

## changing employment contract terms

**If you want or need to change the terms and conditions of staff's employment, can you just do so and inform them or is it more complicated than that?**

The basic principle is that employment contracts can only be changed by agreement. Making a unilateral change, however much notice you give to the employee, will be a breach of contract. This means that the change will not take effect and cannot be enforced but may also expose you to a claim of unfair constructive dismissal.

Some changes would not, however, involve an alteration in the existing terms of employment and therefore would not be a breach of contract. The exceptions are not necessarily universal and each contract needs to be individually considered. The following are examples of changes that may not be a breach of contract:

- changes to methods or techniques of working, such as manual to computerised record keeping, which lead to a change in an individual's duties
- changes in accordance with express flexibility clauses in the contract (although you are still required to implement the changes in a reasonable manner)

What do you do when you want to make a change that is not covered by these types of situations?

The best approach, if possible, is to obtain agreement to the change. It is helpful if you can give something in return for the change (like a bonus payment, a salary increase, increased holiday or promotion). Apart from making the change more attractive, it helps to demonstrate to a court that the benefits of the change were not all one sided – in your favour.

If you cannot come to an agreement, there are two basic approaches that you can take to impose the change:

1. announce the change and implement it
2. terminate the existing contract with proper notice and offer re-engagement on the new terms

If you take the first approach, the employee may accept the change despite their initial protest. However, they may continue to protest, insist on the terms of the original contract, and either bring a claim for breach of contract or resign and claim constructive dismissal. You are unlikely to have a defence to either of these claims and the tribunal may not only award compensation for the loss they have suffered as a result of the change or dismissal but also make an award that they are reinstated to their job on their original terms. In addition, claims in these circumstances could be made long after the change is implemented.

If you take approach two, the employee is being dismissed and can therefore still claim unfair dismissal. However, you are more likely to be able to defend a claim on this basis than under approach one and minimise any compensatory payments. Importantly however the change will not be revoked.

### points to note:

- Record any agreed change and its implementation date, clearly in writing as soon as possible.
- Imposing a change carries legal risks and the risk of damaging employee relations.
- If you cannot get agreement to a change, be sure that the business requirements for it outweigh the damage you may do as a result.



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