



CHANGING TERMS OF EMPLOYMENT

Most changes to a contract of employment e.g. pay increases and promotions will normally happen by mutual consent. Difficulties can arise where an employer or employee wishes to make other changes which the other party will not accept.

A contract may only be amended in accordance with its terms or with the agreement of the parties. If an employment contract is varied without agreement or provision within the contract this will result in a breach of contract.

If an employer is in breach of contract the employee can bring proceedings for sums due under the contract and damages or if it is a serious breach the employee may treat himself as dismissed, leave and bring proceedings for constructive dismissal.

If an employee is in breach of contract the employer may withhold or deduct wages.

Amendments may be made in accordance with the terms of the contract itself. Some contract terms can be interpreted broadly to facilitate a change or there may be flexibility clauses which allow specific or general changes to the employment relationship such as a mobility clause.

However employers have the duty to exercise flexibility clauses reasonably and to provide adequate notice to employees of any changes. When interpreting terms the Courts and Employment Tribunals will seek to determine what the parties intended at the time of entering the contract. Careful drafting is essential as any ambiguity in the relevant term will be interpreted against the party seeking to rely on it.

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If the desired change is not authorised by the contract itself there are three ways in which the employer may vary the contract of employment without breaching it.

- *Seeking the employee's express agreement to the new terms-*

This could be done on an individual basis or through a collective agreement which is binding on the employees concerned. This is the simplest option for employers and ideally written confirmation of the agreement should be obtained. There must be some benefit to the employee for the change to their contract; this can usually be satisfied through the employee's continued employment.

- *Imposing the change and relying on the employee's conduct to establish implied agreement to the change-*

If the employee does not wish to accept the variation they should make it clear they are working under protest and do not accept the new terms.

- *Terminating the employee's employment and offering re-employment under the new terms-*

This may leave employers vulnerable to wrongful and unfair dismissal claims. However, if there is a sound business reason for the change to terms the employer should be able to establish a defence to such claims.



If you would like to know more about the subjects covered in this publication, please contact Louise Attrup on 01727 735663 or la@turnerdebs.co.uk