



Making Work Pay

Fire and Rehire: changes to expenses, benefits, and shift patterns

Introduction

This response is made by Unite the Union. Unite is the UK's strongest trade union, representing over one million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, hospitality, health, local government and the not-for-profit sector.

Executive Summary

Unite is fundamentally opposed to the government's proposals to exclude benefits in kind, expenses and changes to shift patterns from the list of restrictive variations contained in fire and rehire provisions in the Employment Rights Act. Unite believes that *all* contractual benefits in kind and expenses arrangements should be protected by fire and rehire protections.

If the government's proposals are implemented, employers may be able to force through significant detrimental changes to workplace benefits and to shift patterns – unless of course a union is there to stop them from doing so.

Detrimental impact on key entitlements

The range of entitlements potentially caught by the government proposals is broad, including work-related training, childcare provision and vouchers, subsidised staff canteens and vouchers, long term service rewards, uniform allowances health care cover and annual health screening, access to company cars and car-parking facilities; travel tickets, hotel provision when travelling away from home, and family friendly shift patterns, including term-time working and flexible working.

None of the entitlements would be considered by the workforce as “perks”, as suggested by the consultation. The entitlements are integral to employees’ terms and conditions. They improve working life and have been hard won through negotiations with the employer. The removal of benefits in kind and changes to shift patterns by employers would cause a serious detriment to many individuals. The loss of family friendly policies and other benefits is likely to increase staff turnover and mean it is harder for employers to recruit new staff.

Unite will do everything necessary to protect our members’ interests. But we also believe the law should protect employees from such employer actions.

Equality implications

Unite fears the government has not fully considered the equality implications of the proposals, as lower paid employees with protected characteristics are most at risk of losing out from the loss financial benefits and flexible working patterns, which provide them with a decent work-life balance.

Industrial implications

In its Plan to Make Work Pay the government confirmed its commitment to “*ensuring industrial relations are based around good faith negotiation and bargaining*”.

Yet under the government’s proposals employers should be permitted to seek unilaterally to vary key entitlements at work, negotiated through collective bargaining agreements.¹

This is likely to damage good industrial relations, leading to increased workforce tension and protracted disputes. In recent years, Unite members in local government, food manufacturing, textiles, the print industry, the voluntary sector and transport have all engaged in industrial disputes resisting abusive fire and rehire tactics.

Repeating the past

It is important to recall that central to the P&O dispute was a planned change in rosters, whilst one of the key elements of the BA dispute during the pandemic were proposals to reduce the quality of hotel accommodation provided to cabin crew when travelling abroad. It is alarming that under the proposed changes, employees involved in the most notorious examples of fire and rehire could miss out on protections if the circumstances were to be repeated.

Just the latest in a series of measures weakening fire and rehire rights

In the New Deal for Working People, negotiated with trade unions, Labour promised to “outlaw fire and rehire”. Before, during and since the general election reassurances

¹ Labour Party (2024). “Labour’s Plan to Make Work Pay: delivering a new deal for working people.” p.12.

were repeatedly given to employees that the current government would ban fire and rehire.

Yet with the introduction of the Employment Rights Act, Labour's policy on fire and rehire has been hollowed out, with the government repeatedly watering down rights and renegeing on commitments to employees. For example:

- When the Employment Rights Bill was first published, it included new unfair dismissal protections against fire and rehire. But employers can defend dismissals by arguing their business faces serious financial difficulties and there is no alternative but to cut employee's pay and conditions.
- The effectiveness of the new dismissal rights will depend *entirely* on the willingness of employment tribunals to second-guess employers' financial assessment of their company. Something which tribunals are reluctant to do.
- Then, the government amended the Bill to permit the use of fire and rehire by public sector employers facing financial difficulties and struggling to deliver statutory services and who argue they have no choice but to cut pay and conditions. This includes local authorities, where commissioners have been appointed, such as in Birmingham, Nottingham, Woking and Slough Councils.
- At the same time, the government introduced amendments restricting the main fire and rehire safeguards to "core" terms and conditions (referred to as restricted variations). Yet there was no consultation with employees on which rights should be protected. In our opinion, employees - not Whitehall - should decide which hard fought for terms and conditions matter to working people.

