Government softens fire and rehire provisions in the Employment Rights Bill

The Government has proposed amendments which would soften the impact of the "fire and rehire" restrictions in the Employment Rights Bill.

On 7 July 2025, an Amendment Paper setting out a running list of proposed amendments to the Employment Rights Bill (the **Bill**) was published. The paper includes Government-backed amendments, which are likely to be pass into law, including plans to soften the "fire and rehire" provisions in the Bill.

What did the Bill originally say about fire and rehire?

"Fire and rehire" is a shorthand used to describe the practice of dismissing an employee then offering to re-engage them on inferior terms and conditions. Before the election, the Labour Party had talked about wanting to end fire and rehire practices altogether. This was slightly watered down during the General Election, with a promise to end the practice, save in exceptional circumstances.

The first draft of the Bill delivered on that promise and proposed that it would be automatically unfair to dismiss an employee:

- for failing to agree to a change to their terms and conditions of employment; or

- in order to re-engage them (or someone else) under varied terms and conditions of employment, but where the role is otherwise substantially the same.

The sole exception was where the reason for the variation was to eliminate, prevent or significantly reduce or mitigate the effect of any financial difficulties which, at the time of the dismissal, were affecting, or were likely in the *immediate future* to affect, the employer's ability to carry on its business, and there was no way the need to make the variation could reasonably have been avoided. However, even where the exception applied, the dismissal could still be *ordinarily* unfair, even if not automatically unfair.

Shortly after the Bill was published, the Government consulted on extending the remedy of interim relief to employees who had fire and rehire dismissal claims. It was argued that permitting interim relief in this situation would lead to greater protection of employees and further disincentivise employers from using fire and rehire at all. However, the Government ultimately declined to extend interim relief to such dismissals. Instead, it confirmed that it planned to revise the Statutory Code of Practice on Dismissal and Re-engagement to reflect the new rights in the Bill. Importantly, where the Code is breached, a Tribunal may uplift

compensation by up to 25%.

What amendments have been proposed?

Automatic unfair dismissal for "restricted variations" only

The most significant amendment would be to restrict the automatic unfair dismissal protection only to cases where the employee is dismissed:

- for failing to agree to a "restricted variation" to their terms and conditions of employment; or

- in order to re-engage them (or someone else) under varied terms and conditions of employment, where one of more of the differences between the two sets of terms constitutes a "restricted variation", but where the role is otherwise substantially the same.

A "restricted variation" means variations relating to:

- pay;

- pensions or pension schemes;

- working hours;

- the timing or duration of shifts; and

- a reduction in the amount of time off.

It would also cover other variations of a description specified in regulations made by the Secretary of State or the inclusion of a term enabling the employer to make any other restricted variation without the employee's agreement.

Where an employee is dismissed for refusing to agree to a variation (or in order to re-engage them or someone else on varied terms), and the variation in question in **not** a restricted variation, then the dismissal will not be automatically unfair. Instead, certain matters must be

considered by the Employment Tribunal to determine whether the dismissal is ordinarily unfair including the reason for the variation, any consultation carried out about the proposed variation (including with a trade union), anything offered to the employee in return for agreeing to the variation and any other matters specified in regulations.

Other proposed amendments

Other proposed amendments to the fire and rehire provisions of relevance to private sector employers include limiting the scope of the automatic unfair dismissal protection:

- only to cases where the variation in question would result in a reduction of the employee's pay and benefits;

- to exclude minor and non-detrimental variations which do not relate to pay, working hours or place of work; and/or

- to exclude place of work redundancy dismissals (i.e. these would be subject to the ordinary unfair dismissal regime in the usual way).

A further amendment provides that an employee's dismissal would be automatically unfair if the reason for the dismissal was to enable the employer to replace the employee on a broadly like-for-like basis which someone who is not employed, for example, an agency worker or a self-employed contractor. The exception to this rule would be where the employer can show that the reason for the replacement was to address financial difficulties and the employer could not reasonably have avoided the need to replace the employee.

What will these changes mean for employers in practice?

Given that many of the amendments have been proposed by a Labour Peer, including the "restricted variation" line of amendments, it seems likely that at least some of these changes will make their way into the final version of the Bill.

If the "restricted variation" amendments are taken forward, this will soften the impact of the fire and rehire provisions somewhat, but employers will still have a higher exposure to automatic unfair dismissal claims. The terms which would constitute "restricted variations" if varied are the very terms that would usually lead an employer to consider the extreme solution of fire and rehire in the first place – pay, benefits, hours and leave entitlements.

Nevertheless, it would be reassuring to employers to know that dismissals connected to other types of variations do not give rise to automatic unfair dismissal claims. It would also be helpful for the Bill to clarify that a place of work

redundancy dismissal does not give rise to a fire and rehire automatic unfair dismissal claim.

The amendments to the Bill were considered by the House of Lords on 14July 2025 and will need to be reconsidered by the House of Commons. Although the Bill is expected to pass later this year, the fire and rehire provisions will not come into force straight away, meaning employers still have time to digest and adapt to the final rules. In its recently-published roadmap for implementing the Bill, the Government said it intends to commence consultation on fire and rehire-related regulations in Autumn 2025, with the regime expected to come into force in October 2026.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.