



# HR in the East Midlands

February 2019

This month we're celebrating the success of our People Conference. See below for more information on the event and how we'll be building on the main themes in coming months. Our next HR event will be the Employment Law seminar on 13<sup>th</sup> March with Darren Newman. If you can't wait that long for Darren's insights, head to his In Deep article, which this month looks at disability related absence and reasonable adjustments.

## People Conference 2019: Managing & Developing People in a Changing World

Our inaugural **People Conference** held on 6<sup>th</sup> February was a great success. Its theme was "Managing and Developing People in a Changing World" and was attended by more than 50 HR, L&D and OD professionals. Feedback from delegates was very positive.



### Reminder

We will be exploring future opportunities to continue our joint working with CIPD and will keep you posted of these developments. Steve Whiddett's session on PACE – a model to improve productivity and performance – was of particular interest to a number of delegates. We will be providing regional events to look at PACE in more depth.

Further information will be provided in future editions of the HR Bulletin.

## Reminder Alert!

Councils with 250+ employees should be preparing to publish their **gender pay gap information by 30<sup>th</sup> March**. Useful information and webinars have been provided by the Government Equalities Office for those of us working on calculating the gap, identifying appropriate actions and preparing to publish their data/reports. If you need information about this, contact Sam ([sam.maher@emcouncils.gov.uk](mailto:sam.maher@emcouncils.gov.uk)).

## Pay Data Report: Building Control

A new report is available to subscribers of our pay benchmarking service Epaycheck. The report gives an analysis of pay data for Building Control roles across the English regions. It aims to identify patterns, comparisons and trends which may prove useful to councils seeking to attract and retain the employees for this occupational group. It costs as little as £200 to subscribe to this service. Contact Sam or Lisa for more information.

## Projects with Local Authorities

During February we have provided support to councils on the following projects:-

- Action-learning set facilitation
- In-house equality impact assessment training
- Coaching

To find out how EMC could support an area of work for you, then please contact Sam Maher at [sam.maher@emcouncils.gov.uk](mailto:sam.maher@emcouncils.gov.uk) or Lisa Butterfill at [lisa.butterfill@emcouncils.gov.uk](mailto:lisa.butterfill@emcouncils.gov.uk)



## Learning & Development

Identifying and responding to trends is one of our strength areas, this year we are developing our programme of support to focus on some of the trends and priorities for the sector across the region. We'll use the HR Bulletin to keep you up to date with our support programme, and here's a taste of what 2019 will have to offer...

- Apprenticeships
- Attracting and Developing Talent
- Mentoring
- Wellbeing and resilience

## Developing a Mentoring and Coaching Strategy

The role of **mentoring** is becoming increasingly popular as an approach to developing individuals, including those undertaking the role of mentor.

EMC will be supporting local authorities to develop mentoring within their organisations and we are joining forces with Lis Merrick from Coach Mentoring Ltd to provide this support.

Lis's experience in mentoring programme design and development is internationally acclaimed. She has over 150 mentoring programmes to her name and researches, writes and speaks on mentoring and coaching in addition to her work as an executive coach and designer of mentoring and coaching programmes.

Her expertise and research is predominantly in the field of designing programmes with regard to talent management, coaching and mentoring women, supervision in mentoring and coaching and mentoring in a world of volatility, uncertainty, complexity and ambiguity. Lis researches, writes and speaks about mentoring and coaching and this work also informs her practice as an executive coach and designer of programmes.

Our programme of support will include a workshop on developing a mentoring and coaching strategy, looking at how the overall HR/people strategy informs the design of a mentoring and coaching programme and the key steps of:

1. The rationale for the programme
2. Influencing stakeholders

3. Clear recruitment strategy
4. Communications and marketing
5. Preparing the participants
6. Matching process
7. Supporting the programme
8. Review and evaluation

The date of this workshop will be published shortly. For more information on our Coaching and Mentoring support contact [kirsty.lowe@emcouncils.gov.uk](mailto:kirsty.lowe@emcouncils.gov.uk)

## East Midlands LA Challenge

18 teams have signed up and are getting ready to take part in our third East Midlands LA Challenge! For more information about the Challenge and teams visit [here](#).

The full results will be publicised in our Friday 22 March Policy Brief, with details released on twitter the evening of 21 March.

