



**Honest Employment  
Law Practice Ltd**

*Help! On your terms!*

## Variation of Contract

Mutual agreement is the only really safe way to make changes to a contract of employment.

Explain the issue and the particular circumstances driving the need for change. Listen to any ideas or suggestions from the other side. Discuss the issues with a view to reaching a mutually agreeable outcome.

Where a clause in the contract permits changes to be made take care this is not discriminatory e.g. flexibility or mobility clauses may affect women more than men or be disadvantageous to disabled employees. A job description may encompass minor changes to how a job is carried out or changes as result of reorganisation such as new equipment or automation.

Where a union is recognised for collective bargaining purposes the negotiations can be with union representatives or officials. The agreement reached will be implied into individual contracts.

### **Where agreement can not be reached**

Where a new agreement cannot be reached the employer needs to consider very carefully whether the proposed change is necessary and how strong the business case is for the proposed change.

Following this course of action can result in the employee making a claim to the Employment Tribunal for unfair dismissal.

If the employer decides, after careful consideration, to implement the change then by giving proper due notice (contractual or statutory minimum as appropriate) a breach of contract claim will be avoided.

The offer of a new contract including the new terms to continue directly from the termination of the old contract protects continuity of employment.

The employee then has to decide how to respond.

The employee has options when faced with termination of their existing contract and offer of a new contract. They will have been through a consultation period about the proposed changes and not reached an agreement so it is unlikely they will want to agree now.

However the employee has the option of accepting the new terms and conditions and continuing to work under the new contract without taking any further action.

Another option is for the employee to leave at the end the notice period. Obviously this is a drastic step for an employee to take, unless they have already lined up another job.

In both instances there has been a dismissal and if the employee has the necessary qualifying service a claim of unfair dismissal can be made to a tribunal. The employer would then have to show that the dismissal was fair and reasonable in the circumstances.

If an employer simply announces a change without any prior consultation or notice (a unilateral change) it will be a breach of contract. Depending on how serious this breach is will determine the option an employee has in response. If the change is a minor one the employee may have no option other than to accept the change and work on under the new terms.

If a change is more serious or fundamental it can be said to break the contract and can lead to an employee leaving and claims for constructive dismissal and/or breach of contract.

Another option is for the employee to work on under protest whilst trying to resolve the issues or take action through the courts. This is not an open ended option as the employee must be actively trying to resolve the issue either by negotiation with their employer or by taking action to seek damages from the loss resulting from the employer's action. This type of claim can be made only in the High Court and is an expensive option.

A tribunal's jurisdiction extends only to breach of contract claims arising on termination of employment.