

# Changing your employees' contracts

## 1 . Considering changes

An employment contract between an employer and an employee or worker is a legally binding agreement.

You can agree the terms and conditions of the contract either:

- in writing, for example in a job offer letter
- verbally, for example during a conversation when you offer the job

Both you and the employee or worker can propose changes to the agreed terms and conditions, but you must both agree to the changes.

In some circumstances, you might have an agreement with a trade union that allows the union to negotiate and agree certain contract changes on behalf of employees and workers.

Changing a contract is sometimes called 'varying a contract'.

[Find out more about employment contracts](#)

## How employment contract changes can be agreed

Changes to employment contracts can be agreed in different ways, including when:

- a change is proposed by either you, or one or more employees or workers, which you then discuss and agree with them
- you have a 'collective agreement' with a trade union and the union agrees changes to terms and conditions on behalf of your employees or workers
- employees or workers agreed to a term in the contract (a 'flexibility clause' or 'variation clause') that lets you change certain employment terms in some circumstances
- a change happens through 'custom and practice' – terms and conditions change over time and everyone's agreement can be implied

## What to consider first

As an employer, before you propose an employment contract change you should consider:

- what issue you're trying to solve
- if a contract change is definitely needed to solve it

This can help you be clear about what you want to achieve and the different ways you could achieve it.

For example, a business is looking to reduce costs. Before considering potential contract changes, they might look at:

- how they can improve ways of working
- if they can make savings elsewhere

It will help when informing and consulting with employees and representatives if you have:

- explored other options
- made clear why you need a contract change

## The importance of following a fair procedure

You must follow the [Code of Practice on dismissal and re-engagement on GOV.UK](#). You might have your own dismissal and re-engagement policy, but the Code is the minimum procedure you must follow.

If a case reaches an employment tribunal, the judge will consider whether the employer has followed the Code of Practice in a fair way.

The Code says you should contact Acas for advice before introducing the possibility of dismissal and re-engagement.

[Contact the Acas helpline to get advice on dismissal and re-engagement](#)

## When you might consider employment contract changes

Examples of when employers might need to consider employment contract changes include:

- to make sure contracts are up to date with new laws or regulations
- to better reflect someone's job role, if it has changed
- to introduce or change terms and conditions, for example contractual redundancy pay, enhanced maternity or paternity leave and pay, or details of a pension scheme
- to reflect changes to an organisation, for example if it's considering moving to a different location
- helping an organisation better adapt to changing customer needs
- economic reasons, for example if an organisation is considering a restructure or other changes to stay competitive in a changing market

While in some circumstances changing an employment contract can bring benefits to an organisation and its employees, it can also bring significant risks. You should think carefully about the best way to address the issue you're trying to solve.

## Risks to consider

Changing contracts can sometimes cause tensions in an organisation. If changes are not managed well then risks may include:

- damaging working relations
- legal claims, for example claims of breach of contract or [constructive dismissal](#)
- a decrease in commitment and performance, if employees do not support the changes, or feel they have not had the opportunity to inform decisions
- increased levels of stress or absence
- [discrimination](#), for example if changes are introduced that apply to a group of employees but put employees with a certain 'protected characteristic' at a disadvantage
- valued people leaving an organisation, if you propose a change they do not support or agree to

- reputational damage to an organisation or brand, making it difficult to attract new employees
- strikes or other industrial action if there's a trade union
- collective action by a group of employees that's not authorised by a trade union ('wildcat' industrial action)

## Understanding your options for making a change

If you feel you might need to propose a contract change, your approach to exploring the change may depend on:

- the number of employees or workers affected
- whether your organisation has a recognised trade union or other established ways of consulting employees

For example, a company is considering a change that is specific to a certain employee. They should discuss and try to agree the change with them directly. They should include their representative if they have one.

A change might affect a number of employees' contracts. It might be more appropriate and effective to discuss this with any employee representatives as well as individual employees. For example, if there is a trade union, employee forum or joint consultative committee in your organisation.

By law, you must consult with a recognised trade union if you're considering changes to terms and conditions agreed with that union.

Find out more about:

- [working with trade union and other employee representatives](#)
- [training on changing terms and conditions of employment](#)
- [tailored support for your organisation](#) – how Acas can help you work with employee representatives

## If there has been a TUPE transfer

TUPE regulations protect employment rights when someone transfers to a new employer. TUPE stands for Transfer of Undertakings (Protection of Employment).

