



GUIDANCE ON **AMENDING A CONTRACT OF EMPLOYMENT**

If an employer needs to make a change

If there is a flexibility clause

If there is no flexibility clause

When changes are agreed

When changes are not agreed

Employees: if you do not agree to changes

Employees: If you want to change your contract

If an employer needs to make a change

An employer can make a change ('variation') to an employment contract if:

- i. there's something in the contract that allows the change (usually called a 'flexibility clause');
or
- ii. the employee agrees to the change

An employer can force a new contract on employees, although this should be a last resort and could lead to legal action.

If there is a flexibility clause

If the contract that says the employer can change ('vary') specific terms of employment, for example:

- i. hours or days worked
- ii. rates of pay
- iii. the place of work

This is known as a 'flexibility clause' or 'variation term'.

It is important to check the flexibility clause wording to see:

- i. what the employer can specifically change
- ii. if the employer needs to give any notice to make a change
- iii. if the employer needs to follow a certain process to make a change

Even if a change is covered by a flexibility clause, it's still a good idea for the employer to talk with employees before deciding to make a change.

Talking to employees from the start can help implement a change that:

- i. meets the needs of the business
- ii. works for both the employer and employees

If there is no flexibility clause

If the employment contract does not allow the change proposed then the employer will need firstly to try and obtain the consent of the employee.

Open discussion with employees about changes to their contract helps:

- i. employers and employees work together to agree changes
- ii. prevent potential disagreements or legal disputes
- iii. If an employer needs to change a contract, the first step is to talk with employees

Before consulting employees, it's a good idea for employers to think about:

- i. why they need to make a change
- ii. what they need to achieve by making a change

Consultation should be a two-way process where ideas are shared and worked on together.

The employer should:

- i. explain the reason behind making the change
- ii. invite employees to talk about their concerns and suggest ideas for alternatives
- iii. listen to employees' concerns and consider their ideas
- iv. do everything they can to resolve any employee concerns

The employee should:

- i. consider the proposed change and reason for the change
- ii. share their views, concerns and any ideas for alternatives with the employer
- iii. continue to talk to the employer about any concerns
- iv. make sure they have tried all options to reach an agreement

Considering all options and asking employees for ideas can help agree a change. Employees might suggest something the employer had not thought of.

Depending on the proposed change, employers might consider:

- i. asking for volunteers (if the change might suit some employees more than others)
- ii. offering incentives to employees
- iii. taking on some of the employees' ideas

Incentives do not have to be pay-related, for example, an incentive could be:

- i. extra leave or time off
- ii. help with travel costs for a time if employees will have to travel further to get to work

When changes are agreed

Agreed changes do not always have to be in writing, but it's a good idea to prevent any misunderstandings. It can also help to say when changes will take effect.

If a change relates to anything that must legally be in the employee's written terms (statement of initial employment particulars), the employer should notify the employee of the change in writing as soon as possible.

For example, the employer should do this if the change relates to:

- i. the job title
- ii. the job description
- iii. the job location
- iv. pay
- v. working hours
- vi. holiday entitlement

When changes are not agreed

If an employer and employee cannot agree a change, it's often best for them to keep talking for as long as possible and make every effort to reach a compromise.

It can help both the employer and employee if they:

- i. keep talking
- ii. consider all options
- iii. follow their workplace's policies, for example, employees should use the employer's grievance procedure if they are not happy with the proposed change

If there's no flexibility clause and changes cannot be agreed, the employer might still be able to make a change.

If agreement cannot be reached, an employer might decide to dismiss and rehire ('re-engage') the same employee under a new contract. This should be a last resort, and only after consulting the employee.

If you're an employer considering this option, first think about:

- i. whether you've done everything you can to reach agreement
- ii. whether the changes are absolutely necessary
- iii. the risk to employee engagement and morale
- iv. the risk of legal action

If deciding to dismiss and rehire, the employer should:

- i. follow a fair dismissal procedure
- ii. give the employee their contractual notice
- iii. offer the employee a right of appeal against their dismissal

Changes should not take place until the employee has been fairly dismissed and then rehired under the new contract.

The employee keeps continuous service if the new contract starts immediately after the old contract ends.

