

Key Considerations When Changing Employment Terms

Understanding the existing contract and consulting before implementing changes can reduce the risk of disputes and help employers reach an agreed outcome.

-  **Is the Term Contractual?**
Identify whether the proposed change affects an express contractual term, a collective agreement, a policy or a working practice that may have become contractual through custom and practice.
-  **Is Agreement Required?**
Employment contracts are legally binding and changes will usually require agreement between the employer and employee, unless an existing contractual provision lawfully permits the particular change.
-  **Flexibility Clauses**
Review whether the contract contains a flexibility or variation clause. These clauses should be interpreted carefully, and employers should still consult employees before relying on them to introduce a change.
-  **The Business Rationale**
Explain what the organisation is trying to achieve and why the proposed changes are being considered. Employees are more likely to engage constructively when they understand the underlying business reasons.
-  **Meaningful Consultation**
Consultation should be a genuine two-way process. Employers should explain the proposal, listen to concerns and alternatives and remain open to modifying the original proposal.

Employee Representatives

Determine whether a recognised trade union, employee forum or other representatives must be involved. Contractual changes covered by a collective agreement may need to be negotiated with the recognised union.

Discrimination Risks

Consider whether the proposed changes could disproportionately disadvantage employees with a protected characteristic. This can be particularly relevant when changing working hours, locations or flexibility arrangements.

Recording Agreed Changes

Where agreement is reached, confirm the new terms clearly in writing. Changes to the employee's main employment particulars must generally be recorded in writing within one month.

Where Agreement Cannot Be Reached

Consider whether further negotiation, a modified proposal or another business solution is possible. Employers should not move prematurely to dismissal simply because agreement has not immediately been achieved.

Dismissal and Re-engagement

Under the current statutory Code of Practice, dismissal and re-engagement should only be considered as a last resort after reasonable attempts to reach agreement. An Employment Tribunal can increase relevant compensation by up to 25% for an unreasonable failure to comply with the Code.



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