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**EAT UPHOLDS EMPLOYER’S RIGHT TO VARY CONTRACTS UNILATERALLY**

A recent decision in the Employment Appeal Tribunal has upheld a Tribunal’s decision that a clause in a contract of employment, allowing the employer to unilaterally vary terms and conditions of employment was valid.

However, before there is a rush to change employee’s contracts, it is worth noting the very specific circumstances in this case.

The case was *Bateman and Others v Asda Stores Limited UK/EAT* and Asda had a contractual term which allowed unilateral variation of the employee’s contract. Asda sought to enforce this term in an attempt to bring all of its workers onto the same terms and conditions. It transferred 8,700 employees on to new terms and conditions without their consent. 700 of the transferred employees brought claims and 6 test cases were then heard at the Tribunal.

The Tribunal and the EAT, upholding the Tribunal’s decision, found that the clause allowed Asda to impose the new regime on the employees without their consent.

However, the employees **had not** argued, that the change was a breach of **trust and confidence** and, Asda had undertaken a period of consultation on the proposed changes. Furthermore the employees did not argue that they did not have the relevant information when entering into the contract. Also it is worth noting that most of the employees did not suffer any loss due to the changes. The Tribunal’s decision could have been very different had these arguments been advanced and the changes been to the employees’ detriment.

It is also worth noting that the EAT and the Tribunal both relied upon the Court of Appeal’s established decision in *Wandsworth London Borough Council v D’Silva* in which it was made clear that:

**“whilst an employer may reserve a contractual right to unilaterally change a particular aspect of an employment contract, clear language must be used and if the unilateral change could produce an unreasonable result, the courts in construing the contract would seek to avoid such a result”.**

**Practical Tips**

It is worth inserting such a clause in your employment contracts and handbooks. However care is needed to ensure that the wording is clear and unambiguous and the right is only used in circumstances where the employee will not suffer a detriment.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

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