



Imposition and Redundancy

With the increasing clamour to cut public services, there may be more and more occasions in which employees are asked to take a pay cut in an effort to avoid redundancy. Some employers may even take the drastic step of seeking to impose changes in terms and conditions without the consent of the employee.

The advice in this fact sheet is general and you should always take advice from your branch where an employer is seeking to reduce your terms and conditions with or without your consent.

A. Imposition without agreement – breach of contract.

Generally, if an employer imposes changes upon employees' terms and conditions without the employees consent, they will be acting in breach of contract. In most cases, continued performance by an employee of their contractual duties without protest, after the altered terms and conditions have been imposed, will be deemed to be implied acceptance of the new terms and conditions. Therefore the original breach of contract will have been waived.

Any implied acceptance by members will severely weaken the prospects of bringing successful breach of contract claims. Branches will have therefore been advised to seek immediate advice from their regional organiser if an employer purports to impose such changes.

It is not as simple to say that any variation of a contract, without the consent of the employee, will enable the employee to end the contract and sue for unfair dismissal. The law is more complicated than this and therefore any proposed change should be discussed with your region as a matter of urgency.

B. Imposition by dismissal and re-engagement.

This is probably the most common method of imposing contractual change. Mass dismissals by giving the amount of notice required by the contract of employment, together with an immediate offer of new terms and conditions to facilitate the implementation of the reduced terms and conditions, have been known to occur. We must be on guard to ensure that members' rights are protected in this situation.

It is not always the case that these types of impositions will enable an employee to bring a successful unfair dismissal claim and therefore advice should be sought immediately where we become aware of a dismissal and re-engagement situation.

Conclusion

The advice in this guidance is necessarily general and in circumstances where reduced terms and conditions are sought to be imposed you should immediately consult with your regional office to ensure that appropriate and effective responses are developed to ensure the protection of our members' rights.