There are important additional considerations if you're thinking about proposing changes to an employment contract after a TUPE transfer.

[Find out more about changing a contract after a TUPE transfer](#)

## When employees or workers might propose contract changes

In some circumstances, employees or workers might want to propose an employment contract change. For example, if:

- their job role has changed since they started working for you
- they want to ask for improved terms and conditions, such as a pay rise or extra holiday
- they want to make a [flexible working request](#)

You do not have to agree to every change proposed by an employee or worker. You should always listen to them and consider their proposal.

[Find out more about handling requests to change an employment contract](#)

## 2. Proposing changes

When you're proposing employment contract changes, you must inform all affected employees and workers and any relevant employee representatives.

You must inform them about:

- what the proposed changes are
- who might be affected
- why the changes may be needed
- the timeframe for the proposed changes
- any other options that have been considered

### If you exclude or overlook someone

There may be a risk of discrimination if, for example, you exclude or accidentally overlook:

- anyone who is absent, for example off sick or on adoption, maternity or paternity leave
- anyone who needs information communicated in a certain way, for example because of a disability or if English is not their first language

[Find out more about discrimination and the law](#)

## Providing information about the proposed changes

You must provide relevant information about the proposed changes. This is so employees, workers and any representatives can understand, consider and reach an informed view about them.

Providing clear information as early as possible helps:

- give enough time for everyone to consider the proposed changes and how they wish to respond
- explain what other options have been considered and why they are not considered appropriate
- build trust by giving employees a say and assuring them you want to hear their concerns and suggestions
- everyone work together to find solutions if there's any disagreement about the proposed changes

### Informing employees

You should think carefully about how and when it would be best to communicate the proposals. Announcing proposed contract changes can sometimes cause concern among employees.

If any proposed changes are specific to a certain employee, you should discuss them privately. For example, in a meeting between the employee and their line manager.

If the proposed changes apply to a number of employees, it may be appropriate to have initial meetings with small groups of employees. In these meetings you could discuss the broad context of the proposed changes.

After any meeting, you should put information in writing and share it with the affected employees.

### Informing trade union and employee representatives

By law, you must provide relevant information to trade union representatives if your proposed changes are covered by a 'collective agreement'. This is an agreement with a recognised trade union.

You must always follow the [Acas Code of Practice on disclosure of information to trade unions for collective bargaining purposes](#).

Even if there is no recognised trade union, in larger organisations or teams it can be useful to have arrangements to inform and consult with other employee representatives. For example, an employee forum or joint consultative committee which includes both management and employee representatives.

You must also keep all affected employees informed about any proposals. For example, not all employees will be members of a trade union, so they may not receive updates from the union representatives.

[Find out more about working with trade union and employee representatives](#)

## What information you should provide

The information you should provide to staff and their representatives about the proposed changes will depend on the circumstances.

You should usually include the following in the initial information:

- what the proposed changes involve
- the business reasons for the changes
- when you propose to introduce the changes
- your view on how the changes could benefit employees
- your view on how the organisation will be affected if you do not make the changes
- what the proposed new or revised contractual terms will look like
- any alternatives to the proposed changes that you've considered

It should also explain:

- that employees should consider the proposed changes
- a consultation process will follow to consider any questions, concerns or suggestions
- if any discussions have already taken place with relevant employee representatives such as a recognised trade union or a joint consultative committee
- how employees can ask questions and give feedback about the proposed changes, or make any alternative suggestions
- where employees can get help or support, for example an employee assistance programme (EAP) if there is one

You should aim to be as open and helpful as possible in responding to any requests for information on proposed changes from employees or their representatives.

## If there are trade union or employee representatives

If there are trade union or other employee representatives, you should talk to them to try to reach an agreed understanding about the information that would be useful to share.

You should discuss:

- what information is likely to be reasonably required and helpful
- how the information can best be provided
- who needs the information
- when it should be shared

Agreeing these points can help avoid misunderstandings, save time and reduce costs during negotiations about changing contracts.

Find out more in the [Acas Code of Practice on disclosure of information to trade unions for collective bargaining purposes](#).

## If you cannot provide relevant information

In some circumstances, it may be reasonable to refuse a request for certain information. For example, if information cannot be shared because it is confidential or commercially sensitive.