Now the government is consulting on narrowing the list of restricted variations even further.

No current plans to improve to fire and rehire protections

Finally, it is worrying the current consultation focuses only on restricting fire and rehire safeguards and not on improving employee rights.

The government has decided not to use powers in the ERA to add to the list of restricted variations for which a dismissal would be automatically unfair. The list of restricted variations includes pay, pensions, working hours, holidays and other forms of leave. Yet there are significant gaps in the protection afforded to employees. For example, an employee's work location and their job role are not protected. Such gaps are likely to have a devastating impact on employees.

Take the intensive care nurses at Bassetlaw hospital currently taking industrial action over "fire and rehire" contract changes that will force them to rotate between Bassetlaw and Doncaster Royal Infirmary. The nurses - who feared the

transfers could lead to the permanent closure of Bassetlaw ICU – took action short of strike action through a ban on working on any ward or unit other than Bassetlaw ICU. In response, the trust banned the nurses from work and denied them pay. The nurses continued to attend and make themselves available for work. Still the trust issued dismissal notices to the nurses threatening to sack the nurses and then rehire them the next day on less favourable terms and conditions.

Under the Employment Rights Act, these ICU nurses are unlikely to be protected, because the employer is forcing through a change in their place of work.

Similarly, the government has decided not to use ERA powers which permit the government to:

- Specify additional factors which an employment tribunal should consider when determining the fairness of a dismissal for a restricted variation that has met the financial difficulties exemption.
- Specify additional factors which an employment tribunal should consider when determining the fairness of a dismissal for a non-restricted variation.

Unite would call on the government to reopen this consultation and to give genuine consideration to using the above powers to:

- Confirm that financial difficulties exemption in the private sector should only apply where a business can demonstrate that it and associated businesses are at risk of insolvency.
- Confirm that financial difficulties exemption will in the public sector in exceptional circumstances.
- Require employers to open their accounts for independent audit before they can argue their company is in financial difficulties.
- Replace the “band of reasonableness” test in fire and rehire dismissal cases with the “objective justification” test applied in discrimination law, which requires employers to identify a legitimate aim and prove that dismissal was necessary and the least discriminatory way to achieve it.

Unite also calls on the government to keep the fire and rehire legislation under review and to commit to legislating if the current provisions prove ineffective. This should include a review of the remedies and penalties available in fire and rehire cases. Currently there is nothing in the ERA 2025 which prevents employers from sacking employees. Unite calls on the government to adopt Unite’s proposal to permit unions to apply for interim injunctions blocking dismissals and requiring employers to return to the negotiating table.

Responses to consultation questions

Section 1: Expenses and Benefits or Payments in kind

Question 1:

Which of the following options regarding expenses and benefits in kind protections do you agree with?

Other (please expand below)

Unite is alarmed by the central premise of this consultation that all benefits in kind and expenses should be excluded from fire and rehire protections, other than those potentially retained under Option 2.

Benefits in kind form an integral part of the reward package and core terms and conditions for most employees and improve the quality of working life for many employees. (See the response to question 6 for further information).

Excluding benefits in kind and from fire and rehire protections for will favour employers and cause substantial detriment to employees.

Unite believes that *all* contractual benefits in kind and expenses arrangements should be protected under fire and rehire provisions.

We are strongly opposed to the removal of any or all benefits in kind or expenses from the list of restricted variations. Protection should not be limited to benefits or expenses relating to travel and accommodation and share schemes.

Question 2:

If the government were to pursue option 2, which expenses and benefits in kind should be protected (and therefore subject to higher protections from fire and rehire)? (Select all that apply)

As stated above, Unite firmly believes that all benefits in kind and expenses should be protected under fire and rehire legislation.

