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Issue 228



In this edition we cover:

The new Statutory Code of Practice on Dismissal and Re-engagement

An analysis of the Employment Rights Bill and the Draft Equality (Race and Disability) Bill included in The King's Speech

New Statutory Code of Practice on Dismissal and Re-engagement: What you need to know

The Statutory Code of Practice on Dismissal and Re-engagement ('the Code') officially came into force on 18th July 2024. This new regulation aims to provide fair guidelines for handling 'fire and re-hire' processes.

Details of the Code can be found here: [Code of practice on dismissal and re-engagement issued by the Secretary of State under section 203 of the Trade Union and Labour Relations \(Consolidation\) Act 1992 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/code-of-practice-on-dismissal-and-re-engagement)

Background

In our February 2023 issue, we highlighted that the Department for Business, Energy, and Industrial Strategy (BEIS) had released a draft Code of Practice on how to handle 'fire and re-hire' processes fairly when agreements to change contractual terms with staff have been unsuccessful. This move was in response to concerns that some employers were using this practice to apply undue pressure on employees to accept less beneficial terms.

The consultation period on the draft Code concluded on 18th April last year. The Government has now published the final version of the Code, which incorporates Acas guidance on [Making changes to employment contracts - employer responsibilities](#) (Acas advice) and will operate similarly to the requirement to follow the [Acas Code of Practice on Disciplinary and Grievance processes](#).



Issue 228

The statutory Code will apply to employers (a) considering making changes to employees' contracts of employment, and (b) where it is expected that, if the employees do not agree to the proposals, they may require to dismiss those employees and offer to re-employ them on new terms or hire new staff to carry out work under the new terms.

Some of the key points on 'fire and rehire' that are set out in the Code are:

- **Only use it as a last resort** – Employees should not be threatened with dismissal, and offered a new contract, until extensive consultation has been carried out and all options have been considered and exhausted.
- **No minimum consultation period** – There is no minimum prescribed time period in which employers must consult with staff, but it is advised to do so 'for as long as reasonably possible'. Seek legal advice or contact Acas before you raise the possibility of 'fire and rehire' with affected staff.
- **Give as much notice of your proposals as reasonably practicable** – Consult at an early stage and give staff plenty of time to consider suitable arrangements.
- **Be clear about your objectives** – Give as much information as possible to employees to help them understand the need for change.
- **Explore alternatives** – During the consultation consider all other possible options that might achieve the desired outcomes without resorting to dismissal and re-engagement.
- **Re-examine proposals** – If employees reject the changes, review the proposals with them and consider all feedback from staff.
- **Consider committing to future reviews of the changes** – Set a review date to assess whether the changes remain necessary.
- **Consider introducing multiple changes on a phased basis** – You may be more successful in reaching agreement with staff if you do not impose numerous changes all at once.
- **Do not threaten dismissal** – If dismissal is not something that you expect to consider (even if staff don't agree to the proposals) don't threaten it. Don't try to coerce employees into signing new terms and conditions by threatening termination of their contract if they don't agree. The prospect of dismissal and re-engagement should only be raised with staff once all other attempts to reach agreement have failed and legal/Acas advice has been sought.

Failure to follow the Code

An employee cannot bring an Employment Tribunal Claim for a failure by their employer to follow the Code alone. However, any failure to follow the Code can be presented as evidence in proceedings before a court or employment tribunal, for example in an Unfair Dismissal Claim.

If the Code applies to a particular claim brought by an employee, then the tribunal can increase any award it makes, by up to 25%, if an employer has unreasonably failed to comply with the Code.

Our view

[Christine Jamieson](#), Senior Paralegal comments:

"The Code reflects current good practice advice but that may change again in the coming months given Labour's pledge to end 'fire and re-hire' practices.

"In the meantime, it is now more important than ever to and read and follow the Code and ensure that a full and fair consultation has been carried out, before termination and re-engagement is even considered.

"If you are thinking about making changes to your staff terms and conditions, or if you find you have reached an impasse in consultations, please contact us for legal advice at an early stage, and before you consider any 'fire and rehire' process".

