

Statutory Code of Practice on Dismissal and Re-Engagement

18th July 2024

On 18th July 2024, the new statutory code of practice on Dismissal and Re-Engagement will come into force for England, Scotland and Wales.

The Code outlines the procedures that employers will legally be expected to follow, should they wish to make changes to contracts and are considering opting for the practice of 'firing and rehiring'; the employee is dismissed, following consultation, and rehired under new terms and conditions.

It emphasises that 'fire and rehire' should only be implemented as a last resort, after extensive consultation with employees fails to reach an agreement.

A breach of the Code does not independently constitute grounds for a claim; however, courts and tribunals are required to consider it when adjudicating cases. In employment tribunal proceedings, if an employer has unreasonably failed to adhere to the Code, any award may be increased by up to 25%.

As well as financial implications, there is also a high risk of reputational damage and negative impact of employee relations.

Employers must consider the following if looking to 'fire and rehire':

- If 'fire and rehire' is seen to be unavoidable, employers must consult with ACAS in the first instance to rule out other options
- Relevant information must be shared, ideally in writing, as soon as possible and include the following:
 - the proposed changes
 - who will be affected
 - the reasons for the changes
 - the timeline for the changes
 - all options that have been considered
 - next steps
- Allow meaningful consultation to be undertaken openly, in good faith, and for as long as is reasonable possible
- Information sharing and consultation must be via trade unions if a recognised one is in place; if 20 or more employees will be affected collective consultation obligations will apply
- Employers must comply with the stages of a fair dismissal

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- Notice period for 'fire and rehire' should be a minimum of the contractual or statutory notice, whichever is greater
- Employers should review the proposed changes at each stage and consider the following:
 - risk to reputation
 - damage to employee and trade union relations
 - risk of legal claims and associated costs and time
 - whether there is a greater impact on some employees over others
 - are there other ways to achieve the changes

Note:

This Code was prepared by the previous Government. Labour have implied that they would likely introduce greater restrictions, allowing the practice to only be used in limited circumstances.

If you would like support on this or any other issue, **contact us** for an initial chat.

Further resources:

<https://www.gov.uk/government/publications/dismissal-and-re-engagement-code-of-practice>

<https://www.acas.org.uk/changing-an-employment-contract/employer-responsibilities/if-employment-contract-changes-cannot-be-agreed>

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