If you feel you need to refuse a request, you should explain the reasons as clearly as possible.

## If you unreasonably refuse to provide information

If you unreasonably refuse to provide information and then make a contract change, you could later be challenged about this if you're taken to an employment tribunal.

For example, it might be a relevant factor in claims of breach of contract or [constructive dismissal](#).

A trade union might legally challenge you if you have not followed the [Acas Code of Practice on disclosure of information to trade unions for collective bargaining purposes](#).

## If the change might be covered by a flexibility clause

There may be a clause previously agreed in the contract that might allow you to change certain terms and conditions in some circumstances. These are sometimes called 'flexibility' or 'variation' terms or clauses.

For example, a clause in a contract might say that in certain circumstances an employee's working days or work location could change.

You should make sure any flexibility clause:

- is clear and easy to understand
- provides reasonable advance notice before you introduce any relevant contract change

## Using flexibility clauses reasonably

Flexibility clauses must only be used to make reasonable changes.

For example, it may be unreasonable to expect someone to move at short notice to another work location which is not within reasonable commuting distance. If it's not reasonable, doing this may be a breach of contract even if there is a flexibility clause that appears to allow it.

If you use a flexibility clause to make a change without providing reasonable notice or consulting affected employees or representatives, it could lead to claims of breach of contract or constructive dismissal.

## Considering risks of discrimination

You should carefully consider if there might be a risk of discrimination when using a flexibility clause.

For example, it could be discrimination if you change an employee's contractual working hours and this makes it difficult for them to effectively manage their disability.

[Find out more about discrimination and the law](#)

## Consulting employees and representatives

You should always consult employees and employee representatives, even if you think the change may be covered by a flexibility clause. This can help to:

- make sure everyone is clear about what has been proposed
- understand someone's circumstances, and if there are any consequences for them that you should consider
- listen to and resolve any concerns
- avoid any misunderstandings
- reduce any risks of discrimination
- decide if the clause is reasonable to use in the circumstances

[Find out more about consulting about employment contract changes](#)

## Resolving concerns about flexibility clauses

If you propose to use a flexibility clause to make a change, your employers or workers might feel it is unreasonable or against the law. You should try to resolve their concerns at the earliest opportunity.

It can sometimes help to discuss with employees or workers if there is an alternative solution that might work for everyone.

## Getting more advice and support

If you have any questions about proposing contract changes, you can [contact the Acas helpline](#).

You can also ask Acas about:

- [training courses on changing terms and conditions of employment](#)
- [tailored support for your organisation](#)

## 3. Consulting

If you're proposing employment contract changes, you should fully consult with all affected employees, workers and any relevant employee representatives.

You must have already provided [initial information about the proposed contract changes](#).

## What consultation is

Consultation is when you talk and listen to affected employees or workers and any trade union or other relevant employee representatives. During consultation you should:

- help them understand the reasons for the proposed changes
- ask for their feedback on the proposed changes
- answer any questions
- respond to any concerns
- listen to any reasons people may have to object to the proposed changes
- consider any other proposals they may put forward
- consider if you should make any revisions to the proposed changes to address any points raised

Some employees and managers may find a period of change difficult. You should offer help and support, for example through an employee assistance programme (EAP) if there is one.

## Why you should consult

Employees and representatives are much more likely to support changes if they:

- understand the reasons behind the proposals
- have the opportunity to give their views about them
- trust that you have genuinely considered their views and taken them on board

Effective consultation can help you to:

- work together with employees and representatives to find the best solution to whatever has led to the proposed changes
- gain useful insights from employees' knowledge about their roles and customer needs
- build trust and keep good working relations
- keep employees motivated and maintain productivity, even during periods of uncertainty about change
- prevent potential disagreements, tensions or conflict in your organisation
- make sure the process towards any change is fair and reasonable

If employees or representatives feel you have not fully consulted them about a contract change, this can:

- significantly reduce the chances of reaching agreement
- damage morale, working relations and productivity in your organisation
- lead to increased levels of stress or absence
- damage the reputation of an organisation or brand, making it difficult to attract new employees
- lead to strikes or other industrial action, if there's a trade union

There may also be legal risks if you make a contract change without holding genuine and meaningful consultation with employees and representatives.

