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Changing an employment contract

NOTES

1. Getting agreement

Usually, the employer and employee both need to agree to any contract changes. But an employee can insist on a change if they have a legal right to it.

Employers

You must get an employee's agreement if you want to make changes to their contract.

You should:

- consult or negotiate with employees or their representatives (eg from a trade union or staff association)
- explain the reasons for changes
- listen to alternative ideas from employees

You may also want to talk with workers, asking them about their future plans. With older employees this can include talking about their thoughts on retirement and their options for staying in the job, eg changes to their role, hours or working pattern.

Employees

Explain to your employer why you want to make the changes. You can insist on a change if it's covered by a statutory right - eg [not working on a Sunday](#).

2. Making changes

Once employers have agreed on changes with their staff, they need to:

- update the terms of their employees' ['written statement'](#) of employment conditions
- write to their employees within a month to tell them exactly what has changed

If an employer changes terms and conditions that aren't in the written statement (eg the right to sick leave), they should tell their employees where to find information about the change. This could be in a company handbook, noticeboard or intranet site.

Collective agreements

Employers must write to their staff to let them know about any changes to [collective agreements](#) with trade unions or staff associations.

These changes might affect the terms of employees' written statements, including pay and working hours, whether or not they're a member of the union or staff association.

Flexibility clauses

Flexibility clauses are terms in a contract that give employers the right to change some conditions of employment, eg relocation.

Employers can only use flexibility clauses to make reasonable changes.

Example

An employer couldn't use a flexibility clause to insist on an employee moving to another country to work with 1 week's notice.

Changes of employer

If someone starts working for a different employer, they'll normally have to be given a new written statement within 2 months.

However, if the name of a business changes or there's a [new employer](#) but no other changes in terms and conditions, the employer doesn't need to issue a new written statement. They still need to write to their staff about the changes within a month.

Disciplinary measures

Sometimes changes to an employee's terms and conditions, like a demotion, can happen as a result of a [disciplinary measure](#).

Employers should make sure the staff handbook or intranet site contains information about how this could happen in the section dealing with disciplinary procedures.

3. Dealing with problems

Problems can arise if:

- an employer tries to change a contract without agreement, or re-employs someone on new terms and conditions
- there is a breach of contract where one of the terms in a contract is broken (eg an employer doesn't pay agreed wages or employees don't work agreed hours)

Solving disputes

Employers and their staff should try to [solve disputes](#) about contract changes by talking informally or through [mediation](#).

Employees can also get advice from their trade union representative (if they're a member of a union), [Citizen's Advice](#) or [Acas](#) (Advisory, Conciliation and Arbitration Service). In Northern Ireland, they can get advice from the Labour Relations Agency (LRA).

Acas helpline

Telephone: 0300 123 1100
Monday to Friday, 8am to 8pm
Saturday, 9am to 1pm
[Find out about call charges](#)

LRA helpline

Telephone: 028 9032 1442
Monday to Friday, 9am to 5pm
[Find out about call charges](#)

If the problem can't be solved, employers or employees may have the right to take legal action. It's important to get advice first because legal action can be expensive. Trade union members may be able to get legal advice from their union.

Making a change without agreement

If an employer makes a change to a contract without getting agreement (including by using flexibility clauses unreasonably), employees may:

- have the right to refuse to work under the new conditions
- say that they're working any new terms under protest, and are treating the change as a breach of contract
- resign and claim [constructive dismissal](#)
- be able to take a case to an [employment tribunal](#)

! In Northern Ireland an employment tribunal is known as an 'industrial tribunal'.

If an employee disagrees with new terms and conditions but doesn't say or do anything, this may count as agreeing to the changes.

Re-employment on new terms and conditions

Employers may, as a last resort, end a contract and re-employ someone on new terms and conditions.

Employers who are [dismissing employees](#) must follow the legally required:

- [redundancy procedure](#) in England, Wales and Scotland
- statutory minimum dismissal in Northern Ireland

If an employer does dismiss and re-employ someone, they may be able to take a case to a tribunal and claim:

- breach of contract
- [unfair dismissal](#)

Breach of contract claims

If an employee claims breach of contract and they can't solve things informally with their employer, they may be able to take their case to a civil court or an [employment tribunal](#) (or an industrial tribunal in Northern Ireland).

Their employer may be able to make a counter-claim.

Claims and counter-claims can only go to a tribunal if they:

- are related to an employment contract issue
- still haven't been solved when the employee ends their employment

! The claim or counter-claim can't be related to a personal injury, or certain types of contract term like [intellectual property rights](#).

Time limits

Usually, employees must make a claim to a tribunal within 3 months of ending their employment. The employer gets 6 weeks from receiving a copy of the claim to decide whether to make a counter-claim.

Compensation limits

If the tribunal agrees with the employee's claim, they may award compensation. This can only be for financial loss (eg non-payment of wages), up to a maximum of £25,000.

Last updated: 27 August 2015

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