

Employment Law Fact Sheet No. 6

CHANGING CONTRACT TERMS



From time to time it may be necessary to make changes to terms of employment.

The contract may be made up of several sources of information including, amongst others:

- Letter making the offer of employment
- Written contract of employment
- Written terms and conditions of employment
- Staff handbook
- Known custom and practice

The first step is to consider what the documentation says about making changes. For example, a contract of employment may include a written right for the employer to make reasonable changes to the usual place of work, or an employee's hours of work.

What if the proposed change is not covered? Imposing the change without the employee's consent is unlawful and in some circumstances may entitle the employee to resign and claim constructive unfair dismissal.

Making a change

- Consult with the employee. Explain what you want to do and why. Seek consent.
- Is there flexibility within the terms of the contract? If yes and the change does not have a hugely significant effect on the employee go ahead with the change.
- If not, think again. Are there good business reasons for making the change? If the answer is yes, consult with staff again and seek agreement to the change.
- If they will not agree the only remaining option is to seek to dismiss under the old contract (giving notice) and re-engage under the new terms. This will always carry the risk of unfair dismissal claims but where you have good business reasons for wishing to make the change it may be possible to justify the dismissal as being for "some other substantial reason".

- In light of the mass dismissals involving P&O Ferries, in March 2022 the Government announced that a new Statutory Code on dismissal and re-engagement (so-called “fire and re-hire”) would be published. This will also allow tribunals to apply an uplift of up to 25 per cent on employee compensation where the code applies and has unreasonably not been followed.

Be Aware!

The Employment Rights Bill (not yet law) aims to dissuade employers further from the practice of fire and re-hire, where employees who do not agree to proposals to change their contractual terms are dismissed and then re-engaged on new terms in substantially the same roles.

Changes that do not require consent

Changes do not require consent where they are not contractual terms.

For example:

- Changes to works rules – instructions and guidance in relation to method of working or dealing with certain aspects of the job.
- Non-contractual or discretionary benefits, (e.g. discretionary bonus schemes). However, proceed with caution; a discretionary benefit may have become contractual if it has been routinely applied.

Action points

- Always consider whether the change is a variation of a contractual term. E.g. asking the employee who mucks out the stables to also drive a horsebox will usually be change in working practices only.
- Visit ACAS Advice Leaflet - [Varying a Contract of Employment](#) or guidance if you are proposing changes.

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