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HR Solutions

Monthly Newsletter

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Right to Strike

The government has announced it will repeal the Strikes (Minimum Service Levels) Act as part of its Employment Rights Bill, referred to as the "New Deal", which is expected to be introduced into parliament in October 2024.

The Strikes (Minimum Service Levels) Act 2003, which came into force last July, gave employers in the emergency services and border services the power to force employees to work on strike days in order to provide minimum service levels. The new government believes that such a power unfairly restricts the right to strike without assisting industrial relations; the Act has not resolved a single strike with industrial action in the NHS alone costing £1.7bn last year.

Meanwhile, back in April, the Supreme Court ruled that the Trade Union and Labour Relations (Consolidation) Act (commonly known as TULRCA) failed to provide protection against sanctions short of dismissal for trade union members participating in lawful strike action.

Employees on strike are protected from dismissal; however there has long been a loophole in the legislation which permitted employers to subject striking employees to any other detriment.

The judgment follows a case brought in the Employment Tribunal by a support worker, Fiona Mercer, from a charity called Alternative Futures which cut payments to staff on sleep-in shifts. Ms Mercer was prohibited from contacting her colleagues whilst taking industrial action, which was deemed to be a sanction short of dismissal.

Following this judgment, which will likely be enacted into statute in due course, employers who impose any disadvantages on striking employees will be at risk of Tribunal claims.

Where employees take the decision to call a lawful strike via their trade union, this is the last resort and an indication that negotiations with the employer have completely broken down. Strike action is intended to make the employer sit up and take notice by introducing a disruption to normal operations. Rather than get to this point, employers should be open to consultation and discussion with employees about areas of contention. HR Solutions can advise you on the consultation process for wishing to change terms and conditions, or on negotiating in respect of pay.

Fire and Rehire

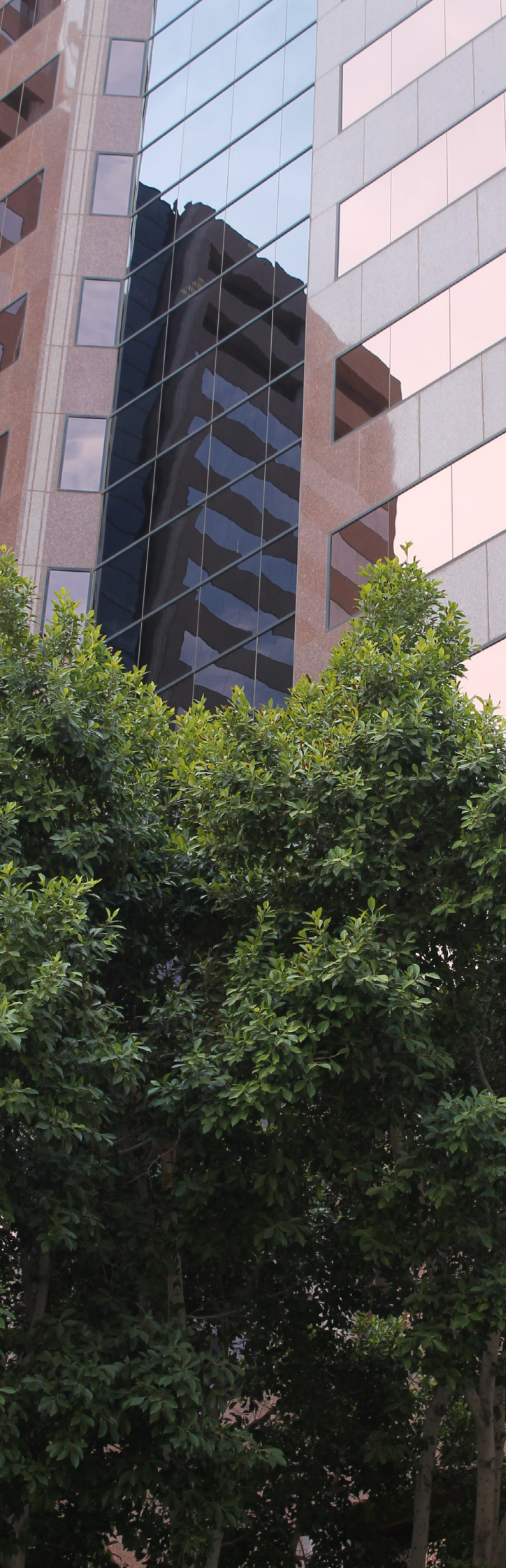
This phrase refers to the practice of dismissing employees who fail to agree new terms and conditions, and then offering to re-engage them on the new terms. It came to prominence in the news last year, partly due to being given this snappy rhyming title, but it has long existed as a concept in law.