For example, depending on the circumstances, it might lead to legal claims including breach of contract, unauthorised deductions from wages or [constructive dismissal](#).

## Who you should consult

Who you should consult with will depend on the circumstances. You might need to consult with individual employees or workers, their representatives, or both.

### Consulting individual employees or workers

Unless there's a formal arrangement that allows representatives to negotiate contract changes on behalf of employees and workers, you should always consult directly with each person affected.

### Consulting trade union representatives

If your organisation has a recognised trade union, you may have a 'collective agreement' that you must consult with the trade union about proposed contract changes affecting certain employees or workers. This group of employees or workers is known as the 'bargaining unit'.

If you have a collective agreement:

- the trade union can negotiate and agree contract changes on behalf of those in the bargaining unit (known as 'collective bargaining')
- the bargaining unit may include some employees or workers who are not union members as well as those who are union members

For example, there may be a collective agreement that the trade union can negotiate annual changes to pay on behalf of all employees who are in a particular role or who work in a certain department.

[Find out more about consulting with trade unions](#)

## Consulting information and consultation (ICE) representatives

If there are 50 or more employees in your organisation, employees have the right to request a formal agreement to be informed and consulted. This is known as an ICE agreement, as it's part of the 'Information and Consultation of Employees' regulations.

If you already have an ICE agreement in your organisation that covers areas affected by your proposed contract changes, you must consult with the elected representatives.

[Find out more about ICE agreements](#)

## Consulting employee forums

You may already have an arrangement in your organisation to consult employee representatives on specific areas of terms and conditions.

For example, some organisations may have:

- a joint consultative committee where employee and management representatives work together to promote good practice in the way an organisation is managed
- a pay review forum that considers annual changes to employees' pay or a forum that looks at health and safety at work

Consulting with employee forums can be a valuable way for:

- you to discuss proposed changes with employee representatives on relevant terms and conditions
- your employees to have a say in important decisions that affect them

Representatives in these forums should be chosen in an appropriate way and consulted on areas in which they have expertise.

[Find out more about consulting with employee forums and representatives](#)

## Consider risks of discrimination

When consulting, you must include all employees and workers who might be affected. There may be a risk of discrimination if, for example, you exclude or accidentally overlook:

- anyone who is absent, for example off sick or on adoption, maternity or paternity leave
- anyone who needs information communicated in a certain way, for example because of a disability or if English is not their first language

## Keeping everyone informed

You should keep everyone updated while you're consulting with employee representatives.

For example, some employees or workers might not be a member of a trade union so you should not rely on them receiving updates from union representatives.

## Acas support for employers

We can:

- help you set up an employee forum
- work with your management and employee representatives to solve problems

[Find out more about Acas tailored support](#)

## How you should consult

Consultation must always be a genuine and meaningful two-way discussion about whether a change is needed and what kind of change is appropriate. You must listen openly to any concerns or suggestions and seriously consider them before you make a decision about the change.

In some situations, consultation might involve negotiations about proposed changes, especially in organisations with an established collective agreement. In negotiations, you discuss a change with employees or their representatives to try to reach an agreement.

If employees or their representatives raise any questions, concerns or suggestions, you must:

- take them seriously
- try to understand everyone's needs and interests
- do everything you reasonably can to answer questions and address any concerns

### If it's difficult to reach agreement at first

Everyone should be open-minded during consultation. You should be prepared to reconsider your original proposal, for example if:

- there's something you may have overlooked
- another proposal is put forward that might work better

Reaching agreement is likely to be more difficult if employees or representatives have reasonable objections to your proposal, but you insist they agree to it.

If you're finding it difficult to reach agreement at first, you should discuss if there might be a suitable compromise. Everyone should:

- keep focused on trying to reach agreement for as long as reasonably possible
- consider if you can look at the problem from a different angle, including other people's perspectives
- encourage others to suggest alternatives they would consider acceptable
- explore if there is any way you could reach a compromise
- be patient and keep talking to employees and representatives – finding agreed solutions can take time
- consider what could happen if agreement cannot be reached

If you can reach a compromise, it's more likely that everyone will support it because they'll believe it's:

- been reached fairly and openly
- the best decision possible when everyone's views are taken into account

[Find out more about what you can do if you cannot reach agreement](#)

## Do not intimidate or threaten employees or their representatives

Employers must never intimidate or threaten employees or their representatives to try to force them to agree to a contract change.

