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# Myerson **Employment**

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**Our guide to varying contracts of employment**

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# Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

## Why Myerson?

Our Employment Solicitors offer clear and confidential advice to businesses facing employment issues.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Employment Team** by clicking [here](#).



# Varying contracts of employment

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There may be many reasons for an employer to consider making changes to employees' contracts of employment; these may be operational, efficiency or costs reasons. However, a contract is an agreement between two parties and an employer cannot assume that it has an automatic right to make variations.

## Does the change require formal contract variation?

Before deciding on whether to embark on a formal contract variation process, employers should consider whether the proposed change is permitted under the terms of the existing contract.

A well drafted contract of employment will include flexibility and perhaps mobility clauses which have anticipated the potential need for change. However, even where such clauses are included in the contract, an employer must enforce such clauses with care to avoid claims that trust and confidence between the employer and employee has been undermined.

Where the change is more than minor and not permitted under the contract, it will be necessary to negotiate with employees to agree change. This will involve effective communication, bargaining and appropriate notice.

In unionised workplaces there may be requirements under recognition or collective agreements to consult or negotiate with trade unions in relation to proposed change.



A variation to a non-contractual policy or a minor or administrative contractual change may be made by giving notice to an employee of the change without a formal process.

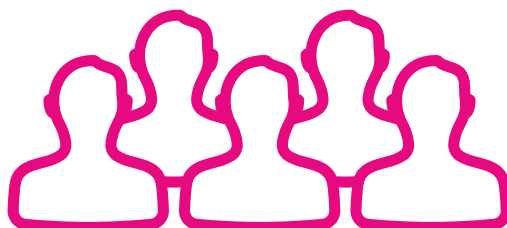
## What if employees do not agree to change?

Employers are sometimes tempted to implement change without agreement. This approach is not recommended and can involve significant risks;

- where changes imposed are fundamental, an employee may be entitled to resign and claim unfair constructive dismissal in response to a breach of contract;
- employees may choose to remain in employment but protest against the change, meaning that the change may give rise to latent claims for unlawful deductions from wages or breach of contract;
- changes that have no immediate impact, e.g. changes to notice periods and restrictive covenants may not be effective at all.

Where change is essential, employers will need to consider the termination of existing contracts of employment, with an offer of re-engagement on the new terms.

This approach is a last resort; it involves a dismissal which may be found unfair unless the employer can prove a sound business reason for the change and that it has acted reasonably in all of the circumstances. Issues of discrimination can also arise where specific groups of employees with protected characteristics are affected.



# How many employees are affected?

Where an employer proposes to terminate the contracts of 20 or more employees in these circumstances, the employer will be required to comply with statutory requirements to inform and consult with trade unions or other employee representatives about the proposed dismissals.

# What is the recommended approach?

The best advice is always to approach the need for change with a view to reaching agreement with employees about changes to their terms and conditions. Change can often be achieved through good communication, consultation and bargaining, whether with a trade union or other employee representative body or on an individual basis.

These steps are in any event, critical steps for the purpose of the employer being able to demonstrate that it has acted reasonably in all of the circumstances if it becomes necessary to implement change through termination and reengagement.

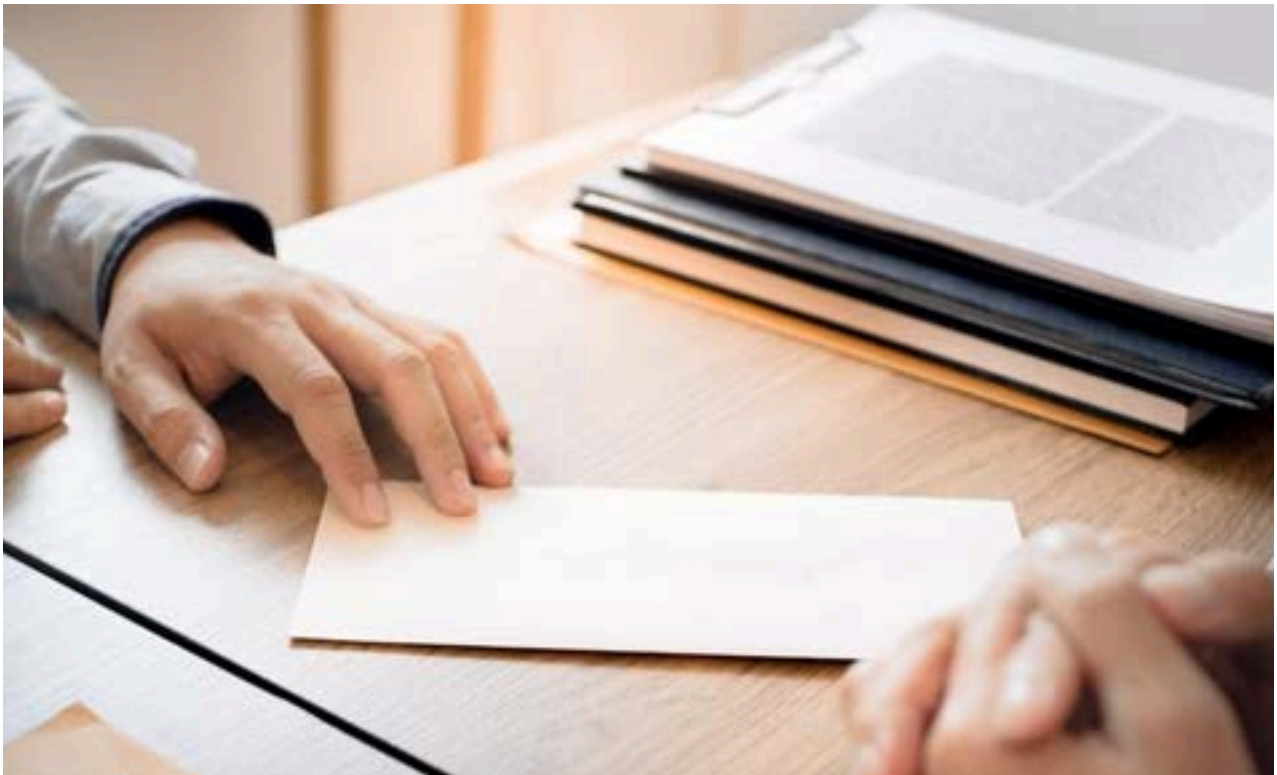
In the absence of a trade union or other employee representative body with a mandate for agreeing change on a collective basis, the employer will need to agree change on an individual basis with employees. This may involve individual consultation meetings and consideration of individual cases. It should also involve clear documentation confirming the changes agreed.

In the absence of agreement, the employer will need to weigh up whether the proposed change warrants an approach where employees are dismissed and offered re-engagement. If the change is crucial, employees will need to be warned of the effect of non-agreement and be properly consulted prior to any steps to terminate the employment.



Where significant numbers are involved, the employer will need to engage in formal consultation; this will significantly affect the timetable for change:

- if it is proposed that 20 or more employees are dismissed, the formal consultation period must not be less than 30 days; and
- if it is proposed that 100 or more employees are dismissed, the formal consultation period must not be less than 45 days;
- there are also requirements to inform the Secretary of State. Employees will also be entitled to contractual notice periods in relation to such dismissals





# You're in safe hands!

If you would like further information about how we can help you with your **contracts**, or if you have any questions, please don't hesitate to contact a member of our **Employment Law Team** today.

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Call: 0161 941 4000

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