UK Employment legislation states that an employer cannot unilaterally vary an employee's terms of employment; it can only do so via consultation and agreement. Unilaterally varying terms and conditions would give rise to a claim for breach of contract for which no qualifying period of service is required.

UK Employment legislation also states, however, that an employer has the right to run its business as it sees fit. Clearly, in addition, things change: markets, technology and ways of working etc therefore an organisation needs to adapt if it is to continue as a viable business. This can result in the requirement to change employees' terms and conditions, and this is where the tension can occur.

A code of practice has been published which sets out employers' responsibilities when they are seeking to change contractual terms and conditions of employment. It seeks to ensure that dismissal and re-engagement is only used as a last resort. If an employer unreasonably fails to comply with the code, the Employment Tribunal will be able to apply an "uplift" of 25% to the compensation it awards to the employee.

HR Solutions can advise you on how to conduct an effective consultation process in order to lawfully change terms and conditions.



Requesting a predictable work pattern

The Workers (Predictable Terms and Conditions) Act 2023 is due to come into force in September 2024. It will give workers a new right to request a more predicable working pattern in terms of days, hours or times of work.

It will apply to any worker who currently has an unpredictable work pattern; somewhat bizarrely it will also apply to anyone engaged on a fixed term contract of twelve months or fewer as apparently a fixed term contract is deemed to be an unpredictable period of time.

Rather than referring to a service length provision (as the new legislation applies to workers, not just employees) there will be a "waiting period" for entitlement which is expected to be 26 weeks from the date of engagement, with a requirement that the individual must have worked for the organisation at least once in the month immediately prior to the end of the 26 weeks.

The procedure for making requests will be similar to that for flexible working:

- Two applications in any 12-month period will be permitted
- Employers will be able to decline requests on the statutory grounds:
  - Burden of additional costs
  - Detrimental effect on ability to meet customer demand
  - Detrimental impact on the recruitment of staff
  - Detrimental impact on other aspects of the business (bit vague)
  - Insufficiency of work during the periods the worker or agency worker proposes to work
  - Planned structural changes

A decision must, however, be notified to the worker within one month of the request (unlike flexible working requests where the requirement is to give a response within two months).

Where the individual making the request is an employee, it will be automatically unfair to dismiss for making an application.

There will also be a claim for a failure to follow the procedure with the award likely to be up to eight weeks' pay.

As with flexible working requests, there could also be a risk of indirect discrimination claims if a request from a woman, young person or person with a disability is rejected, even where this is on one of the statutory grounds for refusal.

HR Solutions can draft a suitable policy for you and advise you on how to consider predictable working pattern requests.

Please see below some examples of the work that we have completed recently.

Peterborough	Assistance with informal meetings including on-site support
Thames Valley	Modern Slavery Statement
Maidenhead	Drafting Settlement Agreement and liaison with solicitor
London	Intern Agreement
Peterborough	Advice on two Flexible Working requests

How we can help?

If you require HR support, please contact us at HRSolutions@mha.co.uk to discuss how we could assist you.

We can provide support on an hourly, fixed-fee or retainer basis so there are a number of options available according to your needs; as you can see from the above examples, we can assist with a large project or a one-off piece of advice.

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