

Variation of terms and conditions

Employment Rights Advice Leaflet

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This leaflet gives general guidance to employees on the main legal issues which arise when employers want to change the terms of a contract of employment. Varying contractual terms is legally complex and it is advisable to seek legal advice at an early stage, before changes have been made.

Your contract of employment is a binding agreement between you and your employer which governs your working relationship. It can include terms that are either '*express*' or '*implied*'.

- **express terms** are terms which have been explicitly agreed between the parties, either in writing or verbally. Examples include terms relating to pay, hours of work, or holidays.
- **implied terms** are those which have not been explicitly agreed between the parties, but are nevertheless considered to be a necessary part of the contract if it is to work in practice. Terms may be implied into a contract because of legislation (for example the right to be paid at the level of the National Minimum Wage). The courts will also in certain circumstances imply terms, where it is necessary to do so. Examples include: the duty on employers to provide a safe working environment; or the duty on employees to obey reasonable and lawful instructions.

No written contract?

Many people think that a contract of employment must be in writing. This is not correct. A contract is simply a binding agreement: it can be written or agreed verbally.

Written contractual documents are important from a legal point of view because they are evidence of what has been agreed. It is often hard to identify contractual terms which are not written down, because there may be a disagreement between the employer and employee over exactly what has been agreed.

Employees are entitled to receive a statement of their main terms and conditions not later than two months after the beginning of their employment. See ERAS leaflet "**Your Written Statement of Terms and Conditions of Employment**".

If there is a dispute about the terms of a contract of employment, it may be necessary for a court or tribunal to decide what the terms of the contract are.

Varying a contract of employment

Over time your contract may change. This may be because of changes to rights implied into your contract by new legislation, such as an increase in the level of the National Minimum Wage. Or it may be because of changes in working methods, which have evolved over time and been accepted by both the employer and employee. Sometimes your employer may wish to vary your rate of pay, duties or hours of work, perhaps due to a change in the economic circumstances of the business.

Changes must be made by agreement

From a legal point of view your employer can only vary your contract where you agree to the changes proposed. You can agree to this verbally, in writing, or tacitly by continuing to work under the contract after it has been changed. Sometimes an agreement is reached between your employer and a trade union on behalf of all the work force. This is known as a "collective agreement". Alternatively your contract may contain express terms which allow your employer to make certain changes to the conditions under which you work. These are known as 'flexibility clauses'. Changes to working arrangements which are covered by a flexibility clause are likely to be lawful.

Revised statement of written terms and conditions

Any variation of your terms and conditions should be included in a revised written statement of terms and conditions. You should receive written confirmation from your employer of any changes made to the contract within a month of the date on which such changes take effect.

Variation of the contract without agreement

Although legally you can refuse to agree to a change in your terms and conditions, in practice many employers decide to impose the change anyway. If your employer imposes changes in your contractual terms without your agreement, this will normally be a breach of contract. Alternatively your employer may decide to terminate your contract by giving you notice and then offer you a new contract on different terms and conditions (see below).

Your remedies when contract changes are imposed

If your employer imposes changes which are “fundamental”, without formally terminating the contract, you may be able to treat yourself as dismissed. A fundamental breach might include a substantial pay cut or a major change in your hours of work, which are not allowed by the contract.

In such a situation you may be able to bring a claim for Unfair Dismissal, as well as a claim for breach of contract (often you will need to have one year’s continuous employment to claim Unfair Dismissal).

Alternatively, you could decide to continue working, under protest. If so, you should make it clear in writing that your decision to continue working does not mean that you agree to the change in the terms of the contract. You could then sue your employer for the loss of any benefit: for example if your pay is reduced you could sue for the balance between your original rate of pay and the new reduced rate.

The Employment Tribunal

A complaint for unfair dismissal or breach of contract connected with the termination of employment must be made to an Employment Tribunal within three months of the date of the variation of contract, which you are treating as a dismissal.

Termination of the contract by notice

If, after negotiation, you and your employer cannot agree on changes to the contract, the employer may terminate the original contract. The employer should give you proper notice, which will either be the period set out in your contract or the statutory minimum period,

whichever is greater. (Under the statutory scheme you receive one week’s notice for a period of employment lasting between one month and two years, then a further one week for each year after that, up to a maximum of 12 weeks for 12 years’ service).

Your employer may then impose a new contract, on altered terms and conditions – and offer the new job either to you or to any other applicant. This may leave you with the stark choice of deciding whether to leave or accept the new terms and conditions. In such a situation it is always best to seek further advice.

Whether you leave your employment by refusing to accept the new contract or are dismissed under the old contract and re-engaged under a new one, the termination of the contract will count as a dismissal in law, giving rise to a possible claim for Unfair Dismissal.

In order to make a claim for Unfair Dismissal to an Employment Tribunal you normally need to have at least one year’s continuous employment.

From a legal point of view the dismissal could be fair or unfair and it will be for an employment tribunal to decide which applies, having considered all the circumstances.

Settling disputes

It is always preferable for employers to try to negotiate changes to contracts with their employees. If you are a member of a trade union, you could ask the union to negotiate on your behalf. If you are not a member of a trade union, you should see a solicitor, or seek advice from ERAS, your local Law Centre, Citizens Advice Bureau, or other independent advice centre.

For further details contact:

Employment Rights Advice Service (ERAS)
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www.lowpayunit.org.uk

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