



# Advice from Alan

## Employment agreement variations

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An employer cannot unilaterally impose changes in employment

agreements. An example of an employer getting this wrong was an Employment Relations Authority (ERA) claim after an employer terminated an employee because he was unhappy with the employee's working hours, which were 10:30am to 6:30pm, while the store was open from 9am to 5pm. The employee did uninterrupted technical work after the store was closed.

The employer was unhappy that the employee was not present during all the store's business hours. He proposed the employee sign a new employment agreement to work from 8:30am to 5pm. The employee refused to change his working hours and was called into a meeting with the employer and the employer's lawyer. During the meeting, the employer's lawyer stated that the new hours proposed would not change and asked the employee whether he wanted to stay or whether he should look for another job.

The employee eventually resigned during the meeting. He was told he would not have

to come into work the next day nor any other day after that as he was no longer employed.

The ERA determined that this dismissal was not just a constructive dismissal, but there had been an actual dismissal during the meeting because the employee was effectively 'sent away' by the employer. The employer was wrong to have imposed a non-negotiable alteration to the hours of work. The employee was not given a chance to discuss his working options and the employer raised the idea of resignation first, showing a serious lack of due process. The ERA ordered the employer to pay the employee \$12,000 as compensation for humiliation, loss of dignity, and injury to feelings in addition to two weeks' wages.

If employers are unhappy with the terms of employment, they must take care to follow a due process to address their concerns and give the employee a chance to participate in the decision-making process. Changes to employment agreement terms must be by agreement. A restructure process may need to be followed if an employee will not change their hours and an employer needs different ones.