If an employee feels they've been unfairly dismissed from the original contract, they might be able to make a claim to the Labour Regulating Authority. They would usually need to have worked for 1 year for the employer to make a claim.

If you are an employer considering dismissing and rehiring employees, it is best to get legal advice first to check you are making the right decision.

An employer might be breaking a contract's terms and conditions (in 'breach of contract') if they:

- i. force a change without the employee's agreement or a flexibility clause in the contract
- ii. dismiss and rehire an employee without notice

Breach of contract could lead to legal action.

Forcing a change without discussion or agreement could also lead to:

- i. disputes
- ii. lower levels of engagement and performance in the workplace
- iii. employees working under protest

If there has been a breach of contract, an employee could make a claim against the employer for:

- i. damages at a civil court
- ii. unlawful deduction from wages before the Labour Regulating Authority, if the change affects pay
- iii. unfair dismissal before the Labour Regulating Authority if an employee felt forced to leave a job because the employer made their pay a lot less

Making changes to employment contracts can be a complex legal matter and legal advice should be sought.

Employees: if you do not agree to changes

If you have concerns about contract changes proposed by your employer, it is best to start by speaking to them.

It can help to:

- i. check if your contract has any flexibility clauses
- ii. explain how the proposed changes will affect you
- iii. listen to your employer's reasons for proposing the change
- iv. take part in your employer's consultation, if they offer it
- v. think about any compromises you are willing to make
- vi. talk to your employee representative if you have one
- vii. think about making a formal complaint ('raising a grievance')

If you do not agree with proposed changes, it's usually best to keep talking to your employer and see if you can find an arrangement that suits you both.

Think about:

- i. the employer's reason for the proposed changes
- ii. the effect of the changes on you
- iii. any other options that you could look at
- iv. what could happen if you cannot reach an agreement

The more you discuss the changes with your employer, the more likely you are to reach an agreement.

If you feel you want to take things further, you can make a formal complaint to your employer ('raise a grievance'). This can be a useful way to keep talking with your employer about the changes.

If you make a formal complaint it can help to:

- i. raise your concerns about the changes
- ii. explain how the changes will affect you
- iii. share your ideas for alternatives
- iv. say what you are willing to compromise on

If a change is imposed that you do not agree to, you can choose to stay and temporarily work to the new terms and conditions 'under protest'. You should only work under protest for a short time so you can formally raise your concerns with your employer, or take legal action. The longer you work under protest, the higher the risk that you could be seen as accepting the change.

It's important you make it clear to your employer you are working under protest (usually in writing on a routine basis, for example every time you get paid). If you do not tell your employer your

objections and start to work under the new terms and conditions, they could see this as you accepting the change.

If you feel your employer has broken the terms and conditions of your employment contract or dismissed you unfairly, you might be able to make a legal claim. You should seek legal advice before you do this

Employees: if you want to change your contract

If you feel you want to make a change to your contract or get your contract updated, it's best to start by talking to your employer.

If your job has changed, you can ask for changes to be put in writing by your employer.

For example, if you have:

- i. been doing work that is different to your original agreement
- ii. started a new job in the same organisation

An employer does not always have to put changes in writing, but it's a good idea they do. Even if you do not have anything in writing, you still have certain employment rights and protections by law, from when you started working for the employer.

If you're an employee and the changes affect your written terms (statement of initial employment particulars) you can ask your employer to provide an updated copy.

If you want to make small changes to your role or employment terms and conditions, you need to get agreement from your employer first.

It's a good idea to:

- i. talk openly about why you need the changes
- ii. explain your point of view
- iii. consider your employer's point of view and why the changes might not be suitable
- iv. think about any compromises you could make

When both you and your employer have agreed, it's best to get everything in writing. If the changes affect your written terms, your employer should provide an updated copy

Your employer does not have to agree to changes, but you can keep talking with them to try and reach an agreement. If you have still not reached an agreement and think you want to take things further, you could:

- i. make sure you have tried everything by talking with your employer
- ii. consider making a formal complaint ('raise a grievance')
- iii. seek legal advice or ask a Lay Advocate to intervene on your behalf