You should carefully consider the best way to have discussions about how the organisation and its employees may be affected if appropriate changes cannot be agreed. However, you must never present a potential outcome to employees as a threat about what you will do if they do not accept your proposed change.

Any intimidating or threatening action, language or behaviour is likely to significantly damage trust, morale and working relations in an organisation.

There are also significant legal risks. For example, any contract change agreed because of intimidation or threats ('under duress') will not be legally enforceable.

An employer must not cause someone 'detriment' because of trade union membership or activities.

Detriment means someone experiences one or both of the following:

- being treated worse than before
- having their situation made worse

Examples of detriment could be:

- their employer reduces their hours
- they experience [bullying](#)
- they experience [harassment](#)
- their employer turns down their training requests without good reason
- they are overlooked for promotions or development opportunities

## Providing training for those involved in consultation and negotiations

If managers and employee representatives are trained to take part in consultation and negotiations constructively, this can:

- make discussions more effective
- increase the chances of reaching a solution that works well for everyone

Negotiating contract changes can sometimes be complex, challenging and stressful for those involved. If this happens, behaviours on both sides can sometimes reduce the chances of reaching an agreement.

Training can help all those involved in consultation keep discussions constructive and avoid unhelpful behaviours like:

- not listening effectively
- making assumptions about others
- insisting on a fixed outcome and refusing to consider other suggestions
- failing to genuinely explore others' needs and interests
- not being willing to consider things objectively
- using confrontational language or appearing aggressive
- being impatient
- adopting an attitude where someone must win and someone must lose
- not being open to creative ways of finding workable solutions

[Find out about Acas tailored training for your organisation](#)

## 4. Handling requests

In some circumstances, employees or workers may ask their employer for changes to their employment contract. For example, employees may have the legal right to ask for flexible working.

### Flexible working requests

By law, someone has the right to ask for a contract change through a 'flexible working request' if they're [legally classed as an employee](#).

For example, they might ask to:

- reduce their hours to work part time
- work from home
- split their time between their usual place of work and working remotely from somewhere else ('hybrid working')
- have flexibility with their start and finish times (sometimes known as 'flexitime')
- share the job with someone else

If an employee makes a flexible working request, you must handle the request reasonably.

[Find out more about flexible working](#)

### Other requests for contract changes

An employee might also ask for other kinds of changes to their contract, for example, because:

- they've been doing work that is different to what was originally agreed in their contract
- they've started a new job in the same organisation
- they're keen to develop their skills by taking on new tasks
- they're unhappy about something at work, for example they feel bullied and want to change their shifts or work location
- they feel they deserve a [pay rise](#)

The employee does not have to put the request in writing, but encouraging them to do so can help make sure:

- the employee fully considers what they are requesting and why
- you have a clear idea about the request and the reasons for it before discussing it with the employee

### Consulting with employees and representatives

You should consult with the employee and any employee representatives to:

- listen to their reasons why a change may be needed
- understand the details of the proposed change
- carefully consider how you might be able to accommodate the request, including the potential benefits for you and the employee

[Find out more about consulting on employment contract changes](#)

### Finding an appropriate solution to a proposed change

If you've considered an employee's request carefully and you feel it may not be appropriate to make the proposed change, you should consider and discuss any alternative changes that may be suitable.

For example, if an employee requests a change of work location because they feel they're being bullied, you should look into their concerns and take any appropriate action. Agreeing to relocate them might work as a temporary solution, but may not fully address the cause of the problem.

It's always important to try to find an appropriate solution to any concerns and understand why an employee has requested a contract change. Not resolving concerns can lead to longer-term tensions at work. This can affect employee wellbeing and productivity in an organisation.

[Find out more about dealing with a problem raised by an employee](#)

## 5. If changes are agreed

If agreement is reached about contract changes after you've consulted with employees, workers and their representatives, you should:

- put any changes in writing
- make sure everyone is clear about the details of changes, such as how and when they will take effect, and whether the change is temporary or permanent
- monitor how the changes are working for an appropriate period of time

### Putting changes in writing

Employees do not have to sign a new contract for changes to take effect.

However, you must put any changes to an employee's main terms of employment in writing. For example you might send them a letter or email.

