



Varying employment contracts: HR guide

Description

Introduction

In this HR guide on **varying employment contracts** I cover the general legal position, specific flexibility clauses, general flexibility clauses, consideration and offering re-engagement on new terms.

The general position

Generally, unless the employment contract allows the employer to make changes the employer will need to get the employee's agreement to **vary the employment contract**. If the contract permits the change no variation will be required and obtaining the employee's agreement will therefore not be necessary. Changes may of course have a positive or negative impact on the employee.

When an employer imposes a change without the employee's agreement the employee has a few options. The employee could decide to accept the change, particularly if objecting is likely to result in the employee being placed at risk of [redundancy](#). The employee could continue working but make it clear that they are working under protest. Alternatively, depending on the seriousness of the breach, the employee might decide to resign swiftly on the basis that the employer fundamentally breached their employment contract. The employee may have various claims, depending on the circumstances.



Specific flexibility clauses

An employer may be able to rely on a specific flexibility clause to make the change. Examples could include [mobility clauses](#) (allowing an employer to change the employee's place of work) or a clause allowing the employer to [change the employee's duties](#). However, the Courts have tended to interpret the clauses narrowly and care needs to be taken when drafting such clauses.



General flexibility clauses

It is quite common for employers to include a clause at the end of the contract that states that the employer has a general right to make changes to the contract. However, employers would have considerable difficulty in relying on these clauses to the detriment of the employee. The clause would usually only allow the employer to make minor administrative changes.

Consideration

Even if the employee agrees to a contractual change in England and Wales there needs to be consideration though there is no requirement for this under Scots law.

Giving consideration means that if the employer wishes to make a change to the employee's detriment, the employer will have to offer something positive in return. This could, for example, be increasing pay or providing a contractual benefit.

No consideration is required if the variation is signed as a deed.



Offering re-engagement on new terms

When an employer cannot get the employee's agreement there is currently another option for the employer. Providing the employer can demonstrate a sound business reason for the change, carries out consultation obligations as required (which could also involve [collective consultation](#) as well as individual consultation), warns that any continued refusal could result in the termination of employment and offers re-engagement on the new terms a subsequent dismissal could be fair.

However, proposed new legislation will make it automatically unfair to dismiss an employee for refusing to agree to a change to their terms, or to replace the employee with another employee on varied terms to carry out substantially the same duties. There will be a limited exception where the business can show that it was in financial difficulties and the need to make the change was unavoidable.

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

If you need any advice on **varying employment contracts** or have other employment law queries please do not hesitate to [contact](#) me on [020 3797 1264](tel:02037971264).

Do check mattgingell.com regularly for updated information.