

HR in the East Midlands

December 2016



This month is a chance to pass on our best wishes for the Season and the New Year. A number of Councils have asked for a copy of the updated Green Book, so we've included a link for you in this bulletin. Darren Newman provides advice about rest breaks and we are pleased to be able to offer a discount to come to our popular Employment Law Update with Darren – further details are on our L&D page.



Review of Term-Time Working: Regional Meeting

A joint review of term-time working is taking place nationally, as part of the 2016-18 pay deal. The agreed Terms of Reference can be found here

The review aims to provide a fair, consistent and transparent approach in contracts for school support staff and term-time only staff not employed by schools. EMC is hosting a meeting in January to enable councils to feed in their views and concerns to the national working group. If you would like to participate, please email Sam Maher at sam.maher@emcouncils.gov.uk

Survey on a Safeguarding Question in Reference Requests

We had a great response to a recent query on your practice on whether you include a question about suitability for working with children/vulnerable adults in generic reference requests. The outcome from our survey was that many councils don't include such a question in references. Some of the councils that do kindly provided the wording they use. Collated responses to the survey will be circulated this week.

Updated Green Book

The "Green Book" which sets out national terms and conditions for Local Government Services staff has been updated to reflect changes agreed since 2005. You can access the revised Green Book at: [Green Book](#)

Projects with Local Authorities

This month, we have been providing individual authorities with support on a range of projects and issues, including-

- Disciplinary investigation
- Mediation
- Psychometric testing

If you would like to know how EMC could support an area of work for you, then please contact Sam Maher at sam.maher@emcouncils.gov.uk or Lisa Butterfill at lisa.butterfill@emcouncils.gov.uk.



Events in the East Midlands

December always provides an opportunity to reflect on the year's achievements, 2016 has certainly been a year to remember. Reflecting on our events this year there has been a continued focus on policy changes, with events on Apprenticeships and our annual Employment Law update. We have also continued to provide support for coaches in the region with a range of practical CPD sessions, including Coaching and Resilience, Embodied Coaching and not forgetting our Coaching Conference.

Employment Law Update 2017

EMCs Annual Employment Law event will take place on 15 March 2017. Once again Darren Newman, Employment Law Expert and guest contributor to the EMC HR Bulletin will lead the update.

This event is aimed at senior HR and Legal professionals in the public sector. The event will be held at Pera Business Park, Nottingham Road, Melton Mowbray, LE13 0PB.

Early Bird Offer: EMC are delighted to be able to offer authorities the opportunity to take advantage of an early bird offer, if you book a place before the end of January the cost per delegate is just £99 + VAT for EMC members, this is a saving of £76 on each place.

How to Coach people who feel Overwhelmed, 25 April 2017

We are noticing increasing numbers of clients who come to coaching with a sense of being overwhelmed in their roles and lives and believe coaching can provide a safe space for them to reflect on the impact of this on themselves and those around them, whilst develop new and more positive ways of being.

This workshop is designed to explore how we as coaches can help clients through this feeling and avoid being drawn into a parallel process of getting overwhelmed ourselves. For more information visit [here](#).

ILM Level 5 in Coaching and Mentoring Programme 2017

EMC is offering an exciting opportunity to be part of an ILM Level 5 programme in Coaching and Mentoring, starting in March 2017. As an open programme those involved will have the opportunity to learn from and with others across the East Midlands.

The 5-day programme runs between March and June 2017 and will enable delegates to effectively coach other individuals and where required to act as a coaching resource for their organisation and other organisations. It is aimed at middle and senior managers, providing a practical skill set.

The cost for EMC Members is £850, which includes the ILM registration fee. To find out more about this opportunity, visit [here](#).

East Midlands Local Authority Challenge 2017

Now the dust has settled on this year's East Midlands Local Authority Challenge, we are starting to plan for the 2017 Challenge which will take place on 16th November. We will be building on the successes of previous years and include new ideas to keep teams on their toes! The bookings will open on 27 January 2017.

Coming up in 2017

We have a range of events scheduled for 2017, including Secretaries Workshop on 2 February 2017, Developing a Coaching Culture on 8 February and Report Writing on 22 February 2017 and Telephone Coaching on 23 March 2017. <http://bit.ly/EMCEvents>

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

Rest Breaks

The right to unpaid rest breaks under the Working Time Regulations 1998 is not exactly onerous. Workers are entitled to one rest break of 20 consecutive minutes in each working day of 6 hours or more. Contrary to the commonly held view, this is not a right to a 20-minute rest break every six hours. If a working day lasts in excess of 12 hours, the worker is still only entitled to one 20 minute break.

Of course, local authority workers can generally expect a more generous rest-break entitlement than this. And yet a recent case on rest-breaks raises some interesting questions about the nature of the obligation that the Working Time Regulations place on employers. It may be of particular relevance for those in professional or managerial grades whose working time is not carefully measured.

In **Grange v Abellio London Ltd** the employee was initially a bus driver but he was moved to a more congenial role of ‘Relief Roadside Controller’. This involved monitoring traffic conditions and the arrival and departure of buses so that he could regulate the service appropriately. As a bus driver his working day lasted eight and a half hours and included a 30 minute unpaid lunch break. It was harder for a controller to find time to take a break during the day, however, so his working day was shortened to eight hours on the basis that he would work through the whole day and then leave half an hour early.

