

Fire and Rehire

- **Fire and rehire:
Where employer uses threat of dismissal
to impose changes to T&C's**

Case law allows an employer to dismiss fairly for some other substantial reason, by simply advancing “a sound business reason”.

Employment Tribunals will not challenge the underlying rationale for achieving savings and nor will it subject the means chosen to achieve that aim to any detailed scrutiny.

Code of Practice wholly inadequate

FIRE AND REHIRE (I)

- Will make dismissal of an employee, automatically unfair:
 - for refusing to agree a restricted variation to their contract of employment or
 - where the employee is dismissed to enable the employer to hire a new employee or an existing employee under a new contract to carry out substantially the same work
- A restricted variation is anything that relates to pay, pensions, number of hours, the timing of and duration of a shift.
- A restricted variation also includes a term enabling the employer to make any variation of “restricted” contract terms without the employer’s agreement.

FIRE AND REHIRE (II)

- Dismissal for a refusal to agree a restricted variation will not be automatically unfair where
 - a) the employer is a private sector employer and “the reason for the variation was to eliminate, prevent or significantly reduce, or significantly mitigate the effect of, any financial difficulties which at the time of the dismissal were affecting, or were likely in the immediate future to affect, the employer’s ability to carry on the business as a going concern or otherwise to carry on the activities constituting the business”;
 - in the case of public sector employers financial difficulties are defined as (i) “the financial sustainability of carrying out the employer’s statutory functions” and in the case of local government means (ii) where the authority is undergoing financial difficulties which lead to a “relevant intervention direction”.
 - (b), that “in all the circumstances the employer could not reasonably have avoided the need to make the variation”.

FIRE AND REHIRE (III)

- Non Restricted Variations
- New provision requiring the ET to consider the following:
 - the reason for the variation
 - any consultation carried out by the employer with the employee or appropriate representatives about varying the employee's contract of employment.
 - anything offered by the employee in return for agreeing the variation
 - any matters specified for this purposes of this subsection in further regulations
- Whenever an employer dismisses employees for the principal reason of replacing them with people who are not employees. The dismissal will be automatically unfair provided the new individual is carrying out substantially the same duties and the requirement for those activities to be undertaken has not diminished or the "financial difficulties" exemption applies.

How effective will these be in curbing fire and rehire practices?

- No provision for interim relief
- Doubling of the protective award from 90 days pay to 180 days pay
- 25% increase for failure to follow the ACAS Code of Practice on Dismissal and Re-engagement
- Not in force until October 2026

Zero hours

INTRODUCTION

- Labour Manifesto commitment to ban '*exploitative*' zero hours contracts
- Important to note not banning 'zero hours' contracts
- Legislation covers both workers on zero hours contracts and 'minimum hours contracts' – aim to prevent avoidance of the measures
- The Bill includes:
 - a right to guaranteed hours for workers
 - a right to reasonable notice of shifts
 - a right to payment when shifts are cancelled at short notice
- An ability to opt out of the provisions by collective agreement
- Still a lot to be determined on the practicalities of the provisions- Regulations

A RIGHT TO GUARANTEED HOURS

- Introduces a duty on an employer to offer a 'guaranteed hours contract' (GHC) which reflects the hours **qualifying workers** regularly worked over a **reference period**.
- An offer of guaranteed hours can be declined by the worker if they wish
- The '**reference period**' is to be determined by regulations but is likely to be around 12 weeks
- The terms offered must be no less favourable than the existing terms (nb: exception for agency workers)
- Where a worker has worked under a variety of contracts with differing terms in the specified period the employer can only offer the least favourable of these where it can justify this as 'proportionate means of achieving a legitimate aim'- must issue a notice to explain this
- GHC can only be for a fixed term when employer can show this is reasonable, for example,
 - where there is a specific time-limited task or event
 - where there is a genuine need for temporary workers

THE FORM OF THE GUARANTEED HOURS OFFER

- If the offer made is a **variation of the existing terms** and it is not reasonable for it to be for a limited term then the amended contract should be permanent and **the only term that should be varied is the hours worked and when they are worked**
- If the **contract offered is a new one** and **there is no justification for it to be for a limited term**, the contract should be permanent and **the terms and conditions offered must – on the whole – be no less favourable** to the worker than the terms they had been working under during the reference period.
- Where the worker has been working on **more than one contract** (or a varied contract) during the reference period **the employer can offer the least favourable terms the employee worked under** where it can justify this as a “proportionate means of achieving a legitimate aim” and **it must issue a notice to explain it has done this** and its justification for doing so
- The Guaranteed Hours Offer contract can only be for a limited term when the employer can show this reasonable due to a **time-limited task, the occurrence (or non-occurrence) of a specific event or there is only a temporary work need – i.e. seasonal works or time limited project.**
- There is a power to make regulations specifying the precise date the offer should be made, what form the offer should take and what other information the employer needs to give to the worker with the offer.

