



Thompsons

Resisting Contract Changes

RCM Workplace Representatives Conference

Bernie Wentworth Thompsons Solicitors

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- Introduction
- Changes to contracts in a recession

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- Identifying Contractual Terms and the requirements set out under section 1 and 4 of the Employment Rights Act 1996

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The 4 Types of Terms in an Employment Contract:

1. Express Terms
2. Implied Terms
3. Incorporated Terms
4. Statutory Terms

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There are also 4 ways to vary a contract:

1. Variation by Agreement

- Does the variation require agreement?
- Bonus Schemes
- Notification of Amendment
- Implied agreement

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2. Contractual Right to Vary

- Accommodation within an existing term
- Flexibility clauses

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3. Collective Agreements

- How terms become incorporated
- Express incorporation
- Implied incorporation
- Termination of a Collective Agreement

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4. Unilateral Variation by the employer

Options for the employee

- Accept the Breach
- Stand and Sue
- Constructive Dismissal
- Unfair Dismissal
- Refusal to Work under New Terms

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Tactics

1. The Contract is sacrosanct
2. UDW/Breach of Contract
3. Declaration/Unfair Dismissal
4. Constructive Dismissal
5. Challenging SOSR

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Tactics continued – Additional arguments

1. Protective Award
2. Protection from Inducements

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- Changes under TUPE
- Reg 4. variations are void if:
- reason is for the transfer itself; or
- a reason connected with the transfer
 - Timing
 - ETO Reason

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Conclusion