



Demoting staff: HR guide

Description

Introduction

When **demoting staff** employers have to tread carefully. Here is a guide on some of the key things to consider.

Demoting staff and altering duties

Substantially altering an employee's duties could effectively amount to a **demotion**.

Demotion does not just occur when an employee is formally demoted to a lower position. If key responsibilities or tasks are taken away from the employee, that could be seen as a demotion too.

In the employment contract often a clause will state that the employer may assign additional duties to the employee, from time to time, as required by the business. Usually, an implied term would be read into the clause that those duties would have to be similar in terms of existing status and responsibilities.



If the contract sets out the employee's duties and the employee is then stripped of some of those duties the employer may well be in breach of an express term of the contract. In addition or as an alternative, the employee could argue that the employer is breaching the implied term of trust and confidence.

Formal demotion

An employer must have a contractual right when **demoting staff**. The Advisory, Conciliation and Arbitration Service's (Acas) [code of practice on disciplinary and grievance procedures](#) states that the usual sanctions in [disciplinary](#) cases are written warnings, final warnings and dismissal. The relevant Acas [guidance](#) clarifies the position. If an employer wishes to impose another sanction, it must either be allowed for in the contract or the employee's consent must be obtained.



When might an employee consent to **demotion**? Supposing their actions justified dismissal but the employer was willing for them to continue in employment, albeit in another role? The employee might agree to a different role, even at a lower status and reduced salary, rather than being dismissed.

Constructive unfair dismissal

If the employer takes away key parts of the employee's role or formally demotes without justification, the employee could consider resigning and bringing a claim for constructive unfair dismissal. To succeed in a claim the employee must have resigned quickly as a result of a fundamental breach of contract by the employer. This could be a breach of trust or another major breach of contract.

The employee would normally need to have at least two years' service to bring the claim, though the new legislation will reduce the qualifying period from two years to six months.

The maximum compensation award is, currently, the lower of 52 weeks' pay or £118,223. The new employment legislation will abolish the 52 week and financial cap.



Demoted employees could have other claims too, such as for discrimination.

It is therefore important to think carefully before demoting an employee.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need any advice on **demoting staff** or other employment law issues please do not hesitate to [contact me on 020 3797 1264](#)

Do check [mattgingell.com](#) regularly for updated information.