Issue 228

An analysis of the Employment Rights Bill and the Draft Equality (Race and Disability) Bill included in The King's Speech

Following Labour's landslide victory in the General Election, King Charles delivered the new Government's first King's Speech to the House of Lords. This was held on 17th July 2024, opening the first session of the new parliament.

Although delivered by the monarch, the King's speech is written by the Government, with the purpose of setting out the Government's priorities in the months ahead.

This King's Speech, and [accompanying briefing notes](#), included 40 bills. However, in this article, we focus on two: the Employment Rights Bill and the Draft Equality (Race and Disability) Bill.

This article will help build on our previous analysis of Labour's proposed employment law changes, including Ben Doherty's analysis of ['Day One Rights'](#) and Daniel Gorry's analysis of [worker status](#). When the draft legislation is introduced to parliament, we will provide you with a further update.

Employment Rights Bill

The Employment Rights Bill is to be introduced within the first 100 days of the new parliament – so at the start of October 2024 by the latest.

The Government have set out that this bill will deliver on [Labour's New Deal for Working People](#). Set out below are some of the expected changes:

- **Banning of zero-hour contracts.** Although many employers will use zero-hour contracts, the government are intending to ban use of 'exploitative' zero hours arrangements. This will significantly change the rights of such workers who will acquire the right to a contract that reflects the number of hours they regularly work and entitlement to reasonable notice of any changes in shift with proportionate compensation for any shifts cancelled or curtailed.

- **Making parental leave, sick pay and protection from unfair dismissal a day one right.** With regard to unfair dismissal, this is a significant change from the current position whereby an employee must accrue two years' service before they are protected from unfair dismissal. For our clients, proper implementation of probationary periods will therefore become crucial.
- **Flexible working will become the default for all workers from day one**, and employers will have to accommodate this.
- **Removing lower earnings limit for Statutory Sick Pay (SSP).** Employers should be aware that employees will be entitled to SSP regardless of their salary. Currently, only employees who earn average weekly earnings of £123 or above are entitled to SSP.
- **Strengthening protections for new mothers.** It will be unlawful for employers to dismiss a woman who has had a baby for six months after her return to work, except in specific circumstances
- **Updating trade union legislation so it is fit for a modern economy.** This includes removing restrictions on trade union activity, such as minimum service levels.

There are also other commitments, including plans to **establish a Fair Pay Agreement in the adult social care sector** and **establish a new Single Enforcement Body, known as a Fair Work Agency** to strengthen enforcement of workplace rights.

If you wish to review the above measures further, please consult page 20 of the briefing notes.

Draft Equality (Race and Disability) Bill

The Government have also indicated that they will introduce a new race equality bill to root out the



Issue 228

structural injustices that make it harder for people of colour, and those who are disabled, to thrive at work.

Employers will have to be mindful of this, and in some cases, take action to comply with their obligations under the Bill when enacted.

The intention of the draft Bill is to tackle inequality for ethnic minorities and disabled people by:

- **Enshrining in law the full right to equal pay for ethnic minorities and disabled people.** This is designed to make it easier for both groups to bring unequal pay claims, and employers should be mindful of this when setting salaries for their employees.
- **Introducing mandatory ethnicity and disability pay reporting** for larger organisations (250+ employees). The aim of this is to help close the ethnicity and disability pay gap. This will impact some of our larger clients, and we will provide an update on this when it becomes evident what the reporting will involve.

When will these bills be introduced and do employers need to take any steps now in preparation?

The Government intend to introduce the Employment Rights Bill within the next few months, and there will be few barriers to the Bill passing through both Houses of Parliament given the scale of Labour's majority. It's less clear when the Draft Equality (Race and Disability) Bill will be introduced to parliament, but likely before the end of the year.

From an employer's perspective, this does not mean that implementation of the proposed measures will come into force straight away, and therefore, there is nothing employers need to do immediately. As soon as it becomes apparent when the proposed measures under both Bills will come into force, we will provide you with a further update.

Of course, we are here to support and advise if any of our clients would like to take pre-emptive measures, especially regarding zero-hour contracts and probationary periods.

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