We would be firmly opposed to the exclusion of any or benefits or expenses policies from the list of restricted variations. Option 2 is preferable to Option 1 in the consultation. But neither proposal goes far enough.

If, the government proceeds with Option 2, it must ensure that all forms of accommodation and travel costs including expenses reimbursed by employers are included in the list of restricted variations.

Unite agrees that all the following should be included in the restricted variations

- Mileage
- Other travel expenses incurred in performance of duties, not including commuting
- Accommodation expenses incurred in performance of duties
- Long term accommodation offered as a benefit in kind
- Share scheme and ownership arrangements

This list however is far from complete.

In many sectors unions have negotiated wider travel and accommodation benefits, for example:

- In civil aviation, cabin crew are often entitled to at least 1 meal and unlimited water per flight. They are also entitled to the provision of hotel accommodation, meeting set criteria for different countries. Accommodation when staff are on stand-by at an airport away from home is also provided and allowances are payable where a pre-bookable room is not available. Where flights are cancelled, staff are also entitled to an allowance. Daily subsistence allowances are paid when abroad plus an uplift depending on destination.
- In construction, the NAECI agreement includes an accommodation allowance where workers are required to work away from, along with supplements where workers are required to stay within the M25. Workers can also be reimbursed for the costs of retaining accommodation.
- In road transport, in some companies drivers are entitled to an overnight subsistence allowance
- Other sectors frequently provide for overnight allowances, which are paid in addition to expenses, accommodation or meal subsistence. Such payments are permitted by the HMRC reflect the impact on workers of being required to work away from home.

All such travel and accommodation arrangements need to be protected under the fire and rehire provisions.

If option 2 is to be adopted, it is vital that future regulations are comprehensive, future-proofed and covers the diversity of policies applying in all sectors. The regulations should not list examples of benefits and expenses which are covered. Instead, they should provide that any expenses and benefits connected with travel and accommodation are included in the list of restricted variations.

Question 3:

If share schemes were to be protected, which types should be in scope of the restricted variation of sums payable for these purposes (and therefore subject to higher protections from fire and rehire)?

- ✓ Direct share allocations
- ✓ Participation in schemes which allow employees to buy shares from a company reserve

Share schemes are designed to give employees a direct stake in a company, creating a sense of partnership, incentivising improved productivity and ensuring there is a fair distribution of rewards arising from company success. Such schemes can attract, retain, and motivate employees.

Closing employee shared schemes without the agreement of staff would seriously damage trust and motivation within the workforce.

Question 4:

In your view, how common is it for expenses and benefits in kind to be part of core contractual terms (without a contract variation clause that would allow the employer to change these terms)?

- **Very common**

The presence of contractual expenses and benefits in kind is widespread.

According to research commissioned by the HMRC in 2023,² nearly all employers with 50 or more employees report reimbursing expenses (90% of medium and 98% of large employers), and more than half of all employers, with 72 % of large employers and 64% of medium employers, provide benefits in kind.

The provision of such arrangements is likely to be more prevalent in workplaces covered by collective agreements. The integration of benefits in kind into collective agreements ensures that such benefits are applied uniformly to the entire workforce and not reserved for management and those on senior grades.

Unite alone is involved in negotiating more than 2,000 collective agreements, covering more than 1.5 million employees across 19 strategic sectors. According to ASHE data³, in 2024 around 40.2% of jobs in the UK are covered by a collective agreement. In the public sector, around 89.2% of jobs had pay set by such agreements, compared to around 20.1% of jobs in the private sector and 49.0% in the not-for-profit sector.

² <https://www.gov.uk/government/publications/research-with-employers-on-benefits-in-kind-and-expenses/research-with-employers-on-benefits-in-kind-and-expenses>

³ <https://www.gov.uk/government/statistics/trade-union-statistics-2024/trade-union-membership-uk-1995-to-2024-statistical-bulletin#fn:4>

Most collective agreements will include provisions for benefits in kind and expenses as part of the core terms and conditions of employment.

