

Changes to Employment Contracts – what are my rights?



Your Questions Answered

This Frequently Asked Question sheet provides guidance on the rights you have if your employer tries to change the terms of your employment contract.

For free, tailored advice on any of the issues discussed in this FAQ or any other aspect of employment law, please call (028) 9024 4401 and ask to speak to an employment adviser.

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What is my employment contract? How can I check what I have agreed with my employer?

Your employment contract is a pre-existing agreement between you and your employer. It sets out your:

- Employment conditions
- Rights
- Responsibilities
- Duties

By law an employer must provide their employees with the main terms of their employment in writing within two months of them starting a job. This is known as the 'written statement of employment particulars'. These particulars do not constitute the contract itself but can be taken to be strong evidence of what the contract is.

All employees have a contract of employment – this can be either a physical contract (written down in your employment particulars, workplace policies and/or your contract) or a verbal contract (for example, an understanding reached at interview or when you were offered the job). Verbal contracts are harder to prove.

In addition, contract terms can be express, implied or inserted by statute.

Express Terms

Express terms can be written down or verbally agreed. They might be in your written particulars or your contract, or agreed at interview or when you were offered the job. For example, an individual might be offered a job over the telephone and asked to work Monday to Friday. It is therefore an express term of this person's contract that their work days are Monday to Friday. Similarly, if that person is given written employment particulars that state that their workplace will be at a certain address, this is also an express term of their contract.

Implied terms

Implied terms fill a gap left by the absence of an express contractual term. They are often governed by 'custom and practice'. An example of this would be where an employer has given all employees 7 weeks holidays for the past 5 years. While not written down anywhere, the 7 weeks holidays have become a contractual term as this has been the custom and practice in the company for the past 5 years.

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There are also other universal implied terms which apply to all employees. For example, 'mutual trust and confidence'. Mutual trust and confidence effectively means that both parties - the employee and the employer – are contractually bound to act appropriately. An employee is contractually bound, for example, not be abusive in the workplace, while employer is contractually bound not to insist that an employee move a great distance at short notice to continue carrying out their duties. There is also the expectation that employees will carry out reasonable orders and take care of the employer's equipment, while the employer is expected to look after the health and safety of all employees.

Inserted by statute

Due to the unequal bargaining power between employees and employers, legislation is in place to protect some basic employment rights. For example, minimum notice periods and the national minimum wage. An employer cannot get around this legislation by inserting an express contractual term which contradicts the law. A term which is less favourable than statute dictates will not be valid and will be unenforceable.

Can my employer change the terms of my contract without asking me?

It is unlawful for either you or your employer to make changes to your employment contract without the agreement of the other. Your employer should consult with you before and seek your agreement before making any changes.

I do not agree with the changes my employer wants to make to my contract. What can I do?

There is no obligation to accept changes to your contract of employment, however, it is worth considering why your employer is suggesting the changes and if a compromise can be reached. For example, if your employer is requesting a change to your place of work because your current workplace location has closed down, it may be reasonable for you to accept this change or suggest an alternative suitable location. There is no one-size-fits-all advice here – you should consider your decision based on your specific circumstances.

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If you do not want to accept the new proposed terms, the following is a list of alternative options:

- [Work under protest](#)
- [Refuse to accept the change](#)
- [Pursue a claim for unlawful deductions from wages](#)
- [Pursue a claim for breach of contract](#)
- [Resign and claim constructive unfair dismissal](#)

These options are explained in more detail below.

What is working under protest?

Working under protest – also known as ‘stand and sue’ – is where you continue to work under the new terms, but protest to your employer. We strongly advise letting your employer know the reasons for your objection in writing as soon as a change is made.

The advantage of this approach is that it keeps your options open. Should your objections not be met after a period of working under protest, all other options to address the issue are still open to you. Please note, if you do not outline your objection in writing and continue to work under the new terms, this could be construed as implicit acceptance.

What happens if I refuse to accept a proposed change?

