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## VARIATION OF TERMS OF CONTRACT OF EMPLOYMENT

### *Can an employer vary an employee's contract of employment?*

An existing contract of employment can only be varied with the agreement of both an employer and an employee. If an employer proposes changing the terms of an employee's contract of employment they should fully consult with that employee or his or her representative and explain that reasons why such change is sought and that implications of any such change for the employee. Variations to the employment contract should be recorded in writing and an employer must give their employee one month's notice in writing of all changes.

### *Does an employer need an employee's consent before imposing a change to their terms and conditions of employment?*

An employee must agree to any changes in their terms and conditions of employment. In most instances the contract of employment will contain an express term allowing an employer to make changes in working terms and conditions and so the employee will often have agreed to any changes on commencement of employment.

### *What happens if an employer varies a contract of employment without their employee's consent?*

If an employer varies a contract of employment without an employee's consent, this will constitute a breach of contract. If an employee accepts the breach and continues to work under the revised terms and conditions without objection, they may, in due course, be regarded as having agreed to the change in their terms and conditions.

If the change involved is significant an employer may be deemed to have fundamentally breached the terms of the employment contract. In such circumstances the employee may be entitled to treat the employment contract as having come to an end and leave their employment. An employee could then claim constructive dismissal i.e. that the conduct of their employer was such that the employee could no longer be expected to continue in employment thus entitling them to reasonably terminate their employment. An employee may then take a claim for unfair dismissal.

Alternatively, an employee may continue in employment, however, at all times maintaining their objection to the variations in their terms and conditions and making it clear that they are treating any changes to be a breach of their employment contract. They could then seek damages from their employer for breach of contract in the civil courts and/or a declaration from the courts that their employer must abide by the terms of their original contract. Employers should also be aware that where they seek to reduce their employee's wages without their consent, such action, as well as constituting a breach of contract could also give rise to an action under the Payment of Wages Acts as giving rise to an unlawful deduction of wages.

***What can an employer do if their employee is not agreeable to varying their terms and conditions of employment?***

Where, after negotiation, an employer finds that their employee is not agreeable to a variation in their terms and conditions of employment, they having failed to reserve the right to vary the terms in the contract of employment, the only option is for that employer to terminate their employee's original contract, with proper notice, and offer a new contract to the employee, including the revised terms. If the employee accepts the new contract, continuity is preserved. Under the law, however, such termination will be regarded as a dismissal and employees will have a right of action for unfair dismissal as they will be deemed to have been dismissed and re-engaged.