

Frances O'Grady, the TUC general secretary, said: "The government has chosen to side with bad bosses by failing to take action to tackle fire and rehire today. It's a national scandal. Even the prime minister calls the practice unacceptable."

Labour MP Barry Gardiner came second in the Private Members' Bill ballot on 20 May 2021.

On 16 June, he introduced the Employment and Trade Union Rights (Dismissal and Re-engagement) Bill into the House of Commons. It seeks to reform employment law to discourage the use of fire and rehire practices by employers, and grant additional protection to workers affected by it.

Fire and rehire

Fire and rehire (formally dismissal and re-engagement) is when an employer fires an employee and then offers to rehire them on new terms, which are usually less favourable for the employee. It is legal in the UK for employers to use (or threaten) fire and rehire, although according to trade union Unite it is banned in Ireland, Spain and France.

UK employees who have been fired and rehired have three more general protections under employment law, being (1) wrongful dismissal (if their employer did not follow the correct procedure when firing them); (2) unfair dismissal (if their employer didn't have a fair reason for firing them, or did not act reasonably); and (3) the right to be consulted if they are part of a group of 20 or more employees being made redundant. These provide some protection, but according to Professor Alan Bogg (University of Bristol) an employer intent on amending its employees' contract terms can still do so with relative ease. !!!

Fire and rehire practices have been used in the UK for many years, but public body Acas reported that it seems to be used more commonly in recent years and especially during the COVID-19 pandemic. During the pandemic, high-profile disputes emerged around the use of fire and rehire at employers including British Airways, Centrica (British Gas), Tesco and Sainsbury's (Argos). A January 2021 poll for trade union umbrella body the Trades Union Congress estimated that 9% of workers had been the victim of fire and rehire tactics since the first lockdown in March 2020, having been told to re-apply for jobs on worse terms. The numbers were even higher among young and BME workers.

Recent action

There has been cross-party criticism in Parliament of fire and rehire tactics used by some employers during the pandemic, including from the Transport Committee in June 2020, a Labour party Opposition Day debate in January 2021, and several Early Day Motions. SNP MP Gavin Newlands has introduced two identical Private Member's Bills which would automatically treat an employee as unfairly dismissed if the reason for their

Ministers have scuppered a Commons bill that would have stopped the practice of companies firing staff and then rehiring them on worse pay and conditions, saying that while they opposed such actions, legislation was the wrong way to respond.

The decision prompted anger from opposition parties and unions, with the TUC saying the government had “chosen to side with bad bosses”.

The junior business minister, Paul Scully, spoke for more than 40 minutes in the chamber, ensuring that the private member’s bill ran out of time and would not progress beyond its second reading.

Earlier in the session, Barry Gardiner, the Labour MP behind the bill, forced a vote that, if passed, would have prevented the government tactics. However, vote was defeated by 251 votes to 188.

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The debate follows increasing concern over so-called “fire and rehire” tactics, as used by companies such as British Gas, which dismissed hundreds of engineers earlier this year who had refused to accept a pay cut and longer, more antisocial hours. Others accepted jobs on the new terms.

While the government has condemned such tactics, it argues that companies in serious financial difficulty must have the option of offering staff new jobs, if the alternative is closure. However, an analysis earlier this year found that nearly 70% of firms engaging in the practice were making a profit.

Introducing the bill, Gardiner stressed that it did not completely ban fire and rehire, as this could be necessary to prevent a company collapsing, but “puts on a statutory footing the procedure that decent employers already follow”.

The Brent North MP said: “It encourages both employers and workers to reach the best outcome and discourages bad employers from threatening fire-and-rehire, where there is not a legitimate threat to the business that demands it.”

In his speech, Scully stressed that he did not disagree with the intent of the bill, just whether it was the best means to achieve it. “The unambiguous message is that bully-boy tactics of fire-and-rehire, for use as a negotiating tactic, is absolutely inappropriate,” he said. “However, I do not believe that this bill as it stands – even if it’s amended, as I do not believe we need that primary legislation to achieve its ends – will actually have the effect.

“What we need to do is make sure that we can address these situations. We’ll legislate if we need to, but we’ll do it as a last resort, not as a first resort.”

But Gardiner said the decision to whip Conservative MPs to oppose the bill and then talk it out was “cowardly”. He said: “In politics, it’s rare to find something that absolutely everyone agrees on ... All the way from Len McCluskey to the prime minister himself, everyone agrees fire and rehire is wrong. So why is the government determined to block this bill?”

dismissal was to re-employ them on less favourable terms. Neither has made progress in Parliament.

In October 2020 the Government asked Acas to review how common fire and rehire practices are and how they are used. Published in June 2021, Acas reported that the use of fire and rehire could usefully reduce redundancies in some situations, but it could also be used to diminish employees' contract terms. The Government subsequently tasked Acas with strengthening guidance in this area – this task is ongoing.

The Government, including the Prime Minister, has on numerous occasions condemned the use of fire and rehire practices by employers as a negotiating tactic. But it has not committed to bring forward legislation, citing the ongoing work done by Acas and the need to consult more with industry.

The Bill

Over the past few months Mr Gardiner has embarked on a national tour of Great Britain in support of his Bill, involving rallies, events and visits to affected employees. The Bill is supported by over twenty trade unions, many of whom are also funding Mr Gardiner's campaign.

The Bill would:

1. Introduce a new duty for employers to consult employees in certain situations when they might be looking to dismiss or change the work terms of 15 or more employees. Any changes to an employment contract aren't valid unless this consultation was done;
2. Provide additional employee protections, by:
 1. prohibiting employers from including in employment contracts a right to vary terms in ways less favourable to employees, without employee consent; and
 2. making it easier for employees to bring claims for "unfair dismissal" in cases of fire and rehire; and
3. Provide additional legal protections by making it easier and quicker for industrial action to be taken in cases of fire and rehire.

The second reading debate is scheduled to take place on Friday 22 October.
