

# HR in the East Midlands

September 2018



How time flies! 3 years ago we launched this HR Bulletin: our dedicated HR space, providing a round-up of the latest HR and learning and development news. Past editions can be accessed from [here](#). This month, Darren Newman analyses a case on discrimination arising from a disability based.

## Pay & Rewards & Pay Modelling Support

EMC is providing support to councils on the implementation of the national pay spine and on wider pay and rewards issues. We are able to offer a **discounted pay modelling service** for local authorities in the region, based on two options:-

### Option One includes:-

- Initial appraisal of current structure, understand local conditions/restraints/issues
- Pay model 2018 to 2019 based on client requirements – forecast to 2024 (five years)
- Options to meet client criteria (costs and impact)
- Short report setting out the options and costs

### Option Two includes:-

As above, plus impact on hourly-related payments (eg overtime, weekend enhancements, etc) Additional support beyond these options can be provided on a daily rate basis.

The costs would be as follows:-

Option	Borough / District	County / Unitary
One	£1800	£2400
Two	£2400	£3600

Contact [sam.maher@emcouncils.gov.uk](mailto:sam.maher@emcouncils.gov.uk) if you are interested in this service.

We are also running a series of **workshops** focused on the aspects of implementation that HR leads had identified and to provide the opportunity to network and share approaches:-

- **Pay modelling, 5<sup>th</sup> November** (see our L&D section for full details)
- **Equality Impact assessments and equal pay, 22<sup>nd</sup> November**

A further workshop is being finalised on **consultation**

## Projects with Local Authorities

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

- Restructuring advice and support
- Grievance investigation
- In-house training on investigations

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), Lisa Butterfill at [lisa.butterfill@emcouncils.gov.uk](mailto:lisa.butterfill@emcouncils.gov.uk) or Sarah Short at [sarah.short@emcouncils.gov.uk](mailto:sarah.short@emcouncils.gov.uk)



## Learning & Development

Earlier this month we launched the East Midlands LA Challenge. Our Third LA Challenge is set to be very different, with a new look landscape for the teams to compete in. We've introduced a new award for 'outstanding team player', which will be chosen by the host of support players that act as Leaders and partners. The event will, as always be fun and challenging development opportunity.

## Our HR Support

### Pay Modelling Workshop, 5 November

At the request of those attending the Pay Spine Implementation Workshop earlier this year and as part of our ongoing support to local authorities, we have organised a follow up workshop on pay modelling. This will take place on Monday 5 November 2018 from 10.30am – 1.00pm, Melton Mowbray.

The workshop will provide an opportunity to understand the principles of pay modelling together with the key considerations for local authorities and the type of help that is available for you. Our EMC associate Graham Thurston will be providing valuable knowledge and insight at this workshop which will also be attended by Harry Honnor and Simon Pannell from the LGA's negotiations team. As always, there will be an opportunity for Councils to learn from each other by sharing experiences, problems, issues and solutions. <http://bit.ly/Paymodelling>

### GDPR and HR 6 months on, 13 November 2018

EMC are holding a follow-up workshop, providing a space to explore GDPR for HR six months on.

Facilitated again by Lynn Wyeth, the workshop will bring authorities together to explore challenges and issues facing authorities, sharing how they have responded to some of the complexities of GDPR, such as Subject Access Request and Right to Erasure requests as well as reporting data breaches. <http://bit.ly/2BWtNWl>

### EMC Employment Law, 13 March 2019

Darren Newman will deliver the 2019 EMC Employment Law update. If you book a place before the end of January 2019 the cost per delegate is just £99 + VAT for EMC members (£76 saving on each place). <http://bit.ly/EMCEmploymentLaw2019>

## Outplacement Support

In recent months EMC has supported a number of authorities with Outplacement, and has developed a range of options available to support individuals facing the risk of redundancy.

The support we have provided has been tailored to the specific needs of the authority and individual concerned. In the past we have delivered to groups or individuals. Our workshops have included the following elements:

- Support with CV writing and preparation
- Support with application form preparation
- Preparing for interviews and practice with interviews
- Preparing for assessment centres and associated ability testing.
- Job search techniques
- Signposting to other relevant supporting agencies, eg for self-employment, retirement, employment benefits
- Change management and managing transitions, e.g. for remaining staff and managers

For more information on EMC Outplacement support contact [Sam.Maher@emcouncils.gov.uk](mailto:Sam.Maher@emcouncils.gov.uk)

## Development for Coaches

This month coaching champions from members of the East Midlands Coaching Network met. The top themes emerging from this group were;

- **Coaching in the digital age**, supporting the development of coaches to coach using Skype or telephone (scheduled event details [here](#))
- **Derailment** and how coaches can support their clients to get back on track (scheduled event [here](#))
- **Coaching for Resilience**

For more information on the East Midlands Coaching Network visit [here](#).

### 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.

One of the relatively few innovations introduced by the Equality Act 2010 was a new form of disability discrimination set out in section 15. The Act calls it 'discrimination arising from a disability' but in some ways that title is misleading. It gives the impression that unfair treatment can be discriminatory just because disability forms part of the backdrop. In **Dunn v Secretary of State for Justice**, however the Court of Appeal reminds us that there is rather more to it than that.