It is well established that substantive terms of the collective agreement which relate to individuals' pay, working time and other benefits will normally be incorporated into employees' contracts of employment and therefore form part of employees' core terms and conditions.

Question 5:

In your view, which expenses and benefits in kind are commonly part of core contractual terms (not including those which can be changed via a contract variation clause that would allow the employer to change these terms)?

Expenses: According to research commissioned by the HMRC⁴, employers most frequently reimburse staff for subsistence expenses, such as accommodation when staying overnight on business, and refreshments when attending meetings outside of the workplace. A quarter of medium and larger employers reimburse the payment of professional fees required for the job and nearly one in five pay for professional subscriptions. Other expenses regularly paid include the provision of PPE and clothing and the washing of uniforms, and expenses incurred by individuals working from home.

Union reps also report annual pay rounds regularly feature negotiations on mileage and fuel rates and allowances and the cap for receipted expenses. For example, Community NHS staff and those working in domiciliary social care regularly raise concerns that mileage rates need to be increased to ensure that workers are not left out of pocket and that they can afford to undertake their work.

Benefits in kind: According to research commissioned by the HMRC⁵, nearly 40% of medium and larger employers provide workplace parking for staff, nearly one in three such employers provide company cars or other company vehicles and a fifth offer electric vehicle charging at the workplace. Nearly a quarter of medium and larger employers provide childcare vouchers, following the decline in nursery places at the workplace. Employers also frequently provide Employee Assistance Programmes, health care policies, counselling services, cycle to work schemes, support and training for staff facing redundancies and reimbursement of relocation costs, employee loans, and sporting and recreational facilities on the premises or off site.

Many of the benefits in kind listed above are often included in collective agreements in organised workplaces. For example, overnight subsistence and allowances, the provision of health care plans found in parts of the car manufacturing,

⁴ <https://www.gov.uk/government/publications/research-with-employers-on-benefits-in-kind-and-expenses/research-with-employers-on-benefits-in-kind-and-expenses>

⁵ [Ibid](#)

pharmaceuticals, freight transport, and publishing sectors. Union reps also report having negotiated the provision of subsidised staff canteens and meal vouchers, long term service vouchers, Christmas vouchers and subsidised online deals.

As indicated above, benefits in kind negotiated as part of collective agreements will form part of the core terms and conditions of employment.

Question 6:

In your view, how important are expenses and benefits in kind, which are granted in employment contracts to employees?

- **Very Important**

Unite is concerned the consultation seriously under-estimates the value of expenses and benefits in kind to employees and the serious detriment caused to individuals when they are withdrawn.

Benefits in kind and expenses form an integral part of employees' reward package and improve the quality of working life and staff well-being.

For example:

- Expenses ensure that workers are not left out of pocket and are not expected to subsidise their employer costs.
- Subsidised staff canteens and meal vouchers assist workers to manage the cost of living.
- Childcare provision and childcare vouchers allow employees with young children to attend work and remain in the labour market.
- The provision of PPE and uniforms are core components of safe working environments
- The provision of company cars and free car parking spaces allow staff to travel to their workplace or access offsite locations.
- Health care policies and regular health screenings ensure the employees remain well and fit for work.
- Paid release for work-related training enables employees to develop their skills and their career pathways.
- Training, support and counselling provided when redundancies are necessary enable workers to transition to new employment
- Long service vouchers encourage staff retention and reward job commitment
- The provision of sports and recreational facilities benefit staff well-being and support team-building and social interaction
- Support for disabled workers and their families enables such individuals to find work and remain in the labour market

Question 7 & 8:

In your view, how common is it, specifically, for share schemes to be part of contractual terms without a contract variation clause that would allow the employer to change these terms?

- **Very common**

Where employees share schemes exist, it is very likely that they will form part of contractual terms and their provision will not be the subject to employer discretion.

Employees share schemes are found more prevalently in sectors such as tech, professional services, retail (co-operatives), manufacturing and Royal Mail.

In your view, how important are share schemes, where these form part of the employment contract, to employees?

