




THE END OF FIRE AND REHIRE? NAVIGATING RESTRICTED VARIATIONS

INTRODUCTION

In many businesses, changing operational needs require adjustments to employee terms and conditions. The need for contractual changes is often driven by new technology, shifting customer demand, productivity improvements, or general restructuring. Consequently, requiring modification to certain contractual terms.

Employers retain the right to modify employment contracts for genuine business reasons, provided they follow a fair procedure and adhere to the Acas Code of Practice on Dismissal and Re-engagement. If a contract supports the change and a robust process is followed, employers can ultimately enforce new terms through two primary methods:

- Fire and Rehire: Terminating the existing contract and immediately offering the employee a new contract under the revised terms.
- Fire and Replace: Terminating the employee's contract entirely and replacing them with a new hire who accepts the less favourable terms.



These practices are both risky, because of the threat of both a claim of unfair dismissal, breach of contract, and possibly a wrongful dismissal. If you remember P&O Ferries back in 2022 carried out mass dismissals, with no process and hired other people on lower terms. This case is what is driving the change in law under the Employment Rights Act 2025.

THE NEW LEGAL FRAMEWORK

Scheduled for January 2027 the law is changing around forcing through contractual changes, where it will become automatically unfair to dismiss an employee for refusing to accept certain changes to core contractual terms (these will be known as restricted variations). So, both practices we saw adopted by P&O Ferries, of 'fire and rehire' and 'fire and replace' will be outlawed.

There will be an exception clause within the law but this but employers will have an extremely high threshold to justify it (see below).

This is going to be significant therefore for employers and their ability to remain agile, when needing to respond to changing operational needs and external market and economic conditions.

THE 'RESTRICTED VARIATION' TRAP

We expected the new law to apply where the proposed variation in the contract is a restricted variation, and, according to the latest information published by the Government, this means:

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

We must wait for further Regulations to be introduced to confirm exactly what constitutes a restricted variation. Note, that a dismissal for an 'unrestricted variation', whilst it still needs a robust process that follows the Code of Practice on Dismissal and Re-engagement, it will continue to be a potentially fair dismissal, subject to new statutory fairness checklist.

EXCEPTIONS

As indicated above, there will be an exception clause within the law that in some very limited circumstances, a dismissal for refusing to accept a restricted variation will not be automatically unfair. But we expect this to be an extremely high threshold to justify.

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.

This is essentially an insolvency-adjacent test, and all three conditions must be met before an employer can argue that a dismissal for refusing to accept a 'restricted variation' wasn't automatically unfair.

PREPARING THE BUSINESS NOW

- 1) **Prepare Immediately:** Businesses should use the next six months before these rules take effect to review existing contractual terms. It is vital to ensure they remain fit for purpose, cost-effective, and operationally viable. Because the upcoming regulations will make securing employee agreement much more difficult, any necessary contractual changes should be addressed now.
- 2) **Management awareness:** Managers may still assume they can fall back on the fire and rehire practice if talks stall, so ensure they understand this won't be a lawful option in most cases from January. Instead, the new approach needs to be more collaborative by involving employees early, using pilot schemes or phased introduction of contractual changes.
- 3) **Strengthen your consultation processes:** If you have a recognised union or employee forum, involve them early in any planned changes. When the new rules come in, we expect tribunals will look at whether representatives were properly consulted. So, if you don't have consultation structures in place, set them up so you are ready to run proper one-off consultations. Always document the business reasons and the steps taken to avoid dismissal before even considering it.
- 4) **Prioritise Genuine Engagement:** If contractual changes are required, businesses must achieve them through proper consultation, meaningful negotiation, and incentivised consent, rather than relying on "fire and rehire" practices.
- 5) **Strengthen Documentation:** Effective consultation must be backed by robust paperwork. Businesses should review and update their change management procedures and template communication letters now.

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