What section 15 actually deals with is unfavourable treatment 'because of something arising in consequence of' the claimant's disability. In recent cases we have seen how very wide this concept can be. Take an employee whose disability leads to long-term sickness absence. If the time eventually comes when the employer wants to dismiss then that will be unfavourable treatment. The treatment will be 'because of' the absence and, clearly, the absence arises 'in consequence' of the disability which caused it. To avoid a finding of discrimination, therefore the employer will have to show that the treatment was a proportionate means of achieving a legitimate aim.

But while the scope of section 15 is wide, it is nevertheless precise. We must identify the unfavourable treatment complained of and ask why it took place – what it was 'because of'. When we have identified that we must ask whether that specific reason for the treatment arose in consequence of the disability. Only then will the question of justification arise.

The latest case to look at this is *Dunn v Secretary of State for Justice*. Mr Dunn was a prison inspector who developed a depressive illness in 2012 and then a serious heart condition in 2015. He took ill-health early retirement from February 2016 but had first made an application for early retirement, based on his depression, in November 2014. The process for making an application was elaborate and bureaucratic involving a range of outside organisations to which various stages of the process had been outsourced –

including an HRE contractor, an Occupational Health Service, and the medical advisors to the pension scheme. The application was delayed in part because of the number of outside bodies involved and it was not until March 2015 that medical opinions were even sought. His worsening heart condition led to further complications and delays and there were errors in the initial calculation of his entitlement. A decision to allow him to retire on health grounds was not made until December 2015.

The Employment Tribunal found that there were three aspects of the employer's handling of his sickness absence and early retirement application that amounted to direct discrimination and also to discrimination under section 15. Firstly, the employer had not acted on the recommendations of the OH report that there should be regular review meetings with Mr Dunn and that the employer should carry out a stress risk assessment. Secondly the employer had failed to provide additional support to Mr Dunn when he had returned from periods of stress-related ill-health. Thirdly, the Tribunal held that there was unreasonable delay in the way in which Mr Dunn's application for ill-health early retirement was handled and no clear explanation for why the delay took place.

There was no doubt that Mr Dunn's ill-health and application for retirement had been handled badly. But the EAT held that this did not justify the Tribunal's conclusion that he had been discriminated against. The essential point in a direct discrimination claim is the reason for the treatment complained of. If somebody has been treated badly you have to ask whether that is 'because of' a protected characteristic. The protected characteristic has to be the reason for the treatment. In Mr Dunn's case his disability was an essential part of the background – for the employer to handle his absence badly, he had to have the underlying condition that led to that absence. But that was not the same as saying that his disability was the reason for the treatment.

The same flaw lay behind the findings on section 15. There too the Tribunal needed to focus on the reason for the treatment and ask whether the treatment was 'because of something' that arose in consequence of the disability. It was not enough that the treatment was



related in some way to the fact that the employee was disabled.

While Mr Dunn's absence arose from his disability, and the employer's unreasonable treatment of him arose from the way in which they dealt with that absence – that did not mean that absence was the reason for unreasonable treatment. The EAT found that there was no evidence that Mr Dunn's poor treatment was in itself because of something that could be said to have arisen from his disability – indeed the Tribunal had expressly found that much of it was due to straightforward incompetence. They dismissed his claim.

The Court of Appeal agreed. Even in section 15 cases there was a need to focus on the mental processes of the employer to determine why it had acted as it did. Unreasonable treatment was not the same as discriminatory treatment. Just because someone with a disability has been treated badly, that does not mean that they will succeed in a discrimination claim.

### Darren's Advice for Employers

Of course, employers should make sure that the process for dealing with long-term ill health is humane and efficient. Quite apart from the moral case, unreasonable delay can exacerbate an employee's ill-health and may amount to a breach of mutual trust and confidence. There can be legal consequences to failing to handle an application for ill-health retirement in a reasonable manner – even if there are no grounds for finding discrimination.

It is also worth considering one argument that the Court of Appeal refused to consider because it was brought up too late in the day. What if the process for considering an application for ill-health early retirement was so inherently bureaucratic and drawn out that it inevitably amounted to unfavourable treatment? If that was true, then the reason for the unfavourable treatment would not depend on the motivation of the individuals involved but would simply be the fact that the application had been made. You could certainly argue that the application was something that arose in consequence of the employee's disability. The question would then be whether the process itself was a proportionate means of achieving a legitimate aim – and it is difficult to imagine the employer succeeding

on that point. This may not be the last case we see where delays in considering ill-health retirement lead to a section 15 claim.

More information can be found on Twitter: @daznewman

## National Developments

### NJC Working Group on Term Time Review

You may recall that as part of a national agreement, a working group was set up to review term-time working. The review is ongoing. The NJC working group met this month and will be meeting again in mid-November.

Given the complexity of the issues being discussed, it will not be possible to finalise any guidance certainly before the end of the year. We will keep you informed of any developments and outcomes as they arise.

## Apprenticeships

Jamie Saddler, Apprenticeship Adviser at the LGA, attended this month's East Midlands Regional Joint Council meeting. Jamie gave an update on apprenticeships, including support available to councils. A copy of Jamie's presentation can be accessed [here](#)

EMC is arranging an event for the region on apprenticeships to provide an opportunity to share approaches and with a view to identify opportunities for councils to work together with EMC's support, to access future funding opportunities that will arise next Spring.