- **Very Important**

Share schemes are designed to give employees a direct stake in a company and to encourage partnership. This can incentivise improved productivity and ensure there is a fair distribution of rewards from company success. Such schemes can attract, retain, and motivate employees.

Closing employee shared schemes without the agreements of staff is likely seriously to damage trust and motivation within the workforce.

Question 9:

In your opinion, what would be the impact on employees of excluding all expenses and benefits in kind from the automatic unfair dismissal protections of the fire and rehire measure?

Unite is concerned the consultation seriously under-estimates the value of expenses and benefits in kind to employees and the substantial detriment caused to workers if they were unilaterally withdrawn by employers without worker consent.

The removal of benefits will reduce the rewards package and may cause significant financial detriment and hardship for some. It will damage workforce morale, leading to an increase in staff turnover. It is also likely to lead to industrial unrest and an increase in disputes.

As was demonstrated during and since the Covid pandemic, general unfair dismissal provisions will do very little to protect employees where employers decide to deploy exploitative fire and rehire tactics. There is nothing in the new fire and rehire dismissal rights to stop an employer from dismissing a workforce to force through substantial cuts to employees' pay and conditions. Compensation awarded by an employment tribunal is no substitute for the loss of a job.

Question 10:

In your opinion, what would be the impact on employers of including travel expenses, accommodation expenses and share scheme expenses in scope of the restricted variation for sums payable (and therefore subject to higher protections from fire and rehire)?

There would be clear benefits for employers if travel expenses, accommodation expenses and share scheme were to remain within the list of restrictive variations. These benefits would be expanded further still if protections for all benefits in kind and expenses were also retained.

The provision of benefits in kind and decent expenses policies support staff well-being and maintain workforce morale and motivation, thereby increasing productivity. It also assists employers to retain and recruit staff.

The BA dispute during the pandemic illustrated how the removal of travel and accommodation benefits can damage industrial relations and lead to disruption. Restricting the ability of employers to strip away benefits will reduce the risk of industrial disputes. The use of fire and rehire can also seriously damage an employer's reputation.

Questions 11 & 12:

Do you believe that the proposals discussed in this consultation relating to expenses and benefits in kind will have an impact on individuals with a protected characteristic under the Equality Act 2010?

▪ **Yes**

The government's proposals could be seriously detrimental to equality at work. Employees with protected characteristics disproportionately rely on expenses and benefits in kind. For example:

- Many women, BAEM workers and those who disabled tend to be lower paid. As a result, they are more reliant on expenses to ensure they are not left out of pocket. They similarly rely on subsidised staff canteens and meal vouchers to manage the cost-of-living.
- Women, who tend to be the primary carers for pre-school children, rely heavily on childcare provision and childcare vouchers to attend work and remain in employment.
- Health care policies and regular health screenings ensure that older workers, disabled workers and those with long term illness can continue to work.
- Paid release for work-related training particularly benefits younger workers who are setting out on their careers.
- Long service vouchers are more likely to be paid to and benefit older workers

- Unions will regularly secure additional support for disabled workers, including reasonable adjustments in the workplace. Without such benefits disabled workers are often unable to work.

The removal of such benefits would disproportionately affect employees with protected characteristics and could expose employers to legal challenge.

Question 12:

Where you have identified potential negative impacts in your response to question 11, are there ways to mitigate these?

The government should withdraw its proposals to exclude any or all expenses and benefits in kind from the list of restricted variations under fire and rehire provisions.

The government should also strengthen the remedies for breaches of fire and rehire unfair dismissal rights. Unions should be to apply for interim injunctions preventing employers from dismissing the workforce and forcing through worse pay and conditions. Interim injunctions would mean employers are required to return to the negotiating table and to reduce or avoid the discriminatory impacts of their proposals.

Question 13:

Is there anything else you would like to share your reflections on, that was not covered by the previous questions (e.g. broader risks or alternative options)?

As stated above, Unite is firmly opposed to the removal of any or all benefits in kind and expenses from the list of restricted variations under fire and rehire legislation.

