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Changing Contract Terms

The extent to which an employer can unilaterally change working arrangements or the terms of a contract depends entirely on the terms themselves. The employer has no inherent or implied power to change the contract terms of an employee, no matter how unreasonable or inconvenient they may be. But this applies only to contract terms. It does not apply to non-contractual benefit packages, nor to job descriptions unless the job description has been incorporated into the contract. Job descriptions are no more than instructions given by the employer as to which parts of the contractual duties the employee should concentrate on and how these duties are to be performed. At law these are regarded as being dynamic rather than static, and therefore subject to reasonable change according to the needs of the business or organisation.

An employer will sometimes wish to say that new terms will apply 'whether an employee likes them or not'. Such an imposition of new terms contrary to the wishes of the employee is a breach of contract by the employer. It is a potentially serious breach of contract, which may amount to a repudiation of the contract enabling the employee in question to resign and bring a claim for (constructive) unfair dismissal.

Instead of trying to impose his wishes, if an employer wishes to change the terms of an employee's contract he should first try and agree the change with the employee (without any suggestion of duress!). If he is successful, the contract will be varied as agreed, there will be no breach of contract and therefore no possible claim. If, however, change is still resisted after explanation of why it is needed and negotiation, it is time to consider how necessary the changes are in a business sense. If they are genuinely necessary for sound business reasons, the employer's last resort will be to terminate the existing contract – giving proper notice and following proper procedures, at least the statutory minimum procedure for dismissal- and offer re-employment on the new terms. If the employee refuses re-employment on the new terms and brings a claim for unfair dismissal, the employer will then have to defend his decision on the basis of "some other substantial reason", i.e. the change was driven by a genuine business need. Dismissal can be justified where there is a genuine organisational need for change and, in addition, the employer can show that he has followed a proper procedure.

At the very least, as referred to above, the employer must follow the new statutory minimum procedure, which involves informing the employee in writing of the reasons dismissal is contemplated, inviting him/her to a meeting to discuss it (at which the employee has the right to be accompanied by a colleague or union official), and holding a further meeting if necessary to hear any appeal against the decision taken at the original meeting. The offer of new terms made to the employee must be reasonable from the standpoint of a reasonable employer. Any

objecting staff should be given full information, the consequences should be explained to them, and they should be allowed time to come to terms with the change (e.g. in one case a company was held to be justified in changing the work pattern of an employee to include working during school holidays. The employer gave plenty of advance notice to enable the employee to make arrangements for child care. The dismissal was fair).

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