

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 the same or 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 cannot 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 limited exemption accounts for situations where businesses need to restructure to remain viable, and to preserve jobs and the company where there is genuinely no alternative. Employers will only be able to use the practice where they are in financial difficulties which threaten their business. In these limited cases, employers must follow a proper process based on dialogue and common understanding between employers and employees.

Key Stats

There is limited evidence on the prevalence of fire and rehire. DBT analysis of 2022 survey data suggests that <1% of employers might engage in the practice of fire and rehire each year.¹

Common questions

What powers are taken in this measure and when will you use them?

The measure includes a power for the Government to make regulations about matters that must be considered by an Employment Tribunal when determining whether a dismissal in a fire and rehire or fire and replace scenario was fair. This will enable the law to remain in line with developments in businesses practices. We will consult on any additional factors before bringing forward secondary legislation using this power.

How does this amendment interact with the Code of Practice on Dismissal and Re-engagement published in July 2024?

The Code sets out employers' responsibilities when seeking to change contractual terms and conditions of employment. An Employment Tribunal will be able to increase an employee's compensation in certain circumstances by up to 25% if an employer has unreasonably failed to comply with the code.

The Bill goes further by ending the unscrupulous use of fire and rehire and reforms the law to provide effective remedies. We will update the Code of Practice in due course.

¹ Department for Business and Trade (2024), Impact Assessment: Dismissal for failing to agree to variation of contract, etc. (Fire and Rehire)