## What else is coming up...

- **Coaching for Resilience, 7 March 2019** - this workshop will support coaches to develop their understanding of what personal resilience actually is; its core components and attributes. It will help coaches learn about a variety of practical and evidence based techniques that they can integrate into their practise, to help their client's grow their own resilience levels. For more information about this workshop please follow this link: [workshop](#)
- **EMC Employment Law, 13 March 2019** - Darren Newman will deliver the 2019 EMC Employment Law update, it's not too late to grab one of the last few spaces available, click on: [law seminar](#)
- **Writing for Results 27 March** – this workshop shows delegates how to write documents that get the results you want. [more info](#)
- **Annual Coaching Conference on 26<sup>th</sup> June 2019** - keynote session on the theme of 'Coaching for Change'.

## Contact Details

For further information about any of our work please contact the Local Government Services Team. Either call 01664 502 620 or email:-

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## In Deep with Darren

Darren Newman's in-depth analysis of a topical HR issue and its implications for local authorities.

### Disability Related Absence

One thing that can complicate the handling of disability-related absence is the employee alleging that the disability – often related to stress and anxiety – is caused or at least exacerbated by the employer's own conduct. Usually a grievance is involved and the employee might in effect be saying 'I cannot come back to work until you resolve this grievance to my satisfaction'. If the employer feels that the Grievance is not well-founded that can lead to an impasse. In such a situation is it fair to dismiss?

That was one of the (many) issues raised in the case of **Ishola v Transport for London**. Mr Ishola suffered from depression and migraines and it was accepted that this meant that he was disabled. The problems began in 2015 when he made a complaint about the conduct of a colleague. He was then dissatisfied with the investigation that took place. He went off sick just before making a complaint about that investigation – and never returned to work.

An OH report commissioned by the employer concluded that 'it is unlikely his symptoms will improve until he feels the workplace issues have been addressed'. He was dismissed after just over a year of absence and he brought a wide range of claims as a result. For our purposes the most useful issue arising in the case is his argument that it would have been a reasonable adjustment for the employer to allow him 'more time to recover'. The Tribunal rejected this, finding that there was at the time of the dismissal no realistic prospect of Mr Ishola returning to work within a reasonable time frame. The evidence was that he would not be able to return until his grievances had been dealt with to his satisfaction and as far as the employer was concerned – having already rejected them – that was not possible.

The employee argued that he did not need the grievances to be resolved in his favour – merely that

they should be dealt with fairly. However, the EAT held that it was open to the Tribunal to find that in his mind, the only fair outcome of the grievances was one which was favourable to him. It was not, in the circumstances, realistic to suppose that he would have been satisfied with a fair procedure even if it went against him.

Many employers in local government will recognise the scenario of what appears to be a breakdown in the employment relationship wrapped up in the issue of disability and reasonable adjustments. It can seem that there is a vicious circle in which the employee will only return to work when the grievance is addressed, but the employer cannot conclude the grievance procedure because the employee is absent and unable to participate.

In such cases it is useful to remember the underlying principle of the duty to make reasonable adjustments. The central idea is that an employer should remove obstacles that are otherwise put in the way of disabled employees that prevent them from realising their full potential. Those obstacles might be physical in terms of the way in which the workplace is designed, but more often in this context what we look for is a 'provision criterion or practice' (PCP) which puts the employee at a 'substantial disadvantage' when compared with employees who are not disabled. The employer is then obliged to take reasonable steps to avoid or remove that disadvantage.

### Darren's Advice for Employers

What makes reasonable adjustments difficult to advise on is that we don't really know what reasonable means – it is a matter for a Tribunal to decide on a case-by-case basis. It is also important to realise that the employer is not being asked to 'give reasonable consideration' to adjustments. The question is not whether, overall, the employer has taken a reasonable and fair approach. If an adjustment is identified that would remove the disadvantage – and the Tribunal subsequently decides that it was a reasonable one – then the employer will be liable for any failure to make that adjustment – even if it was not suggested at the time.



When an employee is on long-term sick leave it is almost inevitable that he or she will have a disability. If the employee is to be dismissed, then you could express that as a 'PCP' requiring employees to attend work which puts the disabled employee who is unable to do so at a particular disadvantage. The Ishola case shows, however, that it is hard to argue for 'more time' as a reasonable adjustment – particularly where the absence has already lasted a year – when there is no clear timescale for the employee returning.

