



Top tips to employers for changing terms and conditions

One of the UK's largest employers, the NHS, has been in the news recently for implementing an unpopular change to terms and conditions without employees' consent. In that case there was a lot of negative publicity and strike action was taken and is ongoing.

Changing the focus to changing terms and conditions more generally, if the change is not authorised by the contract, there are three ways in which the employer can vary the contract of employment:

- obtaining the employees' express agreement to the new terms (either individually or through a collective agreement which is binding on the employees concerned)
- unilaterally imposing the change and relying on the employees' conduct to establish implied agreement to the change
- terminating the employees' employment and offering re-employment on the new terms

Each of the options have their own drawbacks, however obtaining express agreement to the terms is often to the simplest, most straightforward option.

Whilst we won't go into the detail of how to change terms and conditions here, we've put together some practical tips for employers on how to implement changes as smoothly as possible.

1. Explain why the change is necessary - if the alternative to an unpopular change is restructure and inevitable redundancies then explain this. It might be easier to demonstrate that the change is the lesser of two evils.
2. It's all about the presentation - if you need to obtain employees' consent (whether through individual meetings or through a collective consultation process) think about how you are going to present the changes. Set out all of the positive as well as the negative changes and explain what that would mean for the employees. Ultimately, think about the overall package that you are presenting to employees. If questions are raised try to answer them as best you can.

3. Can the changes be staggered? Do all of the changes have to happen straight away? It might be possible to make some changes over time and put in place transitional arrangements. In an ideal situation, give employees plenty of notice before the implementation of any changes.
4. Can you offer a sweetener? Can you offer staff an incentive to accept the change? Offering an additional benefit in exchange for a detrimental change might be a way to secure agreement. Also, remember that there may also be non-financial ways to incentivise staff to agree to a change.
5. Choose your time carefully - it might be more difficult to convince employees to agree to a proposed change if morale is low at a particular time of the year. If something beneficial is due to happen to employees in the foreseeable future it might be advisable to link the change to it. For example, it might be easier for employers to introduce a change to a contractual bonus structure at the same time as annual salary reviews. The salary increase could then be presented as part of a larger package, in exchange for a less favourable change in a bonus structure.

Of course, it is not always possible to obtain consent from all employees, and other routes may be necessary, however obtaining express consent is often the best starting point to enforce a change.