

## What changes has the Act made to the law?

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".

The threat of fire and rehire is often enough to ensure employees agree to lower pay and reduced terms and conditions. The Government considers this to create an imbalance that could be detrimental to both employees and employers. The scope of changes which can be imposed via fire and rehire includes matters such as pay and working hours, which could have a significant impact on employees if they are changed without agreement.

The Act aims to prevent unscrupulous fire and rehire practices. It will be an automatic unfair dismissal for employers to use the practice to change certain core employment terms unless they meet a narrow exemption for financial difficulties. These core terms include reductions to pay, changes to total hours, reductions to leave entitlement, changes to pensions, and specified shift pattern changes, and are referred to as restricted variations. However, there will not be an automatic unfair dismissal where the employer can show:

- evidence of financial difficulties that were affecting, or were likely in the immediate future to affect their viability
- the changes to restricted variations were to eliminate, prevent, significantly reduce or significantly mitigate the effects of those financial difficulties
- the employer could not reasonably have avoided the need to make the changes

This narrow exemption sets a high bar and accounts for situations where businesses need to restructure to remain viable and to save jobs and prevent redundancies in situations where there is no alternative. The exemption is slightly different for private employers, public sector employers and local authorities, to take account of the different financial context of those employers. If an employer can meet the exemption, the employment tribunal will still have to assess whether the dismissal was fair in the circumstances. In making this assessment, the tribunal will be required to 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.

It will not be an automatic unfair dismissal where employers use fire and rehire to make a non-restricted variation to an employee's contract, for example location or job role, but this will be subject to enhanced protections for ordinary unfair dismissal. These seek to ensure employers engage in meaningful consultation with employees, trade unions and other representatives when making such changes, as well as committing tribunals to take account of anything offered to the employee in exchange for the change in their non-restricted terms. In such cases, the employment tribunal will have to take these factors into account as part of their assessment of whether the dismissal was fair in the circumstances. These enhanced protections for ordinary unfair dismissal are due to come into force at the same time as the new automatically unfair dismissals for fire and rehire, on 1 January 2027. Note that the government is reducing the qualifying period for ordinary unfair dismissal claims from 2 years to 6 months. This 6-month qualifying period will apply to claims of ordinary unfair dismissal brought by employees where an employer uses fire and rehire to make non-restricted variations to contracts.

It will also be an automatically unfair dismissal for an employer to dismiss their employees in order to replace them with non-employees (for example agency workers) to do substantially the same work. However, such a dismissal will not be automatically unfair if the dismissal was attributable to the fact that employer's need for that work has ceased or reduced, or if the employer meets the narrow exemption for financial difficulties, that is, where the employer can show:

- evidence of financial difficulties that were affecting, or were likely in the immediate future to affect, their viability
- the reason for the replacement of the employee was to eliminate, prevent, significantly reduce or significantly mitigate the effects of those financial difficulties and
- the employer could not reasonably have avoided the need to replace the employee.

The exemption is slightly different for public sector employers and local authorities, to take account of the different financial context of those employers compared with private employers.

In relation to fire and replace with non-employees, there will be no distinction between restricted and non-restricted variations, as these are cases which go beyond the variation of an employment contract. It will only be an automatic unfair dismissal where employees are replaced with non-employees to do substantially the same work as the employees they are replacing, and where this is not due to a reduced need for that work. This will therefore not affect genuine business restructuring such as outsourcing due to reduced work or taking on seasonal staff.

The measures strike the right balance between ensuring that employees are protected from unscrupulous fire and rehire and fire and replace practices, while granting employers flexibility to make necessary operational changes.

### **How is this different from the previous legislation?**

Under the existing law, employers may be able to fire and rehire employees if they can demonstrate that they have a sound business reason for making the changes to contracts (including responding to economic changes, changing working practices, or harmonising terms and conditions). The existing law also requires employers to demonstrate that they acted reasonably in all the circumstances in dismissing the employee.

The Act goes further by restricting unscrupulous fire and rehire and fire and replace practices, by making some kinds of these practices automatically unfair in unfair dismissal law.

### **When will these changes come into force?**

<b>Measure</b>	<b>Expected Commencement</b>
Fire and Rehire	1 Jan 2027

### **What further detail will be consulted on and when?**

The Act provides delegated powers for the Secretary of State to set out in regulations which changes to shift patterns will be restricted variations. The consultation will seek views on whether changes in shift patterns from day to night and vice versa, as well as changes from weekday to weekend

working and vice versa should be included. The consultation will also seek views on whether to limit the scope of the restricted variation of pay to exclude specified expenses and benefits in kind.

The consultation will seek views on these details to inform the regulations so that they strike an appropriate balance between ensuring that employees are protected from unscrupulous fire and rehire practices, while granting employers flexibility to make necessary operational changes.

The consultation on two proposed changes to fire and rehire protections in relation to benefits and expenses, and to shift patterns is live until 1 April 2026 and you can access it here: [Make Work Pay: fire and rehire – changes to expenses, benefits, and shift patterns - GOV.UK](#)

## **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.<sup>1</sup>

## **Common Questions**

### **Why are only certain terms included in restricted variations?**

The restricted variations are those changes which could have a significant impact on employees if they are changed without agreement. The aim is to protect employees from significant adverse changes to their employment contracts, while allowing businesses to adapt when needed.

### **Is this another burden on businesses?**

Employers who use unscrupulous fire and rehire practices undercut good employers who negotiate changes to terms fairly and in good faith with their employees. We estimate that less than 1% of employers engage in the practice each year and that this policy will be effective in reducing this. We believe the Act fairly balances employer flexibility with employee protection. The financial difficulties exemption permits businesses who are in severe financial difficulties to use fire and rehire where there is no reasonable alternative. This ensures that employers have the flexibility to make necessary operational changes in order to save jobs and prevent redundancies.

### **Will businesses not rush to fire and rehire before your measures come into force?**

The enactment impact assessment on fire and rehire estimates that less than 1% of employers might engage in the practice of fire and rehire. Most businesses seek to find mutually beneficial solutions with their employees and would not use fire and rehire. Until the measures come into force, the existing Code of Practice on Dismissal and Reengagement sets out employers' responsibilities when seeking to change contractual terms and conditions of employment. An Employment Tribunal is 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.

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<sup>1</sup> Department for Business and Trade (2025), Final Stage Impact Assessment: Dismissal for failing to agree to variation of contract, etc.(Fire and Rehire)