But there is an air of unreality about analysing long-term absence in this way. Recently we have seen much greater emphasis on claims for discrimination because of something arising in consequence of the employee's disability – as set out in s.15 of the Equality Act. This form of discrimination fits the scenario of long-term absence rather more easily. A dismissal is clearly unfavourable treatment. The reason for dismissal is the employee's absence, and it would be easy to show that this absence arose in consequence of the disability. The question then would turn on whether the dismissal was justified or, to use the language of the Equality Act 'a proportionate means of achieving a legitimate aim'.

In a sense that takes us back to reasonable adjustments – but with a different focus. Dismissal is likely to be a proportionate response only if the employer has made – or offered to make - any reasonable adjustments that might have allowed the employee to return to work. That might include adjustments to the workplace itself – including location – or to working hours, job design or the employee's duties. It is highly unlikely to involve fixing it so that an employee's grievance is upheld. Requiring employees to work a full day or perform manual labour is a PCP that might well put a disabled employee at a particular disadvantage. The same cannot be said of the normal operation of the grievance procedure. If that is the only thing preventing a return to work then dismissal in accordance with the absence management procedure is likely to be justified.

More information can be found on Twitter:  
@daznewman

## National Developments

### National Joint Guidance on Term-time Working

As anticipated in last month's bulletin, national joint guidance has now been issued relating to term-time employees. This is incorporated into Part 4 of the Green Book.

This initial tranche of guidance covers:-

- Guiding principles on calculation of pay and annual leave (including advisory model calculation)
- Designation of annual leave
- Calculation of redundancy pay
- Termination of employment or contractual change part-way through a leave year
- Payment for overtime and additional working hours
- School closure periods (including public holidays, special leave, public duties)
- Training and career development
- Participation in trade union activities and duties

While this is advisory guidance, councils are recommended to review their term-time only working policies and pay and leave calculations to ensure that they are consistent with the principles outlined in this guidance, and consult with recognised trade unions about any proposed changes.

Further joint guidance is being developed for term-time only employees on other issues such as sickness, maternity, maternity support, adoption, parental and shared parental leave and pay.

A copy of the guidance and the covering Circular is available at the following link: [Local Government Services](#)

### Consultation on Extending Redundancy Protection For Women & New Parents

The Government has published a consultation paper with questions and issues being considered to tackle discrimination and unjustified redundancy dismissals faced by pregnant women and those returning to work



from maternity leave.

The consultation document looks at:-

- extending the protection given currently to those on maternity leave to pregnant women and new mothers who have returned to work;
- how long should any protection period be;
- extending protection to other groups, eg those adopting or on/returning from parental leave;
- improving the awareness and understanding of employees' rights and employers' obligations;
- how enforcement can be improved.

We want to ensure that we are reflecting the interests of our member authorities, so we welcome your comments. If you would like to input to a regional response to the consultation, then contact Sam Maher with your views at [sam.maher@emcouncils.gov.uk](mailto:sam.maher@emcouncils.gov.uk) ideally by 31<sup>st</sup> March 2019. The consultation closes on 5th April 2019.

## EU Work-Life Balance Directive Provisionally Agreed

Provisional agreement was reached by co-legislators at the end of January on the EU work-life balance directive, the co-legislators have reached a provisional agreement on the 24 January 2019.

This directive proposal is one of the deliverables of the European Pillar for Social Rights and part of the 'New Start' initiative to address the work-life balance challenges faced by working parents and carers.

The provisional agreement sets a European minimum standard of 10 days of paternity leave for fathers following the birth of their child, to be compensated at the level of sick pay. It adapts the existing right to 4 months of parental leave, by making 2 months non-transferable between parents and introducing compensation for these 2 months at a level to be determined by the Member States. The agreement also includes European provisions for carers' leave by attributing 5 days per worker per year. The negotiations led to additional subsidiarity guarantees pushed forward by the Member States: a minimum European threshold on payment is planned only for paternity leave, whilst decisions on payment for parental

leave and carers leave are left to national governments.

Finally, access to some leave will be subject to a certain length of service with the employer, with one year of service before qualifying for parental leave and 6 months of service before qualifying for paternity leave. The EU institutions will now finalise the technical details and vote to ratify the agreement.

