

Key Considerations for Changing an Employment Contract

1. Flexibility Clause

- Check if the existing contract includes a flexibility clause.
- Assess whether it has been used before and whether it covers the proposed changes.
- Most flexibility clauses do **not** cover fundamental changes (e.g., pay, hours, holidays).

2. Nature of the Change

- **Minor changes** (e.g., job title tweaks) may be easier to implement.
- **Fundamental changes** (e.g., salary, working hours) require careful handling and likely consultation.

3. Legal Risks

- **Avoid imposing changes unilaterally**—this can lead to breach of contract claims.
- **Dismissal and re-engagement** should only be considered after thorough consultation, as it risks unfair dismissal claims.

4. Best Practice for Agreement

- Aim for **mutual agreement** with employees.
- Avoid presenting changes as a “done deal” or issuing ultimatums.
- Be transparent, open to alternatives, and mindful of morale and discrimination risks.
- Confirm any agreed changes **in writing within 28 days**.

5. Consultation Process

- Begin early and include all affected employees.
 - Ensure consultation is **genuine and meaningful**, not just procedural.
 - Clearly explain the business reasons for the proposed changes.
 - If a **Collective Agreement** exists, follow its procedures.
 - Consider forming an **employee forum** for structured consultation.
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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 the 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 (like 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 employee 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.

Consultation Preparation Checklist

Understand the Purpose

- Clarify the real business objectives behind the proposed changes.
- Consider alternative approaches to achieve the same goals.

Anticipate Employee Concerns

- Play devil's advocate—predict objections and prepare responses.
- Practice announcements to avoid inflammatory language.

Information & Approach

- Ensure you have all statutory or agreement-based information ready.
- Decide how to balance employee input with management decisions.
- Be open to adjustments and highlight any benefits of proposals.
- Check for discriminatory impacts and prepare lawful justifications.

Communication Strategy

- Plan the order of delivery for positive and negative elements.
- Ensure specialists are available to explain complex issues.

Formalities & Environment

- Use plain language in presentations.
- Assign team roles and prepare a formal agenda.
- Provide written materials and record their distribution.
- Take meeting notes and agree on them.
- Set a clear timeframe and ensure a comfortable, interruption-free setting.

Personal Dynamics

- Be aware of past relationships and potential biases.
- Avoid patronizing or stereotypical behaviour.
- Manage expectations realistically.

Relationship Management

- Respect representatives' reputation and motivation.
- Understand how their communication affects morale.

During the Consultation

- Use adjournments to manage tension or reassess.
- Acknowledge constructive contributions.

- Manage concessions strategically.
- Keep a record of agreements and clarify next steps.

Ending the Consultation

- Confirm implementation timelines for agreed items.
- Stay open to dialogue until the legal consultation period ends.

 **Need Help?** Contact **JACS** for advice:

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