EXCEPTIONS - TO THE RIGHT TO GUARANTEED HOURS

Exceptions in relation to the requirement to issue a GHC at end of reference period;

- a) where the contract is terminated during a reference period and the employer has a qualifying reason or the worker has resigned during reference period
- b) where the assignment has ceased due to a limiting event
- c) where an exception applies (to be defined by regulations)

Details of what is a qualifying reason and remedies are to be set out in Regulations.

SHIFTS- RIGHT TO REASONABLE NOTICE AND COMPENSATION

An employer will have to give **reasonable notice of a shift** (specifying the date, the start and end time and the number of hours to be worked) to the following workers

- In the case of a zero hours worker if the shift is to be worked under that contract
 - If the contract requires the employer to make some work available to the worker but the contract does not state on what days and at what times, or in accordance with what pattern of days and times, that work is to be done by the worker, and the shift to be worked is under that contract
 - The contract requires the employer to make some work available to the worker and provides on what days and at what times, or in accordance with what pattern of days and times, that work, or some of that work, is to be done by the worker
- 'Reasonable notice' to be clarified in Regs



RIGHT TO COMPENSATION FOR SHIFTS CANCELLED, MOVED OR CURTAILED

- An employer will have to pay a specified amount by a specified day (to be set out in regulations) to a worker every time it cancels, moves or curtails a "qualifying shift" at short notice where;
- The employer has informed the worker they are required to work the shift.
- The employer requested that the worker work the shift and the worker agreed
- Where "a multi-worker" request has been made, references to cancellation of the shift includes the worker not being needed to work it because one or more others have agreed to work it.
- The worker suggested working the shift and the employer agreed.
- Equivalent provisions will apply to agency workers
- Regulations will specify the amount of compensation to be paid but it will not exceed the amount of pay the worker would have been entitled to had they worked the original shift
- A worker will not be entitled to payment unless, at some point prior, they reasonably believed that they would be needed to work the shift

Collective agreement opt out- an opportunity?