It's a good idea to put all contract changes in writing. This helps to make sure everyone is clear about what has been agreed so there is less chance of misunderstandings or disagreements.

You can choose to update an employee's [written statement of employment particulars](#) but you do not have to.

When you put changes in writing, you should ask the employee to:

- check that it describes accurately what they have agreed
- let you know if they have any questions or concerns

If a change only affects one employee, you must write to them individually.

If a change affects a number of employees, you may not need to write to everyone separately. This applies when the change is about something that's in a document everyone can access, for example in a policy. You can put the changes in writing for the whole group at the same time, for example in a group email.

By law, you must put a change in writing within 1 month of the change.

### Making sure everyone is clear about the change

You should make sure everyone affected by an agreed change is clear about how the change affects them. You should explain details such as:

- what the change is
- why it has been introduced
- exactly what the change will mean for them
- when and how it will take effect
- for how long it will last, if it's a temporary change
- who employees should talk with if they have any questions or concerns
- what's expected of them

The best way to communicate with employees about this will depend on the circumstances, for example:

- how many people are affected by the change
- if everyone affected works in the same location or across different locations
- if the change was agreed directly with employees or with employee representatives

If changes affect employees who work in different teams or locations, it can be useful for one person or department to handle all employees' questions. This can reduce the risk of communicating potentially conflicting information about the details of the changes.

If you have agreed changes with employee representatives, such as a recognised trade union, it can sometimes be helpful for you to work together to communicate the changes to the affected employees. This can help provide clarity and reassurance that employee representatives have influenced and support the change.

## Monitoring the changes

After changes have been introduced, you should continue to keep open communication with employees for an appropriate period and review:

- if the changes are working as expected for everyone involved
- if the changes are being applied consistently and fairly
- how employees and the whole organisation are adapting
- any other new information related to the changes

## Why it's important to monitor how employees respond to change

Changes to terms and conditions can sometimes affect the way people feel emotionally, mentally and physically.

Employees may go through a range of reactions during periods of change. Depending on the circumstances, they may feel uncertain, anxious or resistant to change.

For example, a period of business reorganisation can affect employees' morale and motivation, as well as levels of commitment and performance.

Giving employees an opportunity to continue to feedback on changes can help an organisation adapt to change in the best way.

## How long you should monitor contract changes for

You should decide a time period for monitoring contract changes that is appropriate to the circumstances. For example, you should review changes over a longer period of time, such as one year or more, if:

- contract changes are significant
- there has been resistance to change among employees or their representatives

Find out more about:

- [training courses on contracts of employment, including terms and conditions](#)
- [tailored support for your organisation](#)

## 6. If changes cannot be agreed

It can sometimes feel difficult and time consuming to reach an agreement on a contract change.

It can be particularly difficult if proposed changes are complex. Negotiations can take time, there might be disagreements and times when it seems like there's no way forward. It can be helpful to remember that:

- disagreements often generate new ideas and lead to solutions
- there will be benefits for everyone involved if you do reach agreement
- there are significant risks for you if you try to change a contract without agreement

Risks of trying to change a contract without agreement can include:

- legal claims, for example claims of breach of contract or [constructive dismissal](#)
- damaging morale and good working relations in an organisation, potentially for a long time
- strikes or other industrial action, if there's a trade union
- reputational damage to an organisation or brand

## How you can keep trying to reach agreement

Sometimes even if you have consulted with employees and employee representatives you might not have been able to reach agreement. You should continue to explore all options for as long as is reasonably possible.

It can help to consider:

- how to keep discussions constructive
- if anything might make the proposed changes easier for people to agree
- how Acas can work with you and employee representatives to help reach an agreement

### Keeping discussions constructive

To stay focused on keeping discussions constructive, it can help to:

- share any more relevant information – being transparent about your reasons can help others understand them better and make discussions more effective
- continue to ask questions and listen to answers – taking time to understand other people's views can help you find common ground
- be prepared to consider changes to your original proposal – encourage alternative solutions and be open-minded to them
- try to agree one change at a time – it can help to break down complex problems into smaller ones, for example start with 'what' might need to change, then move on to 'how' and 'when'
- recognise that differences of opinion are normal and to be expected – considering different views can lead to new possibilities to explore
- try to find a solution that includes something for everyone – do not assume that someone must win and someone must lose

### Making proposed changes easier for people to agree

If employees or representatives are reluctant to agree to a proposed change, you should consider if there's anything you could offer that could make the proposal more attractive.

