

## Changing an employment contract

An employer can make a change ('variation') to an employment contract if:

- [there's something in the contract that allows the change](#) (usually called a 'flexibility clause')
- [the employee agrees to the change](#)
- [the employee's representatives agree to the change](#) (for example, a trade union)

An employer can [force a new contract on employees](#), although this should be a last resort and could lead to legal action.

If a proposed change is covered by the [employment contract](#), the employer can bring in the change.

Check if there's anything in the contract that says the employer can change ('vary') specific terms of employment, for example:

- hours or days worked
- rates of pay
- the place of work

Legally this is known as a 'flexibility clause' or 'variation term'.

Check the flexibility clause wording to see:

- what the employer can specifically change
- if the employer needs to give any notice to make a change
- if the employer needs to follow a certain process to make a change

## 2. Check the clause

If a change is covered by a flexibility clause, it needs to be clear and specific about what can be changed.

For example, an employer might be considering a change to an employee's place of work.

If there is a flexibility clause in the contract that says the employee can be asked to work anywhere in the UK, the employer could change their place of work without needing to change the contract.

## Consulting employees when there's a flexibility clause

Even if a change is covered by a flexibility clause, it's still a good idea for the employer to talk with employees before deciding to make a change.

Talking to employees from the start can help implement a change that:

- meets the needs of the business
- works for both the employer and employees

Read more about [consulting employees about a change](#).

## If there's no clause

If there's no flexibility clause covering the proposed change, the employer and employee would need to [agree to the change](#) before it can go ahead.

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Open discussion with employees about changes to their contract helps:

- employers and employees work together to agree changes
- prevent potential disagreements or legal disputes

## 3. Consulting employees

If an employer needs to change a contract, the first step is to talk with employees (or employee representatives like a trade union).

### Before consultation

Before consulting employees, it's a good idea for employers to think about:

- why they need to make a change
- what they need to achieve by making a change

### During consultation

Consultation should be a two-way process where ideas are shared and worked on together.

The employer should:

- explain the reason behind making the change
- invite employees to talk about their concerns and suggest ideas for alternatives
- listen to employees' concerns and consider their ideas
- do everything they can to resolve any employee concerns

The employee should:

- consider the proposed change and reason for the change
- share their views, concerns and any ideas for alternatives with the employer
- continue to talk to the employer about any concerns
- make sure they have tried all options to reach an agreement

## Consulting trade unions

Consulting with trade unions or employee representatives openly and honestly can help to:

- have meaningful discussions with employees
- get a better understanding of employee concerns

Sometimes there is also a legal obligation to [consult trade unions](#).

## Consider all alternatives

Considering all options and asking employees for ideas can help agree a change. Employees might suggest something the employer had not thought of.

Depending on the proposed change, employers might consider:

- asking for volunteers (if the change might suit some employees more than others)
- offering incentives to employees
- taking on some of the employees' ideas

Incentives do not have to be pay-related, for example, an incentive could be:

- extra leave or time off
- help with travel costs for a time if employees will have to travel further to get to work

## If there has been a business transfer (TUPE)

Employers should be careful if changing a contract of employment when there's been a business transfer (TUPE).

When an employee transfers there are some special protections and rules about the terms and conditions in their contract.

In these circumstances, it's important employers consider [getting legal advice](#) before making a change.

Find out more in the [Acas guide to TUPE](#).

Trade unions can agree [contract](#) changes for employees when:

- it's written in the employee's contract that the trade union can agree changes ('incorporated' into the contract)
- it's not written in the employee's contract but the employer normally agrees contract changes with the trade union (an 'implied' term of the contract)

## 4. Check for existing trade union agreements

Sometimes there's an agreement between the employer and trade union ('collective agreement') that says the trade union can agree changes for employees. This could be for changes to specific contract terms like pay or holiday.

A collective agreement can only be enforced if it's included ('incorporated') in the employment contract.

An employee does not have to be a member for a trade union to agree changes for them.

## If a change affects 20 or more employees

If an employer decides to dismiss and rehire 20 or more employees, there is a legal obligation to consult with any recognised trade unions or employee representatives. This is called 'collective consultation'.

If an employer does not hold the collective consultation, they could be fined up to 90 days' pay for each affected employee.

The collective consultation must run for 30 to 45 days (depending on the number of employees being dismissed).

Even if an employer is not planning to dismiss and rehire employees, running collective consultation can:

- save time, if the employer later decides to dismiss and rehire 20 or more employees
- help agree a change with employees

Changes can be agreed verbally or in writing.

Agreed changes do not always have to be in writing, but it's a good idea to prevent any misunderstandings. It can also help to say when changes will take effect.

## 5. When changes must be in writing

If a change relates to anything that must legally be in the employee's [written document of terms and conditions](#), the employer must notify the employee of the change in writing within a month of the change taking effect.

For example, the employer should do this if the change relates to:

- the job title
- the job description
- the job location
- pay
- working hours
- holiday entitlement
- changes to collective agreements with a trade union

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If a change cannot be agreed, it's often best for the employer and employee to keep talking for as long as possible and make every effort to reach a compromise.

It can help both employers and employees if they:

- keep talking
- consider all options
- follow the workplace's internal policies, for example, employees should use the employer's grievance procedure if they are not happy with the proposed change

If there's no flexibility clause and changes cannot be agreed, an employer might still be able to make a change.

## 6. Forcing a change by dismissing and rehiring someone

If agreement cannot be reached an employer might decide to dismiss and rehire ('re-engage') the same employees under a new contract.

This should be a last resort, and only after [consulting employees](#).

