

A Change Can Do You Good!

Achieving amicable change in the workplace

The recent case of *Bateman and others v Asda Stores Limited* provided that 'Asda', the well known supermarket brand, were entitled to unilaterally impose a change to pay and working conditions because the terms of employees' contracts of employment were wide enough to allow them to do so.

Can I rely on my contract to make changes?

Employers occasionally need to make some changes to the way their business operates, to cut costs or increase efficiency. These changes, more often than not, will impact upon employees. Some changes are innocuous, and require little more than notifying the employee of the change. However, making fundamental changes to contracts of employment can be fraught with difficulty and must be handled with care. Changes should be imposed only after careful consideration.

It is important to note that that *Asda* had two very significant factors in their favour - only one employee alleged they had suffered any loss and there was an extensive consultation process seeking agreement before the change was imposed.

The starting point for change is to consider the contract of employment and whether it allows the change the employer is seeking to implement. However, provision within the contract is not enough in itself. The law determines that some changes are just so fundamental to the continuance of a contract that consent must be sought and notice given in any event.

Seeking consent to the change

For reasons explained above, it is always best practice to seek employee consent to the proposed variation. The nature of the change will obviously determine whether or not consent is likely to be obtained. The employer will need to consult with employees individually or collectively and the appropriate method of consultation will depend on the number of affected employees. The employer will need to look at any collective or recognition agreement that may be in place and make sure all employees are represented in any negotiations.

If consent is not forthcoming at the end of this process, employers may consider a 'sweetener' to push through the change. Employers have the opportunity to be creative: a client of mine offered free travel to work for a month (to buy out a change to travel allowances), another - holiday vouchers (to buy out a change of holiday shutdown). Generous pay offs may not be a realistic idea depending on the numbers involved.

A fresh start?

Employers can terminate contracts if consent cannot be obtained, giving employees the appropriate notice and offer new contracts including the amended term. This is a risky step. The employees may treat themselves as permanently dismissed and claim unfair dismissal. The employer may lose valuable employees and face tribunal claims, with obvious cost implications. If the termination affects more than 20 employees the employer is



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obliged to comply with statutory obligations on collective dismissal and consultation.

Last Resort

Imposition of the change without consent should be a last resort. There is a real risk of claims, and the action will undoubtedly prove damaging to employee relations. Employers should not rely on employees choosing to simply accept the change in the hope of job security.

There is no doubt the way in which contract terms are drafted are important and following the *Asda* case, contracts should be reviewed to allow employers as much flexibility as possible. However, this does not change the emphasis on consultation and agreement. Employers should equally consider putting consultation

agreements into place. These agreements can help set out a framework for future change.

A good structure for managing change in the workforce, including well drafted contracts, and a mechanism for consultation, is essential to provide employers with the flexibility they need and should avoid the irrecoverable time and money spent on defending tribunal claims.

Employers should always seek advice before making changes to employee contracts so that due consideration can be given to the particular circumstances of each case.

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