

# Fire and rehire

A look at the upcoming changes

3 September 2025

# Agenda



- What is fire and rehire?
- The current regime
- Proposed changes in the Employment Rights Bill
- Practical tips for employers

# What is fire and rehire?



Fire and rehire (also known as dismissal and re-engagement) refers to the practice of dismissing employees but immediately re-engaging on different (or less favourable) terms

# Current legal framework



- [Statutory Code of Practice on Dismissal and Re-engagement](#)
- Key requirements:
  - Information sharing with appropriate personnel (eg individually, employee representatives)
  - Meaningful consultation
  - Transparency with employees about prospect of fire and rehire
  - Re-examination of the proposals by the employer
  - Dismissal and re-engagement as last option

# Current legal framework



- If Code is not adhered to, Tribunals can increase awards by up to 25%

# Current legal framework



- Risks
  - Unfair dismissal – ordinary and constructive
  - Unlawful deduction from wages/ breach of contract
  - Discrimination claims
  - Negative press
  - Employee relations issues

# Proposed changes within ERB



- It is automatically unfair to dismiss an employee for refusing to accept a 'restricted variation'

Section 28 of Employment Rights Bill

- Restricted variations defined as any changes related to:
  - Pay and pension
  - Working hours
  - Time off and holidays
  - Variation clauses
  - Any other changes defined by Secretary of State
- What if variation clause is already in place?

# Financial difficulties exception



- Dismissal will not be automatically unfair where:
  - The reason for the restricted variation was to eliminate/mitigate financial difficulties at time of dismissal. Financial difficulties must impact
    - the employer's ability to carry on the business as a going concern; or
    - where the employer is a public sector employer (other than a local authority), the financial sustainability of carrying out the employer's statutory functions.
- In all the circumstances, the employer could not reasonably have avoided the need to make the variation
- Then subject to normal tests for ordinary unfair dismissal



# Further automatic unfair dismissal provisions



- Section 28 of the ERA also provides it will be automatically unfair to dismiss an employee to replace with someone who is not an employee
- Subject to certain provisions:
  - Individual is taken on a contract to undertake activities for the employer's business
  - The activities are the same, or substantially the same, as those the employee undertook for the employer
  - The employee's dismissal is not wholly or mainly attributable to the fact that the requirements of the employer's business for those activities to be carried out have ceased or diminished or are expected to cease or diminish

# Impact of ERB changes



- The government have confirmed the statutory code will be updated to reflect the changes
- Further consultation to open in Autumn 2025
- [Changes to come into effect 1 October 2026](#)

# Practical tips for employers



- Act early
  - Review contracts of employment and any contractual documentation
  - Consider whether they contain sufficient flexibility
  - Seek legal advice when drafting of amending variation clauses
  - These amendments require consultation and agreement

# Practical tips for employers



- Inform, consult and document
  - Review and familiarise with updated Code of Practice once available
  - Ensure all consultation exercises are fully documented and meaningful
  - Fully consider and respond to all proposals
  - Be prepared to find 'middle ground'

# Practical tips for employers



- Follow process and avoid shortcuts
  - Ensure dismissals are made with genuine financial justification and proper consideration (and last resort!)
  - Take legal advice on exercises involving contractual changes

# Practical tips for employers



- Monitor developments
  - Stay informed on updates
  - Be prepared to adapt as further Regulation becomes available

# Any questions?



Our legal team will continue to review and update members