



Important considerations when changes are made to an employment contract

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The terms of a contract of employment may from time to time be revised by routine changes such as salary increments or the promotion of an employee. Some changes do not evoke dispute between an employer and an employee as they are mutually agreeable. However, a dispute may arise when an employer is constrained to effect a change that is not mutually agreed upon to the contract of an employee. A case in point arises where an employer proposes revising the terms of an employment contract on account of adverse economic conditions affecting the employer from the effects of the corona virus pandemic.

The making of a unilateral change to a contract of employment by an employer without the agreement of the employee will often result in a breach of contract. The exception to this arises where a written clause is included in the contract of employment that

grants the employer the right to unilaterally change the terms of an employment contract. Where no clause exists allowing for unilateral change to an employment contract the two common ways by which an employer may go about effecting a change to an employment contract are:

1. By seeking the voluntary consent of the employee to the changes sought. Here the employer will likely encounter a challenge where the change sought is considered detrimental by the employee. Properly explaining to the employee why the change is necessary and offering incentives to help in acceptance of the changes can be useful tips for use by an employer in reaching consensus.
2. By the implied agreement of the employee. This is the case where upon the practical impact of a change taking effect the employee continues to work without objection and is taken to have accepted the change by his conduct.

In the absence of a clause granting an employer the right to make changes to contract terms without consulting the employee, the employee has the right to refuse to work citing a fundamental change to his terms of employment as set out in writing in his contract of employment. An employee that refuses work under such circumstances may after resigning from employment make a claim for constructive dismissal from employment.

Where the change to the contract terms arises from a deduction made to the wages of an employee, in certain instances the employee may continue to work but after clearly protesting the changed terms. Such protest should take the form of a written disagreement with the changes. The employee can later make a claim for unlawful deduction of his wages in breach of the contract of employment.