Changes to all benefits in kind, expenses and share schemes should continue to be treated as restricted variations.

Section 2: Shift Patterns

Question 14:

Which of the following options regarding shift changes do you agree with?

- **None of the above**

Unite believes that any changes to shift patterns should be considered as restricted variation for the purposes of fire and rehire legislation.

Unite is concerned that the current government proposals for reducing protection for shift changes are too simplistic and do not reflect the diversity and complexity of work patterns in the UK.

Employers may have genuine operational reasons for changing shift patterns. For example, a downturn in orders may temporarily lead to fewer shifts and a shorter working week. Yet such changes should always be negotiated and agreed with trade unions in recognised workplaces or employees elsewhere.

Question 15:

Do you agree with the proposed definition of night-time working (any time 11pm-6am)?

- **No**

The definition of night-time differs from that used in many collective agreements and in many workplaces. For example:

- The National Agreement for the Engineering and Construction Industry (NAECI) defines a night work week as one where the normal starting time will be no earlier than 8pm and the normal finishing time as no later than 8am.
- Under the Agenda for Change agreement, which covers more than 1.3 million NHS staff across the UK, night-time applies to the period between midnight and 5am and a night worker is someone who works for at least three hours of their daily working time during night-time as a “normal course.”

The proposed statutory definition will not sit easily with different industrial practices.

Unite is also concerned that the proposed definition for night work will not provide sufficient protection for all workers who are increasingly pressurised to work unsocial hours, for example by working later and or starting earlier in the morning.

Under the proposed definition, an employee may currently begin their shift at 2pm. However, if their employer pressures them to work until midnight this would not represent a change from daytime working to night working. Similarly, a shift may currently start at 5 am. However, if their employer pressures them to start work at midnight this would not represent a change from daytime working to night working because they already do an element of night-time work. The employee would therefore not be protected.

Question 16:

If answered no, don't know or other to question 15, what do you think the definition of night-time working should be?

Unite believes that any changes in shifts should be treated as a restricted variation. Employers should only be able to change shifts by agreement. Unilateral changes to shift patterns, forced through by employers, can have devastating effects for employees and their families.

If the government decides to proceed with the proposal only to include changes from daytime working to night working in the list of restricted variations, then:

- The specified hours for night-time working should also be expanded to 7pm to 8am to ensure that protection is provided for moves to all forms of unsocial hours working.
- Regulations must clearly state that a shift to night working includes any increase in hours between the specified hours.

Question 17:

Do you agree that changes from weekday to weekend and weekend to weekday shifts should be included in this list of protected shift changes?

- **Other**

Unite does not support the government's current proposals. Forced changes to shift patterns can have devastating effects for employees and their families. We believe that any changes in shifts should be treated as a restricted variation. Employers should only be able to change shifts by agreement with employees.

If the government proceeds with its proposals, then changes from weekday to weekend and from weekend to weekday shifts should both be included in the list of restricted variations.

Unite is concerned that only restricting changes from weekday to weekend working will not be sufficient to protect employees, especially those who need flexible working patterns. For example,

- Employees working part-time will often have negotiated to work specified days which fit around their childcare or elder care responsibilities. If their employer pressures them to work on different days, they would not be covered by the proposed fire and rehire rights.
- Some employees currently work short weekday shifts that fit around school times and an additional single weekend shift to increase their take home pay. If their employer was free to unilaterally require them to work on both days of the weekend this would have a huge effect on their family life and could leave them unable to continue with their job.
- The regulations should also make provision for employees in retail, hospitality and food production who are often expected to take on additional work during busy periods, such as Christmas, Easter or the summer periods. This might involve a weekday worker being asked to do an occasional shift at the weekend during peak seasons. It is important that the legislation does not deem

the individual to be both a weekday and weekend worker, meaning they could be vulnerable to unilateral weekday to weekend (and vice versa) changes.

Question 18 - Do you agree that changes from day to night and night to day shifts should be included in this list of protected shift changes?