In some cases, it might be possible to offer some new, more beneficial terms to compensate for a less attractive change to other terms. This is sometimes called 'buying out' a term in the contract.

For example, an employer might offer extra paid or unpaid leave to compensate for an unpopular proposal to change agreed shift patterns.

It can also be helpful to consider if:

- a change could be introduced gradually rather than all at once
- a change could be introduced on a temporary basis only
- you could achieve the aims of a proposed change in a way that might seem fairer and more acceptable, for example by changing senior managers' contracts in a similar way to those of other employees
- all parts of a proposed change are needed, or if you could achieve some aims in other ways
- there are solutions that may not need a contract change

If there's a 'collective agreement' with a trade union, it should set out a 'collective bargaining' procedure for negotiations with the union.

You must not make direct offers to employees or workers as an incentive to give up any of their terms that are covered by the agreement. The only time you could consider this is if you've followed and genuinely believe you've exhausted the agreed collective bargaining procedure.

If you make direct offers without first exhausting the agreed procedure, you're likely to be legally challenged about this at an employment tribunal.

## How Acas can help

We offer a range of services that can help you reach agreement with employees and employee representatives. This includes:

- Acas services to help resolve disagreements
- training and tailored support for your organisation

[Find out more about Acas support for employers](#)

## If you decide to go ahead and make a contract change

If you still cannot reach agreement after extensive attempts, it may sometimes be possible to introduce a contractual change by either:

- giving notice to the employee that you intend to make a change ('imposing' a change) to their employment contract with effect from a certain date
- giving notice to terminate the employee's existing contract and offering to rehire the employee on the new terms ('dismissing and rehiring' – some people call this 'fire and rehire')

You should thoroughly explore all other options before deciding to take either of these steps. They both carry significant legal risks and can damage working relations, morale and levels of performance in your organisation.

## Imposing a change

If you impose a change to a contract before getting agreement you will be breaking the agreed contract ('in breach of contract').

In some circumstances, an employee's actions might count as agreeing to ('affirming') the change if:

- they continue to work under the changed terms and conditions
- they do not inform you that they do not agree to the change

However, if an employee does not agree with an imposed change, they might decide to:

- temporarily work to the new terms and conditions, but make it clear they are challenging the change ('working under protest')
- resign and make a claim of [constructive dismissal](#) at an employment tribunal, if they feel the change significantly breaks their agreed contract (a 'fundamental breach of contract')

## If an employee works under protest

If an employee works under protest, they continue to work under the changed terms, but make it clear that they do not agree to the change and take steps to challenge it.

An employee should make it clear to you that they're working under protest. They should usually do this in writing on a regular basis, for example every time they get paid.

They should normally only work under protest for a short time so they can formally raise their concerns with you or take legal action if you do not resolve their concerns.

For example, depending on the circumstances, an employee could decide to make legal claims against the organisation for:

- damages for breach of contract at a civil court
- 'unlawful deduction of wages' at an employment tribunal, if the change affects their pay
- [discrimination](#), if the change means they are treated unfairly in relation to certain 'protected characteristics' under the law

If you impose a change that makes an employee's terms and conditions significantly worse than before, they might be able to claim unfair dismissal while continuing to work under the changed terms. This is a very complex claim. You should get legal advice if you're in this situation.

## If there's a trade union

If you impose a change after not being able to reach agreement with a recognised trade union, the trade union might consider:

- taking industrial action – for example a strike, refusing to take part in certain activities, or a 'work to rule' where employees do no more than what they're contractually required to do
- supporting individual employees to make claims to a court or employment tribunal

## Dismissing and rehiring

You should only consider dismissing and offering to rehire someone on new terms ('dismissal and re-engagement') as a last resort. This is sometimes known as 'fire and rehire'.

Before dismissing, you must have made all reasonable attempts to reach agreement through a full and thorough consultation.

If you're proposing to dismiss and rehire 20 or more employees, by law you must collectively consult on the proposed dismissals.

It's important to consider that by ending the employee's original contract of employment you will be dismissing them, even if they accept a new contract and continue to work for you. So you must:

- have a fair reason for dismissal

- follow a fair dismissal process
- provide the correct amount of notice
- offer the employee the right of appeal against their dismissal

It is important to follow a fair procedure as set out in the [Code of Practice on dismissal and re-engagement on GOV.UK](#). This is the minimum procedure that you must follow.

