Judgments illustrate the limits on employers' ability unilaterally to vary terms of employment

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Whilst the general rule is that changes to the terms of a contract of employment must be agreed, it is possible to make changes unilaterally if an employer has the express contractual right to do so. Two cases this month emphasise how clearly this right needs to be expressed to be effective.

In *Sparks v Department for Transport*, the Claimants were each employed by a different agency run by the Department for Transport. They all had a staff handbook based on a standard form. The handbooks contained a trigger point after which absences from work would be formally investigated; this ranged from 8 to 21 days depending on the agency. The absence provisions were in 'Part A' of the handbook, which purported to be contractual. The Department for Transport sought to harmonise the handbooks so that every agency had an absence trigger point of 5 days.

In Norman v National Audit Office, the offer letters given to employees contained a statement that the terms and conditions of employment were 'subject to amendment'; the offer letter contained provisions for notification of changes once made, but no further detail. The National Audit Office relied on the flexibility clause to reduce the amount of paid sick leave available under the contract.

In both cases the employees challenged the attempted changes to their terms and conditions.

The High Court in Sparks took the view that the provisions as to absence procedures were intended to be binding and had been incorporated into staff contracts of employment. It rejected the Department of Transport's submission that the changes were beneficial to staff. The changes would lead to employees facing the possibility of formal sanctions much sooner which

was clearly detrimental.

In *Norman*, the EAT held that merely including the phrase ‘subject to amendment’ was nowhere near being sufficiently clear and unambiguous to be relied on to make alterations to the terms of its employees’ contracts without consent. Whilst the HR manual allowed for changes essential to the operation of the business, it was not incorporated into contract and, in any event, the changes to sick pay were not essential. The EAT held that the sick pay provisions should remain unchanged.

Employers will see from these decisions that it is particularly difficult to amend the terms of contracts of employment contracts without employees’ prior consent. It is, however, possible. Employers wishing to reserve their right to amend should ensure that there is a clear and unambiguous flexibility clause in the contracts which specifies a method by which changes may be made. Similarly, where there is a staff handbook or manual, employers should be clear on what, if any, aspects of them are intended to be contractually binding.

Sparks and another v Department for Transport [2015] EWHC 181 and *Norman & Another v National Audit Office UKEAT/0276/14*

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