▪ **Yes both**

Unite does not support the government's proposals. Forced changes to shift patterns can have devastating effects for employees and their families. We believe that any changes in shifts should be treated as a restricted variation. Employers should only be able to change shifts by agreement with employees.

If the government decides to proceed with its current proposals, then changes from day to night shifts and from night to day shifts should both be included in the list of restricted variations for fire and rehire provisions.

Employees should be able to choose whether they work day shifts or during nights so they can manage their working life alongside caring responsibilities.

Please also see the response to questions 15 and 16.

Our current understanding (subject to change based on consultation feedback) is that some employment contracts do not include fixed shift patterns i.e. on what days and at what times the employee will work their hours, but instead set out availability windows i.e. a period during which an employee must contractually be available to work and whose shift will be scheduled during this period however it will not provide the exact timing of the shifts.

Questions 19:

Do you think that the government should consider whether there are certain kinds of changes to contractual availability windows which should be protected from being changed through fire and rehire?

▪ **Yes**

Unite believes that changes to availability windows should be treated as restricted variations. Whether these are timetabled slots or a proportion of an employee's contracted hours, they place significant limitations on employees' ability to enjoy a social life, manage caring responsibilities or to carry out other paid employment.

Availability windows accounting for 50 % of an employee's hours are common in some workplaces. Given that these are very broad timetables, Unite believes it would be appropriate that any changes which are not agreed with employees to be deemed "restricted variations".

Question 20:

If you answered yes to question 19, which changes to contractual availability windows should be protected?

All changes to contractual availability windows should be considered as a restricted variation.

This is important to ensure employees can arrange benefit from a social life, manage caring responsibilities and/or to carry out other paid employment. They should not be constantly at the beck and call of one employer.

Question 21:

In your opinion, how common is it for shift patterns (specific days and times) to be specified in employment contracts or as a contractual term?

- **Very common**

This is very common for the following reasons:

Most employers will include details about hours of working are included in employees' contracts of employment. Employees need to know when they are required to turn up to work and when they can leave.

Under section 1 of the Employment Rights Act 2025, information about hours of work (including normal working hours, the days of the week the worker is required to work and whether and how their hours can be varied) should be included in a worker's statement of employment particulars. Whilst the statement itself is not a contract it can be relied on as evidence of the contract.

Decent employers will negotiate shift patterns with recognised unions. Substantive terms of the collective agreement relate to individuals' working time will normally be incorporated into employees' contracts of employment and therefore form part of employees' core terms and conditions.

Question 22 – In your opinion, how common is it for there to be a flexibility clause in an employment contract that would allow the employer to change an employee's shift patterns without the employee's agreement?

Other (please expand below)

This will vary from workplace to workplace and sector to sector.

Question 23:

What would the impact on employees be of only protecting the proposed narrow list of shift changes (day-night, night-day, weekday-weekend and weekend-weekday)?

Limiting protections to changes in shifts from day- to night- time working and weekday to weekend working will not be sufficient to safeguard employees. This narrow approach to shift changes means many changes to shift patterns will not be deemed restricted variations leaving employees vulnerable to unilateral changes by employers.

Changes in shift patterns will often have a seriously negative impact on the quality of working life, on work-life balance and on employees' health and well-being.

Worklife balance: The government's proposals could have seriously adverse implications for work-life balance, particularly for those with caring responsibilities. Employers may still be able to pressure workers to increasingly work unsocial hours or to reduce or remove rest periods. Employees who benefit from flexible working arrangements, such as term time working, or who have requested flexible working and negotiated arrangements which accommodate their caring responsibilities could find that employers can unilaterally force through changes their working patterns.

Health and well-being: Working shifts should not mean that employees' health is compromised. However, there is clear evidence that some shift patterns, including longer night working, rotating shift patterns and work intensive rosters, such as 6 days on 6 days off, can seriously damage employees' health and well-being.⁶ Employees are also increasingly pressured into working excessive hours and into starting work during the early hours. All of which contributes to fatigue, the disruption of the biological clock and an increased risk of cardiovascular and gastrological disorders. Yet, under the government's proposals, such changes could continue be imposed without employees' consent and the new fire and rehire rights would not apply.