The Code says you should [contact the Acas helpline](#) for advice before raising the possibility of dismissal and re-engagement with employees or representatives.

[Find out more about dismissals](#)

## Risks of dismissing and rehiring

Proposing to dismiss and rehire an employee or worker is an extreme step that has significant risks.

You should always carefully consider the risks, even if you feel there's an urgent need to make contract changes and expect it may be difficult to reach agreement.

It's likely that employees or their representatives will view a proposal to dismiss and rehire as a threat. This might:

- cause immediate and long-lasting damage to trust and working relations in an organisation
- make it harder for both sides to reach a negotiated solution

Other risks include:

- losing valued people from an organisation – either because they do not accept the offer of a new contract, or they leave afterwards because they're not happy with the change or the way it was made
- legal claims, such as potentially costly claims of [constructive dismissal](#) and [unfair dismissal](#)
- reputational damage to an organisation or brand, making it difficult to attract new employees
- likely [industrial action](#) if there's a trade union, as well as longer-term damage to relations with the union
- the issue you're looking to deal with still not being resolved satisfactorily

## Consider the reason for dismissal

It's important to consider the reason for the proposed dismissal. This will affect the process you need to follow and any payments you may need to make to employees.

### If the reason for dismissal is redundancy

The reason for dismissal could be redundancy even if you are offering the employee a new contract. For example, it could be a redundancy situation if:

- you're proposing contract changes because the number or types of roles needed to do certain work have changed
- the changes you're proposing will significantly change the roles of affected employees

If it is a redundancy situation you must:

- [follow a fair redundancy process](#)
- [pay the correct redundancy pay](#)

The Code of Practice on dismissal and re-engagement does not apply to redundancy dismissals.

## Other reasons for dismissal

If you dismiss and offer to rehire someone and it is not a redundancy situation, you will need to show you had 'some other substantial reason' to dismiss if it's challenged at an employment tribunal.

For example, it might be considered 'some other substantial reason' if:

- your business is in severe financial distress
- you've made exhaustive attempts to reach agreement on contract changes
- there was genuinely no other option but to dismiss and offer to rehire

An employment tribunal will consider factors such as:

- if you had a good business reason for introducing the change
- if you reasonably and genuinely consulted with employees, including making any compromises where appropriate
- if it was reasonable for you to decide that the benefits of the change for the organisation outweighed the disadvantages for affected employees
- if the changes you made were reasonable, for example if changes did not unfairly affect the financial wellbeing of employees
- the extent to which you considered alternatives to dismissal
- if any recognised trade union recommended or objected to the proposed terms
- how many employees accepted the change and how many rejected it
- if it was reasonable for an employee to refuse the change in the circumstances

## If you're proposing to dismiss and rehire 20 or more employees

By law, you must 'collectively consult' if you're proposing to dismiss and rehire 20 or more employees:

- at one establishment
- within a period of 90 days or less

Collective consultation is when you consult with a recognised trade union or other elected employee representatives. An 'establishment' might be wider than a single workplace, but not necessarily as wide as your whole organisation.

You must collectively consult to explore how to:

- avoid the dismissals
- reduce the number of dismissals
- limit the consequences of the dismissals within the organisation

The law says you must start this consultation 'in good time'. What counts as 'in good time' will depend on the circumstances. However, you must start consultation for:

- 20 to 99 employees – at least 30 days before the first proposed dismissal
- 100 or more employees – at least 45 days before the first proposed dismissal

You must follow the same process as for [collective consultation in redundancy situations](#). This applies even if the reason you're proposing to dismiss and rehire is not redundancy but 'some other substantial reason'.

## If you fail to collectively consult

If you fail to collectively consult, it could lead to a claim for compensation known as a 'protective award'. This can be up to 90 days' full pay for each affected employee.

If you do not follow the [Code of Practice on dismissal and re-engagement on GOV.UK](#), this could be taken into account by an employment tribunal making a protective award. If it is found you unreasonably failed to comply, from 20 January 2025 they could increase the award by up to 25%.

Where it is the employee who has unreasonably failed to comply with the Code, their award may be reduced by up to 25%.