

Changing Terms & Conditions of Employment

Employment

Trying to change your employees' terms and conditions can be tricky. It's a complex area and one which often causes problems in trying to balance the needs of your business and the rights of your employees. The following note sets out general guidance to employers.

Changes to policies

Often staff handbooks or other policies will not be regarded as contractual. This means that you will usually be entitled to change staff policies without your employees consent.

Flexibility clauses

Sometimes contracts will contain clauses which allow the employer to vary terms and conditions of employment without the consent of the employee. These clauses can be referred to as flexibility clauses.

Changing terms & conditions of Employment without a flexibility clause

The safest way to change your employees' terms and conditions of employment is to obtain their consent. Where the amendment is relatively minor, it is commonplace to issue revised contracts, or a memo containing the new contract terms, and ask the employee(s) to sign and return a copy containing a declaration that they agree to the change in terms and conditions.

Changes without consent

If agreement can't be reached with your employees you could decide to terminate the employee's original contract (with proper notice) and offer him/her a new one including the revised terms. The new contract must be offered to start immediately the old one comes to an end. We would recommend that the employer takes specific advice on this point before dismissing and re-engaging. If the employer is dismissing and offering re-engagement to more than 20 employees the collective consultation procedures apply. The collective consultation procedures are outside the scope of this guidance note.

A genuine business need

In order for the above dismissal and offer of re-engagement to be fair, the employer must have a genuine business need for making the change. An employer does not have to show that the change is essential but just that there is a sound business reason for imposing the change.

Reasonableness

The employer must also be able to show that the dismissal is reasonable in all the circumstances including the procedure used to bring in the change. In order for the imposed change to be fair, the employer must hold proper meaningful consultation with the employees, to try to reach agreement, listen to the employees' representations and compromise wherever possible. Consultation is an important factor in judging the reasonableness of the proposed change.

Conclusion

A degree of flexibility in the ability of employers to vary the terms and conditions of employment of their employees is not only desirable but essential to meet changing business needs and/or economic changes and uncertainty. However, this needs to be balanced against ensuring that there is a genuine business need for the change, that any changes are introduced fairly after due consultation between the employer and the employee and that appropriate notice is given to the employee prior to the implementation of the change(s). In the absence of any of these factors employers risk Employment Tribunal claims.