



*This Week in Employment Law*

**04-04-2022**

## Government announces new statutory code of practice on fire and rehire

**In response to the recent large-scale dismissals of P&O Ferries staff, the government is to introduce a new statutory code of practice on dismissal and re-engagement, we look at the key implications for employers.**

- The use of fire-rehire practices has been widely criticised as a means of renegotiating contractual terms and conditions. Last year, ACAS published new guidance at the request of the government, which highlighted that employers should only consider dismissing and offering to rehire someone on new terms as a last resort, if changes are critical and voluntary agreement isn't possible. Before doing so, they must have made all reasonable attempts to reach an agreement through full consultation.
- The Department of Business, Energy and Industrial Strategy (BEIS) is now going one step further to introduce a statutory code of practice on dismissal and re-engagement. The Code will include practical steps that employers should follow in these situations.
- The Employment Tribunal will be able to take the Code into account when considering cases such as unfair dismissal. This means an employer may face paying up to 25% more in compensation for not following the process set out in the Code.
- The government will be consulting on the draft Code later this year and will bring it into force as soon as parliamentary time allows. For now, businesses can continue to utilise fire-rehire approaches where necessary, but it's important they understand the need to properly consult with affected staff members as it is likely that in the coming months tribunals will be stricter when evaluating fire-rehire situations and be less lenient when considering the process employers followed to enforce changes to contractual terms.

### Increase in compensation for discrimination claims

Guidelines for awards of compensation for injury to feelings in discrimination claims increase on 6 April 2022. The new bands (known as the Vento bands) are: a lower band of £990 to £9,900 (less serious cases); a middle band of £9,900 to £29,600 (cases that do not merit an award in the upper band); and an upper band of £29,600 to £49,300 (the most serious cases), with the most exceptional cases capable of exceeding £49,300.

#### Did you know?

The increase in the Vento bands applies to claims presented to the Employment Tribunal on or after 6 April 2022. For claims presented before this date, the old bands will still apply.

### Changes to Covid testing and stay at home guidance

In England, from 1 April 2022 free Covid testing for the general public ended and government guidance was updated to say people should "try to stay at home" and avoid contact with others if they have Covid or develop symptoms. In Wales, from 28 March 2022 the legal requirement to isolate after a positive Covid test was removed. PCR tests are no longer free for the general public in Wales, but lateral flow tests will remain until June.

#### Did you know?

Employers who want staff to stay at home if they are Covid positive or showing symptoms should have a clear policy setting out the rules for this, including what employees will be paid.

### No protection against action short of dismissal ruling

The Claimant was employed as a support worker who in her capacity as a workplace representative was involved in planning and organising a series of lawful strikes regarding a dispute over sleep-in shifts. The Court of Appeal rejected her claim that she had suffered a detriment by being suspended, where the sole or main purpose of the suspension was to deter her from the trade union activities, or penalise her for taking part in them.

#### Did you know?

This case is significant as it confirms that it is not prohibited to take action short of dismissal, such as removing discretionary bonuses, where an employee participates in industrial action.

Employers implementing a fire and rehire process should ensure that they fully consult with affected staff and their representatives in a genuine and meaningful way to avoid the risks of tribunal claims, industrial action and reputational damage. Contact our 24-hour Advisory Service for up-to-date guidance on this and more.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this publication.