

Changing the Terms of an Employment Contract

Employment terms often change over time when employees are promoted or receive a salary increase, for example. There are, however, certain changes to employment terms that employees are less willing to accept, such as pay cuts, changes to working hours, or the addition of new duties. It is therefore important that employers understand how to amend an employment contract with minimal risk of conflict.

Consultation

A contract can only be amended according to its terms or with the agreement of the employer and employee. Employers are therefore strongly advised to consult with employees (or their representatives if they are part of a trade union or staff association) whenever any change is going to be made to their employment terms. Even though some changes won't require the contract to be altered, the consultation process should still be carried out to avoid any chance of employees making a claim against you later on.

Importantly, it should be noted that contractual amendments are only legally binding if the employee gains some type of benefit in return, such as continued employment.

Express Agreement

If the contract does not grant the employer the right to amend it without the employee's consent, the first course of action would be to seek 'express agreement' from the employee. Securing express agreement to the proposed contractual changes is the simplest, least contentious route when amending a contract. Employers are urged to get the employee's consent in



writing, as written agreements are easier to back up in court than verbal agreements.

To get the employee's express agreement, the reasons for the proposed changes should be carefully explained during consultations. Employers should also listen to the employee or employee or their representative's suggestions for alternative changes, and be willing to negotiate if necessary. If the proposed changes are due to disciplinary action (for example, in the case of a demotion), the employer should refer to the employee's existing contract and to the employee handbook in explaining the reasons for the changes.

Unilaterally imposing the change

Some employers opt to unilaterally impose changes to an employee's terms, taking the employee's silence as implied agreement. This typically occurs where the change has an immediate practical effect, and the employee continues to work without objecting. However, this is a dangerous approach, as silence does not necessarily indicate agreement—even more so when a change does not have an immediate impact. Employers risk the employee complying with the terms but working 'under protest'; the employee may then claim for a breach of contract or, if the change is a pay cut, for unlawful deductions from wages. There is also a chance that the employee may resign and claim for constructive dismissal.

Dismissal and re-engagement on new terms

The third option available to employers is dismissing the employee and offering re-engagement on new terms. When taking this route, employers should give

an appropriate notice period or offer payment in lieu of notice. Otherwise, there is a risk of the employee claiming for wrongful dismissal. Unless a fair reason can be given for dismissing the employee for failing to agree to the change in terms, the employee may also claim for unfair dismissal.

Top priority: avoiding conflict

Employees are fully within their right to refuse changes to their employment contract and litigate if they feel they have been treated unjustly. As claims against a business can be extremely damaging to its reputation and brand image, it is therefore always in an employer's best interests to seek the least contentious route possible when amending employment terms. In the event of a dispute, employers should always consult with a solicitor experienced in employment law before taking action.

For more information or for expert advice on business or personal legal issues, call us on 020 3475 6751 or via email at info@carterbond.co.uk

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