

## FACTSHEET 2

# ELIMINATING 'FIRE AND REHIRE'

## RESTRICTIONS ON DISMISSING TO IMPOSE CHANGES TO CONTRACT TERMS

### WHAT'S CHANGING?

'Fire and rehire' is the name given to the strategy where an employer, unable to secure agreement to new contract terms, dismisses staff and then offers to rehire them on the revised terms (or hires new people on those terms instead).

Until now, that approach had been lawful if there was a genuine business reason and the process was fair (though it could still trigger unfair dismissal claims if mishandled). Some employers used it as a strong-arm tactic to drive through changes to pay, hours or other conditions.

**Dismissal for a 'restricted variation' – automatically unfair unless justified by serious financial difficulties**

Dismissal for fire and rehire will be automatically unfair (unless justified – see

below) where the proposed variation in the contract is a 'restricted variation'.

A restricted variation is:

- a reduction in pay;
- a variation to pensions;
- a variation in hours of work;
- a variation in timing or duration of shifts (which meet conditions specified by the Secretary of State);
- a reduction in entitlement to time off;
- the addition of a variations clause, allowing any restricted variations to be made without the employee's agreement; or
- any other variation specified in Regulations.

Although dismissal for refusing to agree a reduction in pay is a restricted variation and will result in an automatic unfair dismissal unless justified, the government can pass Regulations saying that certain benefits (such as a car allowance) don't count as 'pay' - in which case, a dismissal because the employee refuses to accept a cut to their car allowance will be potentially fair.

Dismissing someone for refusing to accept a restricted variation will be automatically unfair – unless the employer can meet a very high threshold to justify it.

What is that threshold?

The employer would need to show:

- it had serious financial difficulties affecting (or likely to affect) business viability;
- the proposed contract changes were intended to address or mitigate those financial problems; *and*
- it had no alternative – the changes were unavoidable to keep the business afloat.

All three conditions must be met before an employer can even try to argue that a dismissal for refusing to accept a 'restricted variation' wasn't automatically unfair. And even then, a tribunal will still closely examine whether the process was fair. That includes looking at whether the employer genuinely consulted with staff or any recognised union, and whether alternatives to dismissal (or any incentives to accept the changes) were properly explored.

Put simply: unless the business is in very serious financial trouble and has no choice but to change staff contracts to survive, dismissal and rehire to make a restricted variation can no longer be used. If it is, you'll lose an automatic unfair dismissal claim. The government's aim is to stamp out what it calls "unscrupulous fire

and rehire tactics", i.e. using the threat of job loss to strong-arm people into worse terms.

### **Dismissal for an 'unrestricted variation' is potentially fair but subject to new statutory fairness checklist**

There are some variations which an employer might want to make which fall outside the list of 'restricted variations'. These are some examples:

1. the employee's place of work: an employee can be fairly dismissed for refusing to agree to a mobility clause, or refusing to move from (say) Birmingham to Derby.
2. their job title or job duties: it will be potentially fair to adjust roles, and make contractual changes when doing so.
3. notice periods: it will be potentially fair to impose changes to employment contracts lengthening or shortening notice periods.
4. restrictive covenants: it will be potentially fair to impose new restrictive covenants on the workforce, and to dismiss those who refuse to agree to the new covenants.

Note, though, that the dismissal for refusing to accept a variation that falls outside the 'restricted variations' list is *not* automatically fair. It just means it is not automatically *unfair*.

Historically, the issue of fairness is left to the reasonableness test in s98(4) *Employment Rights Act 1996*. However, the new law on fire and rehire has a gloss on this, by giving tribunals a list of matters they must consider when deciding the fairness of a dismissal for refusing to agree to a variation (as long as it is not a restricted variation). The factors are:

- the reason for the variation;
- any consultation carried out by the employer about varying the employee's contract of employment;

- anything offered in return for agreeing to the variation; and
- any additional matters specified in Regulations.

### Dismissal of employees to replace with people who are not employees is automatically unfair unless justified by serious financial difficulties

If an employer wants to dismiss an employee to replace them with a person who is not an employee (such as a worker, or agency staff), then the dismissal will be automatically unfair if the replacement is carrying out substantially the same activities as the employee did, and provided that the defence of being in serious financial difficulties (see above) does not apply.

## HR IMPACT – WHAT TO DO NOW

This new law represents a major shift in how much leverage employers have. It doesn't ban changes to contracts outright, but it means that in nearly all situations, changes will need to be agreed or reached through proper consultation. According to the government's 'roadmap' to implementation, the fire and rehire changes are due to take effect in October 2026.

Here's what HR teams should now focus on:

- **Plan ahead for contract changes:** Look at what's coming. Will you need to adjust working hours, job roles, pay, or benefits in the next few years due to competitiveness, restructuring, or new technology? If so, start preparing now. You'll need to achieve changes by consulting and reaching agreement – not by threatening dismissal. You may need to offer something in return to get buy-in rather than try to force change. If you don't already have a variation clause
- in your contracts of employment, get one added in now.
- **Educate leadership:** Some senior leaders may still assume they can fall back on fire-and-rehire if talks stall. Make sure they understand this won't be a lawful option in most cases. The new approach needs to be more collaborative – involve employees early, use voluntary sign-ups, pilots, or phased changes. The law is clearly steering employers away from ultimatums and towards genuine dialogue.
- **Strengthen your consultation processes:** If you have a recognised union or employee forum, involve them early in any planned change. Future tribunals will look at whether representatives were properly consulted. If you don't have such structures, set them up or be ready to run proper one-off consultations. Always document the business reasons and the steps taken to avoid dismissal before even considering it.
- **Prepare for emergencies:** In a true crisis – for example, a sudden financial collapse – you'll need to meet all three legal tests: the business is in real financial danger, the changes are necessary to address it, and there are no realistic alternatives. Even then, consultation is required, and you should offer something in return if possible. HR must ensure financial evidence (like accounts or forecasts) is documented, along with evidence that all other options (cost-saving, redundancies, etc.) were considered first. Only with that record might dismissal and re-engagement be legally defensible – and even then, it's a last resort for survival, not a negotiation tactic.
- **Follow the Acas Code:** While ERA 2025's changes to fire and rehire won't be implemented until October 2026, the Acas Code on Dismissal and Re-engagement already applies. Stick to it. If your case wouldn't meet ERA 2025's high legal

standard, don't consider fire-and-rehire at all. The Code says to consult properly and exhaust other options – ignore that, and a tribunal can increase any award by up to 25%. The Code and ERA 2025 are aligned: the direction is clear – engage with employees.

- **Tackle common misconceptions:** If someone suggests, "Let's just call it redundancy and rehire," be cautious. If the job isn't disappearing, calling it redundancy won't help – tribunals will focus on the real reason. If the goal is to change terms, it still counts as fire-and-rehire. Likewise, if just one employee refuses a change (e.g. relocation), dismissing them would likely fall under the same rule – you'd need to prove serious business harm. It's safer to negotiate individual solutions, like offering an alternative role or gradual changes, instead of relying on dismissal threats.
- **Be practically prepared:** If you haven't already, create a structured approach for changing terms by agreement. This could include consultation templates, clear employee FAQs, and flexible proposals (e.g. letting staff choose between different benefit adjustments). In unionised settings, expect unions to take a firmer stance now – they know you can't legally threaten mass dismissal. That means HR will need to sharpen negotiation skills and focus on getting to yes. The core message of ERA 2025 is clear: contract terms agreed in good faith must be respected – they can't be torn up under threat of dismissal. So, it's time to build a culture of genuine negotiation.