

# Monday Morning Dispatch

YOUR WEEKLY EMPLOYMENT LAW NEWSLETTER FROM CHADWICK LAWRENCE

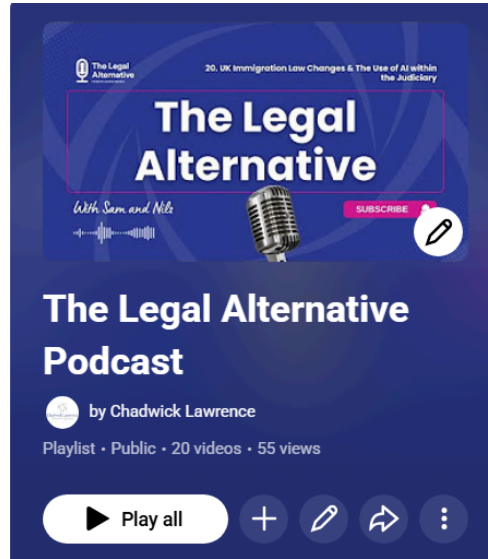
Coming  
up this  
week...

- In Daniel's second instalment to his series on 'Fire & Rehire', he discusses the concept of 'restricted variations'.
- In the news, we take a look at whether potential employers should pay an individual for a work trial/ trial period, including the legal implications.
- Join the waiting list for our Mock Tribunal below!

## The Legal Alternative Podcast



### Catch Up on Our Episodes




🌐 The Legal Alternative Podcast

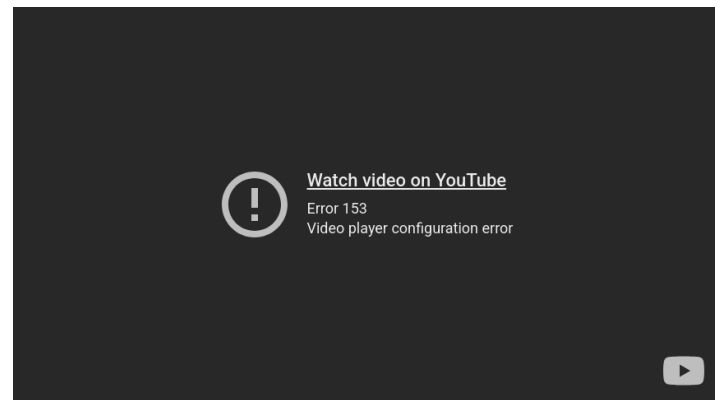
## The Media Hub



### Fire and Re-hire - Part Two

Building on the introduction to fire and re-hire provisions, we now discuss the concept of "restricted variations". We focus on specific changes to elements of the contract such as pay, hours and holidays which may create a risk of automatic unfair dismissal claims if a refusal to agree leads to termination of employment.

 Fire and Re-hire - Part Two



## In the News



**Should a potential employer pay an individual for a work trial/ trial period?**



It's well accepted within many job markets that candidates should be expected to do a work trial before commencing employment. November is a particular time of year where many employers will be looking to hire seasonal staff for the necessary extra cover over the festive period. However, should employers be paying candidates during their work trial and are employers unknowingly breaching legislation by expecting candidates to trial for free?

### **What Counts as a Genuine Work Trial?**

Legislation does not explicitly ban unpaid trial shifts. However, if the unpaid trial period extends across more than one full shift, or several days, then unpaid trial shifts of this length in a real (not simulated) work environment are likely to create an entitlement to minimum wage. This is because the actions taken by the individual is almost certainly of substantial value to the employer rather than testing the individual's ability to perform the specific task that the work requires.

However, in some circumstances an unpaid trial work period lasting a few hours may be reasonable and not create an entitlement to minimum wage. This is due to the main purpose being to *test* the individual, and this test would therefore just be an analysis of their performance rather than having any other beneficial value to the employer. The substance of the arrangement would therefore concern recruitment rather than providing work under a contract; in this event, the candidate in question would therefore not be entitled to the minimum wage.

The proportionate length of time the employer will need to sufficiently test the candidate's ability will be assessed on a case-by-case basis. Therefore, it is important to look at whether employers are genuinely testing candidate's ability prior to recruitment or if they are being used to provide additional value to the business.

### **What is the risk of not paying for a potential employee for a trial shift?**

- HMRC may investigate the business for not paying employees minimum wage;
- A claim may be brought against the business in the employment tribunal;
- The business may suffer reputational damage resulting in a loss of profits and potential difficulties recruiting new staff;
- Fines of up to 200% of underpaid wages, capped at £20,000 per worker.

### **What should employers look to do?**

To mitigate any potential risk employers should make sure they have planned prior to the trial shift what is necessary to sufficiently test the candidate. Further to this the employer should as much as possible keep the candidate informed as to what is expected on the trial shift and that the trial shift will be unpaid.

## Upcoming Events



### **Seminars & Events Autumn/Winter 2025**

## Mock Tribunal Event: Disability Discrimination & Flexible Working



### TIME

8:30 AM – 12:00 PM

### LOCATION

Weetwood Hall Estate, Leeds, LS16 5PS



🌐 Mock Tribunal Event

## Contact Us



For questions, feedback, article ideas, or story contributions, email [boxhr@chadlaw.co.uk](mailto:boxhr@chadlaw.co.uk) and we'll be in touch.

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