sup>2</sup> [Dismissal and re-engagement \(fire-and-rehire\): a fact-finding exercise](#) ACAS (2021)