If you are an employer considering this option, first think about:

- whether you have done everything you can to reach agreement
- whether the changes are absolutely necessary
- the risk to employee engagement and morale
- the risk of legal action

If deciding to dismiss and rehire, the employer should:

- follow a fair dismissal procedure
- give the employee enough [notice](#) (statutory notice or what's in the contract – whichever is longest)
- offer employees a right of appeal against their dismissal

Changes should not take place until the employee has been fairly dismissed and then rehired under the new contract.

Employees must keep continuous service if the new contract starts immediately after the old contract ends.

### **Risks for employers who dismiss and rehire**

If an employee feels they've been unfairly dismissed from the original contract, there is a risk they could [make a claim to an employment tribunal](#).

If 20 or more employees are being dismissed and rehired, the employer can face legal action if they do not hold 'collective consultation' with any recognised trade unions or employee representatives.

Employers can be fined up to 90 days' pay per affected employee.

If you are an employer considering dismissing and rehiring employees, it is best to [get legal advice](#) first to check you are making the right decision.

## **When forcing a change might break a contract**

If an employer forces a change without agreement or a flexibility clause in the contract, they might be in 'breach of contract'.

Breach of contract is when the terms and conditions of the contract are broken.

An employer could risk legal action if they force a change that is not covered by a flexibility clause.

Forcing a change without discussion or agreement could lead to:

- legal action if there is a breach of contract
- disputes
- lower levels of engagement and performance in the workplace
- employees working under protest

If there has been a breach of contract, an employee could make a claim against the employer for:

- damages at a civil court
- unlawful deduction from wages at an employment tribunal, if the change affects pay
- constructive dismissal at an employment tribunal, if the breach is fundamental and significant – for example, if an employee felt they were forced to leave a job because the employer made their pay a

lot less

Making changes to employment contracts can be a complex legal matter.

You can also speak to an [Acas helpline](#) adviser who will explain possible next steps and the risks and benefits of each. Acas advisers cannot tell you what to do or give [legal advice](#).

If you have concerns about contract changes proposed by your employer, it is best to start by speaking to them.

It can help to:

- check if your contract has any [flexibility clauses](#)
- explain how the proposed changes will affect you
- listen to your employer's reasons for proposing the change
- take part in your [employer's consultation](#), if they offer it
- think about any compromises you are willing to make
- talk to your trade union or employee representative if you have one
- think about making a formal complaint ('raising a grievance')

## 7. Try to reach a compromise

If you do not agree with proposed changes, it's usually best to keep talking to your employer and see if you can find an arrangement that suits you both.

Think about:

- the employer's reason for the proposed changes
- the effect of the changes on you
- any other options that you could look at
- what could happen if you cannot reach an agreement

The more you discuss the changes with your employer, the more likely you are to reach an agreement.

## Making a formal complaint

If you feel you want to take things further, you can make a formal complaint to your employer ('raise a grievance').

This can be a useful way to keep talking with your employer about the changes.

If you make a formal complaint it can help to:

- raise your concerns about the changes
- explain how the changes will affect you
- share your ideas for alternatives
- say what you are willing to compromise on

Find out more on [how to raise a grievance](#).

## Working under protest

If a change is imposed that you do not agree to, you can choose to stay and temporarily work to the new terms and conditions 'under protest'.

You should only work under protest for a short time so you can formally raise your concerns with your employer, or take legal action.

The longer you work under protest, the higher the risk that you could be seen as accepting the change.

It's important you make it clear to your employer you are working under protest (usually in writing on a routine basis, for example every time you get paid).

If you do not tell your employer your objections and start to work under the new terms and conditions, they could see this as you accepting the change.

## Options for making a legal claim

If you feel your employer has broken the terms and conditions of your employment contract or dismissed you unfairly, you might be able to make a legal claim.

If you have been with your employer for less than 2 years, there are fewer options for making a claim.

You can speak to an [Acas helpline](#) adviser who will explain possible next steps and the risks and benefits of each. We cannot tell you what to do or give legal advice.

You might want to [get legal advice](#) to help you decide whether to make a claim.

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If you feel you want to make a change to your contract or get your contract updated, it's best to start by talking to your employer.

## 8. When your job has changed

If your job has changed, you can ask for changes to be put in writing by your employer. For example, if you have:

- been doing work that is different to your original agreement
- started a new job in the same organisation



An employer does not always have to put changes in writing, but it's a good idea they do.

Even if you do not have anything in writing, you still have certain employment rights and protections by law, from when you started working for the employer.

### **When changes must be in writing**

If you're an employee and the changes affect your [written document](#), you can ask your employer to provide an updated copy. They must provide this within a month of the changes being made.

## **Asking for changes to your contract**

If you want to make small changes to your role or employment terms and conditions, you need to get agreement from your employer first.

It's a good idea to:

- talk openly about why you need the changes
- explain your point of view
- consider your employer's point of view and why the changes might not be suitable
- think about any compromises you could make
- talk to your trade union if you have one

In certain cases, you might have [the right to ask for flexible working](#) by law (only if you are an [employee](#)).

When both you and your employer have agreed, it's best to get everything down in writing. If the changes affect the terms in your written document, your employer must provide an updated copy within one month.

Your employer does not have to agree to changes, but you can keep talking with them to try and reach an agreement.

If you have still not reached an agreement and think you want to take things further, you could:

- make sure you have tried everything by talking with your employer
- get support from your trade union
- check your employer is following your workplace's internal policies
- consider [making a formal complaint](#)

You can call the [Acas helpline](#) to talk through your situation with an adviser. We cannot give an opinion but can discuss your options.

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