The problem with this is that while there is nothing in the Regulations to say when a rest break should be taken, it is pretty clear that you cannot simply put it at the end of the working day and let workers leave early. That isn’t a break, it’s just a shorter working day.

So you might have thought that the employee in this case would have had a straightforward claim. He is entitled to a rest break (there is no suggestion that one of the exceptions applies) and his working day does not seem to include one. However the Regulations are not entirely straightforward on this issue. Regulation 12 says he is entitled to a rest break. But when it comes to Tribunal claims, he has to show that the employer has ‘refused to permit him’ to take a rest break (reg 30(1)(a)). Mr Grange, however, never actually asked for a rest break or even tried to take one. He was not subjected to a detriment for complaining about rest breaks – which would also have given him grounds for complaint – he simply claimed that his employer’s failure to provide for rest breaks was a breach of the Regulations.

The Tribunal followed the EAT decision in *Miles v Linkage Community Trust Ltd* – a 2008 EAT decision in which it was held that there had to be a deliberate act of refusal on the employer’s part, with the result that claim could only be brought if the worker had made a distinct attempt to exercise his or her right to a rest break. Mr Grange had made no such attempt and so the Tribunal dismissed his claim.

On appeal, the EAT held that this approach could not stand. The Working Time Regulations had been introduced to comply with the EU Working Time Directive and had to be interpreted in a way that was consistent with the Directive’s purpose – which was to protect workers. In the case of *Commission v UK (C-484/04)* the European Court of Justice had held that guidance issued by the UK Government on the taking of annual leave and rest breaks was wrong. The Guidance (which was subsequently withdrawn) had suggested that while employers had to make sure that workers *could* take their rest breaks, they did not have to ensure that they *actually did* so. The ECJ held that the Directive required member states to ensure that workers actually benefitted from the rest breaks they were entitled to. It was not enough to leave it to the individual worker – although the ECJ acknowledged that workers could not actually be forced to take rest breaks and that the employer’s responsibility ‘could not be without limits’.



The EAT relied on this decision in holding that a worker's entitlement to a rest break had to be 'actively respected' by employers. In the context of the particular case that meant that the employer had a duty to give Mr Grange an appropriate opportunity to take his rest breaks and that by putting in place working arrangements that failed to take account of the 20 minute rest break, the employer effectively 'refused' to give him the rest to which he was entitled.

Implications for Local Authorities

So where does that leave us? The first point to note is that although this case was concerned with the daily 20 minute rest break, its principles will certainly apply equally to the entitlement to 11 hours of daily rest, one full day of rest in each seven day period, and also the entitlement to four weeks of annual leave. In each of these cases the worker is 'entitled' to the rest (or leave) and the employer must not 'refuse' it.

I think we can also say that this case does not suggest that an employer must ensure that the right amount of rest and annual leave is actually taken. If a worker simply fails to book holiday or chooses to work through the day without a rest break then that in itself will not involve a breach of the Regulations. Note that the situation is very different when it comes to the limits on actual working time, where the employer must take 'all reasonable steps' to ensure that a workers' working time does not exceed the prescribed limit.

But employers should nevertheless make specific provision for rest-breaks and leave to be taken at the appropriate time. If the working day is organised in such a way that it is difficult for the worker to find an opportunity for a rest break then that will certainly be a problem. Similarly if an employee's workload means that he or she cannot find the time to take annual leave or – more likely – has to do at least some work on every day of the week simply to stay on top of things, then that too may involve a breach of the Regulations.

The sensible thing to do is to ensure that each department has clear guidelines on when workers are expected to take breaks and making it clear that heavy workloads should not mean that a worker feels pressurised into not taking his or her full leave entitlement. 'Actively respecting' a workers'

entitlement to rest and annual leave means doing more than just leaving it to the individual.

More information can be found on Twitter:
[@daznewman](#)

National Developments

National Pay Spine Review

A joint [circular](#) has been issued this month setting out the plans to work jointly with a view to concluding a review of the pay spine by end of June, which will be followed by a consultation process. EMC will, as usual, facilitate the consultation process to enable councils to feed in their views on the outcome of the joint work.

Coroners' Pay Survey Report 2016

The management side of the joint negotiating committee for coroners (JNC) conducted a pay survey this year looking at all elements of coroners' pay. The circular and full report published earlier this month can be accessed [here](#) along with further details of the JNC.

English Fluency Requirement for Customer Facing Roles in the Public Sector

Last month saw the introduction under part 7 of the Immigration Act 2016, of the requirement for public authorities to ensure that each person who works for them in a customer-facing role speaks fluent English. The Act does not prescribe how to assess fluency. A statutory [Code of practice on the English language requirements for public-sector workers](#) provides guidance, including information on relevant factors to determine the standard required in a role, as well as examples of assessment tools. Employers are not required to subject all new and existing staff to formal language tests - the ability to competently answer interview questions in English could be evidence of sufficient fluency. No further action is required when employees are clearly fluent to the necessary standard for the role in question.

