



## Varying Contracts

Some matters can be changed by an employer without the agreement of employees and these include non-contractual policies and procedures and working practices. However this is not necessarily the case with contracts of employment and it is therefore important to take advice regarding any proposed variation of a contract.

### Why change a contract of employment?

There are lots of reasons why either an employer or employee may wish to vary a contract of employment.

An employer may need to change contractual terms because of economic circumstances or because they are undertaking a reorganisation of their business, whilst an employee may seek to amend the contract so that the terms are more favourable or better suited to their individual circumstances.

### How can contracts be varied?

A contract of employment can be varied in the following ways:

- By agreement following consultation
- Unilaterally by one party
- By termination and re-engagement on new terms

Any variation to a contract will be a permanent change unless agreed otherwise.

Given the permanency of a change, employers and employees should approach the variation of a contract cautiously. In particular, employers need to be aware that some changes, if made without consent, may entitle an employee to resign and bring a claim for unfair constructive dismissal.

Employers can also build some flexibility into a contract of employment to help them vary a contract more easily by using an express term in the contract stating that a particular term can be varied by them. For example, duties which the employee undertakes or the place at which the employee is employed.



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## Other things to consider

All variations should be recorded in writing and should be signed by both parties. This can therefore be used as evidence of the agreement reached between the employer and employee.

Certain clauses such as mobility clauses or restrictive covenants need to be drawn up with particular care to ensure they can be relied upon in the future. You should seek specialist advice on the nature, implications and enforceability of such clauses.

Although the Employment Equality (Age) Regulations 2006 outlaw unjustified discrimination on the ground of age, they do allow employers to apply different contractual provisions and benefits for the first five years of employment when compared to longer serving employees. However after that an employer has to prove that the provision of such benefits are justified because they fulfil a business need such as encouraging loyalty or motivation, or rewarding the experience of some or all of the workers.

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