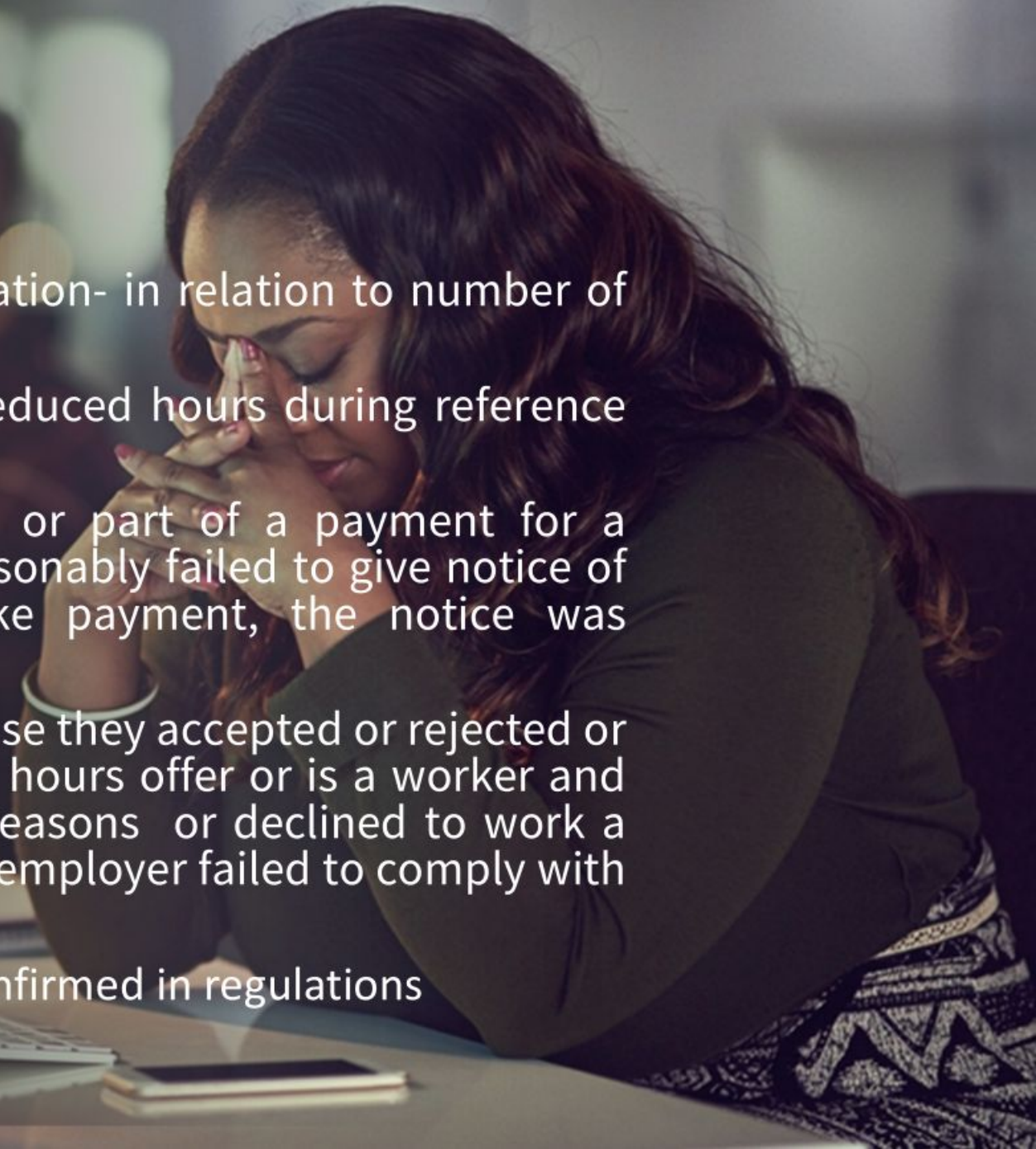
- The rights to guaranteed hours, reasonable notice of shifts and compensation for cancelled, curtailed or moved shifts for zero hours, low hours and agency workers can be excluded by a relevant collective agreement.
- To be a valid opt-out the terms of the collective agreement relating to these rights must be incorporated into individual contracts of employment, cannot just exclude rights must also replace them
- May be attractive for employers due to
 - a) The complexity of the statutory regime
 - b) can create own regime which is industry specific

Will it work? An end to exploitative zero hours contracts?

- Difficult to see how when the length of the reference period, exceptions to the right, potential conditions for qualification relating to regularity of hours, and what constitutes a “low-hours contract, are all yet to be determined by regulations
- Likely to see an increase in fixed term contracts to avoid the legislation
- Interesting to see if use of agency workers drops or if sector adapts to new rules
- Fears of seasonal industries, agriculture, hospitality etc likely overstated given exceptions ability to issue a fixed term GHC if justified
- May lead to those on GHC being classed as employee’s, mutuality of obligation created-increase in rights, access to UD rights
- An opportunity for TU’s to increase number of collective agreements/recognition to members’ benefit?

ENFORCEMENT REGIME

- **Claim to employment tribunal if;**
- GHC offer not made in line with the legislation- in relation to number of hours, varying other contractual terms etc.
- Avoidance- Employer deliberately offers reduced hours during reference period, leading to a reduced GHC
- The employer failed to make the whole or part of a payment for a cancelled, moved or curtailed shift ; unreasonably failed to give notice of the regulation it relied on not to make payment, the notice was inadequate or untrue
- They are an employee and dismissed because they accepted or rejected or proposed to accept or reject a guaranteed hours offer or is a worker and was subject to a detriment for the same reasons or declined to work a shift because they reasonably believed the employer failed to comply with the duty to give reasonable notice.
- Compensation – just and equitable- to be confirmed in regulations



What next?

- Government to launch further consultation on these provisions once the Bill receives Royal Assent
- Will then need to make regulations to finalise the missing details of the provisions
- In force during 2027



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