

The Rt Hon Liam Byrne MP
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Dear Liam,

The Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment or Schedule A2) Order 2024

I am writing to inform you that the government laid a statutory instrument in Parliament on 17 October which, once in force, will add the protective award to Schedule A2 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

The protective award is compensation awarded by an employment tribunal where an employer did not consult with their employees before dismissing 20 or more of them within any 90-day period at a single establishment. The maximum amount of compensation employees can get from a successful claim is currently 90 days' pay, though we plan to consult on increasing this cap shortly.

Schedule A2 of the 1992 Act is the list of claims for which an employment tribunal could make a 25% adjustment to compensation where one of the parties has unreasonably failed to comply with a Code of Practice made using powers in Section 203 of the 1992 Act.

The effect of this change would mean that where employers fail to comply with their collective consultation obligations and any Code of Practice made under Section 203 of the 1992 Act that provides for adjustment of compensation, the compensation they would owe to employees could be increased by up to 25%.

This change is designed to increase the deterrent effect of the Code of Practice on Dismissal and Re-engagement (“the Code”), which was published by the previous government and came into force on 18 July. The protective award is a key potential claim in dismissal and re-engagement scenarios.

The Code sets out how employers should act when seeking to change employment terms and conditions. It requires employers to contact the Advisory, Conciliation and Arbitration Service before raising the prospect of fire and rehire and seeks to ensure that fire and rehire is only used as a last resort.

While the Code is an inadequate measure to deal with fire and rehire, it will at least provide a small additional level of protection for workers.

The Employment Rights Bill introduced to Parliament last week contains a measure which, once in force, will end unscrupulous fire and rehire tactics and ensure it can only be used when an employer genuinely has no alternative.

Yours ever,

A handwritten signature in black ink, appearing to read 'Justin Madders', with a long horizontal flourish underneath.

JUSTIN MADDERS MP

Minister for Employment Rights, Competition and Markets
Department for Business and Trade