

EMPLOYMENT LAW DEPARTMENT

Changing Terms and Conditions of Employment

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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. If no such right exists, and even if it does (see further details below) it may be necessary to obtain the employee's consent to the changes.

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 and express consent to the proposed changes should be sought.

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. Through this process an employer will often make a presentation to the affected employees giving them warning of the proposed change and explaining why the change is being proposed. 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 should also meet (probably individually) with the employees to receive their feedback on the proposed changes and consider any objections before deciding how to proceed.

If the employees don't agree to the change but it is imposed anyway, and it is a sufficiently serious change, an affected employee may resign and bring a constructive unfair dismissal claim and/or a wrongful dismissal claim. Alternatively, they may continue to work under protest but bring an unlawful deduction from wages claim if the change imposed means that they now receive less remuneration than previously.

4. Other than imposing the change without consent, what other options are there?

If employees refuse to agree to a proposed change to the terms and conditions of their employment, it is possible for the employer to give notice to terminate their existing contracts of employment and offer them continued employment on the new terms. There are legal risks associated with this course of action, mainly the risk of an unfair dismissal claim. The employer adopting this course of action will need to make sure that they can demonstrate a clear business need to make the change, that it had consulted with the employees about the change and sought to obtain their consent and had then acted reasonably in treating the lack of consent to the change of terms and conditions as a reason justifying dismissal and the offer of re engagement.

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

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