

## Making changes to an Employment Contract

Adding or making changes to contractual clauses in a contract is not as straight-forward as just advising an employee with 4 weeks' notice. The optimal way forward would be to mutually agree changes between the employer and employee(s).

### Before starting ...

- check the terms of employment for an existing flexibility clause;
- understand the impact of the proposed change and the business case for wanting to achieve this;
- is there a Collective Agreement in place – if so follow the process set out in the Agreement?
- consider setting up an employee forum to consult with employees (similar to collective consultation under redundancy rules);



### Meaningful consultation ...

- start the consultation process early and include all affected employees.
- ensure that consultation is meaningful, and not just a box-ticking exercise to say it has been done;
- transparency and clarity are the key words – set out reason for needing to make any changes.



### Reaching Mutual Agreement?

- do not present as a 'done deal';
- do not make 'or else' statements;
- be clear and open about the changes being proposed;
- consider alternative options if presented;
- be mindful of impact on staff morale;
- be aware of any potential statutory risks including acts of discrimination;

### General Considerations:

1. Flexibility clause – is there one in existing terms of employment?
2. If so has this been used previously?
3. Are the changes minor or fundamental – think about the impact on pay, holidays, hours, other benefits?
4. Many existing flexibility clauses may not have been used for some time and also likely to not cover fundamental changes (see 3 above).
5. If a flexibility clause is to be used check re any periods of notice set down in these.
6. If any doubt at all follow the consultation process.

### Force Changing:

Try to avoid imposing any changes on employees as this could result in claims for breach of contract\*.

### Dismissal/Re-engagement:

Unless a comprehensive consultation process has been undertaken to serve notice on existing terms and issue revised ones containing the required variation may result in unfair dismissal and/or breach of contract claims\*.

\*employees do not need to leave a business in order to take forward breach of contract claims.