Take home pay: Unions will often negotiate enhanced pay premia for night shifts, anti-social hours, and different shift patterns. Some employees will seek to adapt their working patterns to increase their income so that they can afford their rent or mortgage and can cover that energy and food bills. Employers should not be able to unilaterally change employees' working patterns, reducing their take home pay, without their agreement.

Question 24:

What would be the impact on employers of only protecting the proposed narrow list of shift changes (day-night, night-day, weekday-weekend and weekend-weekday)?

The proposed narrow list of protected shift changes may prove detrimental to employers.

⁶ [https://resources.unitetheunion.org/media/2785/original/\(JN2721\)\(2\)_A4_Shift_Work_and_Night.pdf](https://resources.unitetheunion.org/media/2785/original/(JN2721)(2)_A4_Shift_Work_and_Night.pdf)

Employers may have genuine operational reasons for changing shift patterns. For example, a downturn in orders may temporarily require to fewer shifts and a shorter working week.

However, the imposition of shift patterns is likely to damage workforce morale and motivation, leading in turn to lower productivity.

Shift patterns which do not respect employees' needs for work-life balance may lead to increased staff turnover. Employees who can no longer manage their work alongside their caring responsibilities will be forced to look for new work, or to become economically inactive.

The imposition of changed shift patterns is also likely to damage employment relations, leading to an increase in industrial tensions and strike action which will inevitably disrupt services and/or production. At the time of writing, Unite has two live ballots and one dispute in the transport sector, arising from employers' refusal to agree shift change patterns, including in one bus company which refused to schedule rest breaks for drivers.

In 2025, Unite also entered a dispute with transport employers in the NW over shift changes. Eventually, the workers accepted new rota changes that will lead to a reduction in driving time without a break from five and a half to five hours, the removal of six day working and the introduction of an additional two rest days. All drivers will also benefit from having their duty length reduced from 9.5 to 9 hours.

Employment laws should support good practice by employers and good industrial relations. To this end, fire and rehire laws should restrict or prevent employers from forcing through changes to shift patterns. Instead the law should encourage employers to negotiate shift changes with employees and their recognised unions.

Question 25:

In your opinion, are there any concerns or risks you think should be considered with protecting the proposed narrow list of shift changes (day-night, night-day, weekday-weekend and weekend-weekday)?

- Yes

Please see the responses to questions to questions 14 to 20 and 23 and 24 above.

Question 26:

Do you believe that the proposals discussed in this consultation relating to shift changes will have an impact on individuals with a protected characteristic under the Equality Act 2010?

- **Yes**

Unite is concerned that the government's proposals could have a disproportionate impact on women who remain the primary carers in most households. Reduced access to flexible hours and arrangements such as term time working, will make it harder for them to manage their working life and meet their childcare and elder care responsibilities. Such changes may pressure women to look for new employment or to become economically inactive.

Question 27:

Where you have identified potential negative impacts in your response to question 26, are there ways to mitigate these?

The government should withdraw its proposals to limit the list of shift changes which will be considered as restricted variations to day-night, night-day, weekday-weekend and weekend-weekday shift change. Instead, regulations should be introduced which protect all forms of shift changes under the new fire and rehire provisions.

The government should also strengthen the remedies for breaches of fire and rehire unfair dismissal rights. Unions should be to apply for interim injunctions preventing employers from dismissing the workforce and forcing through worse pay and conditions. Interim injunctions would mean employers are required to return to the negotiating table and to reduce or avoid the discriminatory impacts of their proposals.

Question 28:

Is there anything else you would like to share your reflections on, that was not covered by the previous questions (e.g. broader risks or alternative options)?

As stated above, Unite is firmly opposed to the adoption of a narrow list of shift changes which will be considered as restricted variations.

All changes to shift patterns should be treated as restricted variations.

Contact:

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