

Fire and rehire

The new Acas guidance is a timely reminder for employers on how to approach effecting contractual changes.

15 November 2021

Following their report on fire and rehire practices, Acas recently published new guidance for employers on changing terms of employment, which advises that firing and rehiring should only be used as a last resort.

“Fire and rehire” is the name given to the practice of dismissing employees and immediately offering to re-engage them in circumstances where employees will not agree to changes to their terms of employment which their employer wants to implement. It is not a new phenomenon, but one which has achieved more press coverage and political scrutiny since the outbreak of the Covid-19 pandemic. In January 2021, the TUC reported that nearly 1 in 10 workers had been told to reapply for their jobs on worse terms or face dismissal, and nearly a quarter had their working terms, such as pay or hours, downgraded since March 2020.

As a result of this ongoing scrutiny, in October 2020, the Department for Business, Energy and Industrial Strategy invited Acas to carry out a fact-finding exercise with stakeholders. The results, published in a report produced by Acas in June 2021, revealed the widespread use of firing and rehiring in a range of industries and sectors – in small, medium and large organisations – and in both unionised and non-unionised workplaces. Whilst the Acas report did not reveal a prevailing view, some participants expressed concerns that fire and rehire practices were used as a “smokescreen” for diminishing workers’ terms and conditions or as a negotiation tactic to threaten workers and undermine or bypass genuine consultation. Others felt its use was justified provided it was driven by a genuine business need and preceded by negotiations attempting in good faith to reach an agreement on the proposed changes.

The [new Acas guidance](#) is a timely reminder for employers on how to approach effecting contractual changes, and how dialogue with workers through consultation is key not only to maintaining good employee relations and staff morale, but also to minimising legal risk, and damage to brand reputation. The Acas guidance makes clear that firing and rehiring should only be used as a last resort and only if agreement cannot be reached after “extensive attempts”. Clearly when employers have to make quick and substantial financial decisions in novel and uncertain economic times, that will present a significant challenge.

Contact



Mark Hickson

Head of Business Development

onlineteaminbox@brownejacobson.com

+44 (0)370 270 6000

Related expertise

Services

Employment