

v

EMPLOYMENT LAW DEPARTMENT

# Changing Terms and Conditions of Employment

**Dean Wilson LLP** Solicitors

Ridgeland House, 165 Dyke Road, Brighton, BN3 1TL **01273 249 200**

## **1. Does an employer have the right to change an employee's terms and conditions of employment?**

---

When considering whether terms and conditions need to be changed, the first thing that an employer should do is decide if there is actually any need to amend the contract itself or whether they need to amend something that is non-contractual, such as a policy or procedure. However, even when a policy or procedure is stated to be non-contractual this doesn't mean that it actually is. A policy can become part of an employee's terms and conditions of employment in various ways, for example through custom and practice. Working on the basis that a contractual change needs to be made, an employer first needs to see if they have a contractual right to make the change.

## **2. Many employment contracts contain a general clause saying that the Company reserves the right to amend the terms thereof from time to time upon reasonable notice being given. Would this allow an employer to make a change to contracted hours of work?**

---

Even when the contract includes this kind of clause, employers need to keep in mind that general variation clauses are construed very narrowly by the Courts. As such, if an employer is making a change that will affect employees to their detriment, then they may not be able to rely on a general clause to impose the change unilaterally.

## **3. What other options exist and what are the risks if a change is just imposed?**

---

We often suggest that employers start a consultation process with the aim of seeking the employees' express agreement to the change, either orally or in writing but ideally in writing. Through this process an employer will often make a presentation to all of the affected employees giving them warning of the proposed change and explaining why the change is being made. If there is the potential that the employer can offer an incentive to encourage the employees to agree to the change (such as a new bonus scheme, or a one-time payment) then this can be introduced at the same time.

In addition to any group presentation or meeting, an employer will also need to have consultation meetings to receive the employees' feedback on the change and consider any objections before deciding how to proceed. The number of employees will be relevant to the consultation obligations as well.

If the employees don't agree to the change but it is imposed anyway, they may resign and bring a constructive unfair dismissal claim and potentially a wrongful dismissal claim. Alternatively, they may work under protest.

## 4. Other than imposing the change, what other options are there?

---

If employees refuse to agree to a change, it is possible to terminate their existing contracts and offer them continued employment on the new terms but there are legal risks associated with this course of action, mainly the risk of an unfair dismissal claim. Even if the employees choose to accept the offer of new employment, they could still bring a claim so employers need to act very carefully before imposing the change, mainly as regards consultation, in order to reduce the risks of litigation.

Changing contract terms is a tricky area and one where legal advice in advance is usually required.

Victoria Wright

 01273 249277

 [vjw@deanwilson.co.uk](mailto:vjw@deanwilson.co.uk)