

Changing Employment Contracts Guide

Overview

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Our expert lawyers have used their years of experience dealing with these matters to create this guide for you to use as a reference tool.

The guide has been condensed as much as possible to make sure you only get an overview of the area, for that reason it should not be viewed as comprehensive or as a substitute for specific legal advice.

If you have the benefit of a legal expenses policy with us, then the guide can be used in addition to the advice we provide and you should contact our advisors for advice in relation to any specific situations.

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CHANGING EMPLOYMENT CONTRACTS

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Given the nature of an employment relationship and the fact that it is possible for someone to continue in employment for decades, it becomes inevitable that occasionally employment contracts will need to change.

This isn't an issue when both parties agree. Like with any contract, the terms can be changed by mutual agreement of the parties. This could be as a result of a promotion or a pay rise or an agreed change in working patterns.

However, difficulties often arise when one party wishes to make a change and the other party refuses. Technically, as an employer if you change an employee's contract without consent, you will be at risk of a number of claims.

Getting agreement

If it becomes necessary to make changes to an employment contract, the first step will usually be to seek agreement with the employee or employees in question.

Usually the best way to do this will be to consult with the employee or employees in question and explain fully the reasons you are having to make a change. Hopefully, with an understanding of why it would be in the best interest of the business to make a change, the employee will be supportive and prepared to assist.

Consider the possibility of a compromise – for example, if you have decided to remove an entitlement to contractual sick pay, could you offer an extra holiday entitlement?

Bear in mind that when you are dealing with a number of employees, it might be that only one will refuse to agree. Asking for individual agreement, rather than collective agreement, can avoid issues that could arise where one employee is refusing to accept the change.

Any meetings should be documented and if agreement is achieved, then the employee should confirm their agreement in writing.

Failure to get agreement

If you are unable to get agreement you could leave things as they are and continue with the original terms and conditions.

If, however you decide to go ahead and change the contract without an employee's consent you will be in breach of contract. Therefore, you will be at risk of potential claims.

If you are prepared to take that risk, there are generally two ways to go about making the change:

1. Forcing the change upon the employee by explaining that from a specific date, the change will apply.
2. Terminating the employee's contract, usually on the ground of "*some other substantial reason*", and offering to re-instate the employee if they sign a new contract.

If you decide to force the change through, there will be a risk that the employee resigns arguing the change amounts to a fundamental breach of their contract. The employee could then pursue a claim for constructive unfair dismissal. If the change relates to a reduction in pay, there is also a chance that the employee could pursue an ongoing unlawful deduction from wages claim.

There is also a chance that the employee could work under protest and bring a breach of contract claim for damages and or seek an injunction to prevent the change.

Terminating and offering new terms will usually prevent unlawful deduction claims, so it may be more appropriate when making changes that have an impact on pay. It should also prevent the employee from working under protest. However, if the employee doesn't accept the new contract, they could pursue a claim for unfair dismissal. You would then have to persuade a tribunal that you had a fair reason to terminate, i.e. some other substantial reason and that you followed a fair process.

Unfair dismissal claims can only be brought if the employee has been working with you for at least 2 years.