
ACAS PUBLISH REPORT ON DISMISSAL AND RE-ENGAGEMENT

This issue of *Workforce Matters* summarises the key points of a recently published report by Advisory, Conciliation and Arbitration Service (ACAS) entitled [Dismissal and re-engagement \(fire-and-rehire\): a fact-finding exercise](#). The report considered the practice where employers dismiss then re-employ workers on changed terms and conditions, or where the prospect of doing so is put to workers during negotiations about changing their terms and conditions.

The COVID-19 pandemic has required many employers to consider their business operating models and ACAS report that some employers have used fire-and-rehire practices in these circumstances. ACAS state that concerns had been raised that some employers may use the pandemic as a pretext to diminish workers' terms and conditions and use fire-and-rehire as a tactic to undermine or bypass genuine workplace dialogue on change.

There was a shared anticipation among participants that a further increase in use of fire and re-hire might be expected when the Government's furlough and COVID-related business support initiatives are wound down, especially if the economic recovery is slow.

A well published dispute involving Centrica, who owns British Gas, and its engineers brings into focus the potential pitfalls of 'fire and re-hire'. In this long running dispute, the engineers were asked to sign new contracts which required them to work longer hours, for no additional pay. Many engineers refused to agree to the changes prompting British Gas to deploy a 'fire and re-hire' strategy, thereby forcing engineers to choose between the new terms of being dismissed. Around 500 engineers were subsequently dismissed for not accepting the new terms, and we may yet see several Employment Tribunal claims against British Gas as a result of this.

Fire and re-hire

Thankfully, fire and re-hire is not a practice we often see within our industry mainly because changes to employment terms would normally occur in a structured way, following consultation either directly with the workforce or through collective consultation (with a trade union). Although fire and re-hire is not an illegal employment practice, it can expose employers to claims of unfair dismissal, so caution is advised. If you are thinking about doing this, you should obtain specialist employment advice beforehand. Some organisations have used the practice in the following situations:

- **Redundancy** to both minimise redundancies and maximise overall headcount reduction by making relevant changes to the contracts of remaining staff).
- **Harmonising terms and conditions** in relation to business transfers and other contexts.
- **Introducing temporary or permanent flexibility into contracts** in terms of working hours, shift patterns, payment entitlements and security of hours or employment.

Changing Terms and Conditions of Employment

As above, an employer seeking to change employees' terms of employment must consult with the employees either individually or collectively (if more than 20 employees) with a view to reaching mutual agreement to the proposed changes. Where possible, employers should ensure consent is documented in writing. Equally, it is important to consult with employee about potential dismissal if firing and re-hiring is a distinct possibility.

Full details about changing an employment contract can be viewed on the ACAS website – [here](#).

FINALLY, the [ACAS report](#) also suggests some legislative and non-legislative changes that may be considered in the future, such as:

- Tightening up the law around unfair dismissal; enhancing the requirement and capacity for employment tribunals to scrutinise business' rationale for change in relevant cases; protecting continuity of employment in fire-and-rehire-scenarios; and strengthening employers' consultation obligations around proposed dismissals.
- Improved guidance for employers on relevant legal obligations and good practice; using data on fire-and-rehire to inform decisions around public procurement and access to government funding; and publishing 'name and shame' data on employers' use of fire-and-rehire practices on a government website.

For further guidance on dismissal and re-engagement or any other employment related matter please contact BESA Employment Affairs at employment.affairs@thebesa.com or visit www.thebesa.com .