If you refuse to accept the new terms, it is then up to your employer to take what action they feel is appropriate. For instance, your employer may decide to dismiss you from your role, but offer you a new job with the proposed changes written into your contract. This approach is risky, and could lead to a claim of unfair dismissal.

How can I pursue a claim for unlawful deductions from wages?

If your employer makes changes that result in a reduction in your pay, you may be able to pursue a claim for unlawful deductions from wages in the Industrial Tribunal. It is possible to do this while remaining in your job. To start this process, you should lodge an ET1 claim form at the Industrial Tribunal. You can find more information about the process [here](#). It may be beneficial to first raise a grievance in writing, following the Labour Relations Agency’s [Code of Practice on Disciplinary and Grievance Procedures](#). Be careful that your three month tribunal time limit does not expire while in the grievance process.

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How can I pursue a claim for breach of contract?

You can pursue a claim for breach of contract if your employer has tried to impose terms on you without your consent or broken your current terms of employment.

There are two ways to pursue a claim for breach of contract. If you have left your job or your contract has terminated or come to an end, you can bring a claim to the Industrial Tribunal. Please see more information on the tribunal process [here](#). If you are still in your job, you can bring your claim at the County Court or another civil court. In either case, if your claim is successful, you may be entitled to payment for damages.

What is constructive unfair dismissal and how do I claim it?

Constructive unfair dismissal is where you feel you have no option but to resign from your job because of an employer's breach of your employment contract. There will be a series of events leading up to a 'final straw'. It is advisable to raise a grievance with your employer in the first instance and in doing so you should follow the [Labour Relations Agency's Code of Practice on Disciplinary and Grievance Procedures](#). If the outcome of the grievance does not resolve matters, you can resign with immediate effect, without giving or working your notice.

To claim, you will need to have one complete year of service with your employer and your employer must have imposed changes that make a significant difference to your contract (such as reducing pay or altering your working hours) or which have breached the implied term of mutual trust and confidence.

Please note, constructive unfair dismissal cases can be extremely hard to prove and such cases have a relatively low success rate at tribunal.

I am not happy with the new terms of employment proposed by my employer. How soon do I need to act?

You should make it clear that you are unhappy with the proposed terms of employment in writing as soon as you reasonably can. You should not continue to work under the new arrangements without outlining your objections to your employer. If you keep working and fail to protest, this may be taken as proof or implicit consent that you have accepted the new arrangements.

Do the changes made by my employer need to be given to me in writing?

Any changes to your contract do not necessarily need to be communicated in writing. However, if they change any of the terms outlined in your written statement of employment particulars, your employer must give you a written statement outlining what has changed. This must happen within a month of the changes being made.

My employer says there is a flexibility clause in my contract that allows them to make changes. What does this mean?

Some contracts include flexibility clauses, that give an employer the right to change certain conditions. This could include altering shift patterns or place of work.

However, flexibility clauses are more complex than they might appear. They must set out clearly what changes the employer is entitled to make and they cannot be too broad. For example, a clause which read '*the employer can make change to the employee's terms and conditions as they see fit*' would not be enforceable. Further, a clause which gives the employer a right to change an employee's place of work to any location in the UK, would also likely be held as too broad. Any changes made under a flexibility clause must follow the procedure or mechanism set out in the clause, or it may amount to breach of contract.

My employer is proposing to dismiss me from my job and re-hire me on new terms of employment. Can they do this?

This is a relatively common approach for employers to take and is legal. However, your employer must give you any notice period to which your contract entitles you before your job ends. They may also need to follow the [Statutory Dismissal and Disciplinary Procedure](#). Whether or not they need to follow this procedure depends on how many employees are being dismissed. If the employer is dismissing and offering re-engagement to all the employees in the company, or in a particular category or role, they do not need to follow the Statutory Dismissal and Disciplinary Procedure. However, if they are only trying to change the terms of contract of one or a small number of individuals, then they have to follow the procedure.

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It is a risky approach for the employer to use, as it will leave them open to claims of unfair dismissal, if the employees in question have more than one year's service.

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