



Legal Brief on contractual changes

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Can my employer change my contract?

An employer cannot legally change the terms of your contract of employment without your agreement. If an employer imposed changes without your agreement which resulted in a financial loss, such as a reduction to your hours/salary, this is likely to amount to a breach of contract.

My employer has told me that they have a contractual right to change my contract as there is a flexibility clause in my contract, is this correct?

Contractual flexibility terms may give an employer the right to make changes where it can be interpreted to specifically cover the term it proposes to change. However, an employer cannot give itself free reign to make any changes it wants by simply including a term in an employee's contract to that effect. Further, it cannot change statutory terms, such as the right to statutory minimum notice.

What can I do if my employer imposes a change without my agreement?

An employee has several options open to them if their employer imposes changed terms:

- They can waive their right to take action by continuing to carry on working under the changed terms as their conduct is likely to amount to an implied agreement to the change
- If the change is a fundamental breach they can resign and claim constructive dismissal
- They can refuse to work under the changed terms, for example if it involved a change in duties or hours
- They can work to the new terms under protest and bring a claim against their employer to recover their ongoing losses



- Where the change can be said to amount to a termination of the old contract, the employee can work under the new contract and claim to have been unfairly dismissed from the old contract

Who can claim constructive dismissal?

Only employees who have over a year's continuous service (from 6 April 2012 this changed to two years for employees commencing employment after this date) are eligible to claim constructive dismissal. Employees will need to show that their employer has committed a fundamental breach of contract, that they resigned in response to this (and not for any other reason) and they did not delay too long in resigning.

If I refuse to work to the new terms what can my employer do?

An employer may decide to dismiss an employee who is not working to the new changed terms and may offer to re-employ them under the new contractual terms. If this happens the employee could bring an unfair dismissal claim. This would mean that the employer would have to show that they had a fair reason to dismiss and they acted reasonably in treating the refusal to agree to the new terms as a sufficient reason to dismiss to defeat this claim.

My employer has not paid me my contractual bonus payment, I do not want to leave my job so how can I make a claim for this loss?

You have two choices in terms of bringing a claim against your employer whilst working under protest:

- Bring a claim of breach of contract in the High Court or County Court to claim the bonus sum as damages for breach of your contract or seek a declaration that the employer must abide by your original contractual terms and pay you the bonus payment
- Bring a claim of unlawful deduction of wages in the Employment Tribunal

Employees should bear in mind that bringing proceedings against their employer whilst still employed is likely to have an adverse impact on their working relationship.

Contact Karen Bristow for your employment issues: t. 01256 854670, kbristow@phillips-law.co.uk