



# Rights of an employee where employer unilaterally changes contractual terms of employment

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A consequence of the outbreak of the Covid-19 pandemic is that many employers have found it difficult to generate revenue that is required to meet their business overheads including salaries. As a result, some employers have resorted to sending their employees on unpaid leave with others imposing salary cuts on their employees with yet others opting to summarily terminate contracts of employment.

It is noteworthy that some of these interventions by employers infringe on the rights of employees as set out in the Employment Act. This is because the Employment Act provides that changes to pertinent contractual terms of an employee should be done in consultation with the employee and communicated to the employee in writing. Pertinent changes to the

contractual terms of employment include changes to job description, duration of contract and remuneration. Therefore inasmuch as some employers may be genuinely unable to meet contractual obligations due to employees on account of the pandemic or other difficult circumstance there is need to consult with employees and thereafter communicate with them in writing before effecting fundamental changes to their contractual terms of employment.

It is important that an employer retains evidence of consultation with the employee so changes effected thereafter do not appear to have been unduly influenced by the employer upon a helpless employee. It is prudent for employers to have their employees sign the acceptance of any understanding on revision to contractual terms of employment reached following the consultation. In this regard, it is taken that the existence of a written document varying the previous contractual terms of employment between the employer and the employee is ample evidence to show that the employer did not exert undue influence over the employee.

Where an employer effects unilateral changes to fundamental contractual terms without consultation, an affected employee has the right to refuse to work and possibly even resign and commence a claim against his employer for constructive dismissal. Alternatively, an employee affected in such manner by the misconduct of an employer may opt to continue work but protest the changes in writing. This enables the employee to later make a claim for redress against the employer with such claim taking a variety of forms such as a claim for unlawful deduction of wages where the unilateral change adversely affected his remuneration.