

FIRE & REHIRE

What does it mean? Is it unlawful?

Fire and rehire is a term that has been in the news recently, because several high-profile organisations are using this approach to try to change their employees' terms of employment, for less favourable terms, and they have attracted some criticism from Unions for doing so.

Is it a lawful process?

Although this approach may have a new(ish) name, it is not necessarily a new tactic, nor is it unlawful – provided that it is handled properly. When an employer wants to change workers' employment contracts, often to reduce the business running costs, they can sometimes dismiss all the affected workers and offer to re-engage them on new contracts - known as "fire-and rehire". It has been reported that some 9.6 million employees have been furloughed in the past 12 months, as many businesses struggle with their fall in income. Several have been forced to make savings, and employment costs can be the biggest single overhead for most. If an agreement to make the changes that an employer is seeking is not agreed to by the employee, then employers can take 2 routes to re-contract, and offer new employment terms.

These are:

1. By giving contractual notice to end the employment,

Or

2. By making the employee redundant, and then offering fresh new terms of employment. It is important to note that an employment contract is no different from any other contract, and normally both parties have to unilaterally agree to change the terms.

The Advisory, Conciliation and Arbitration Service (ACAS), advises employers that are dismissing employees to be able to re-hire and force a change in a contract, that this method should only be used as a "last resort". There are key points that an employer needs to consider carefully, before going down this route, for example in this scenario, it is whether the obligations to enter into collective consultation under the Trade Union and Labour Relations (Consolidation) Act 1992, are triggered. They may well be, if the company has proposed to dismiss 20 or more employees at one establishment, and to offer the re-engagement. There is also a risk of some form of industrial action and of reputational damage.



Other important points for employers to consider are:

- To be able to demonstrate whether they have done everything they can to reach agreement with the employee
- Whether the contractual changes are absolutely necessary
- The employer should follow a fair dismissal procedure
- To give the employee enough notice (statutory notice or what is in the contract – whichever is longest)
- To offer the employee a right of appeal against their dismissal

It is important that any changes to working conditions should not take place until the employee has been fairly dismissed, and then rehired under the new contract. Whether you are an employer, or an employee, if in doubt of the processes involved or your rights, it is wise to take advice from an employment lawyer early on, in order to try and avoid any contentious situations or expensive and timely litigation.

Hatti Suvari, Consumer Advocate and host of podcast Get Legally Speaking (www.getlegallyspeaking.com)

