

HR in the East Midlands

March 2017



Earlier this month, many of you attended our employment update briefing with Darren Newman. The feedback was, as always, extremely positive – with delegates valuing Darren’s knowledge and advice, and the chance to meet up and share views and experiences with colleagues from across the region. Darren’s article this month outlines the implications for employers of ET decisions being available on the internet.

Information Request Results – Facilities Time

Following a request from a council in the region which is reviewing its policy on Facilities Time for Trade Unions, we have examples of current policies from 8 organisations which are available for sharing. If anyone would like access to the policies, please contact us and we will email them to you.

This is a useful opportunity to raise awareness of provisions from the Trade Union Act which come into force on 1st April 2017 relating to the publication of information facilities time.

Although the first time the information will need to be published is by 31st July 2018, councils need to take steps now to ensure they are gathering the information to enable them to comply with the requirements

which are set out in the [Trade Union \(Facility Time Publication Requirements\) Regulations 2017](#)

The information will need to be published annually using the same timetable each year, ie covering the period from 1st April to 31st March and to be published by the 31st July of that year. Information required includes:-

- No of employees/FTEs who are union officials
- % time spent on facility time
- % pay bill spent on facility time
- Time spent on trade union activities as a % of total paid facility time

Authorities will have to report separately for schools based and fire and rescue service staff.

Projects with Local Authorities

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

- Restructuring support
- Disciplinary investigations
- Coaching

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

At EMC over the next few months we are focusing on Coaching, with several events and programmes taking place, including our 5th annual coaching conference. Looking further afield to the autumn, we're already planning a new PA Conference and offering authorities the opportunity to be part of a Collaboration Skills Programme.

Developing a Coaching Culture, 20 April 2017

On 20 April EMC Councils will provide an opportunity and space to talk about coaching and how the East Midlands Coaching Network can support their councils with their coaching journey.

The morning workshop will provide participants the opportunity to hear directly from network members on their coaching journey and their development of coaching activity within their organisational setting.

The aims of the workshop are to:-

- explore what a coaching culture is, what the benefits are and how to develop leadership buy-in
- provide delegates with the opportunity to hear what others have done around developing their coaching culture
- provide a space to share challenges and explore experiences of developing a coaching culture, to provide an opportunity to explore options, learning from others experience, picking up valuable tips from those who have had similar challenges
- provide details of the Coaching network and the support that can be provided through the network
- demonstrate how the Mye-Coach portal works and the benefits this offers to the facilitation of coaching

To book your place, please complete an online registration form that is available from this link

<http://bit.ly/DevelopingCoachingCulture>

East Midlands Coaching Conference, 13 June 2017

5th Annual Coaching Conference in the East Midlands, Melton Mowbray

The East Midlands Coaching Network are proud to celebrate our 5th Annual Coaching Conference, which will feature a mix of practical workshops and group coaching experiences, exploring a range of exciting coaching areas, with something for coaches of all

experience. Delegates will be able to choose from a range of practical workshops, including;

- Enhance your coaching presence
- Bouncing back from failures
- A Refresher Coaching Workshop
- OutGROWn?
- "Good question"
- The Mindful Approach to Coaching

Whole Group Sessions

The Power of Constellations Coaching

Why you need to take a systemic approach if you want organisational break-through. We'll do a deep dive into the power of the Constellations approach and you'll each get a practical taster of Constellations Coaching in action.

Coaching with mBIT: Tapping in to Embodied Wisdom in coaching

This session will introduce you to the exciting new field of mBIT (or multiple brain integration techniques). Our keynote speaker will share with you how neuroscience is now proving what ancient wisdom traditions have known for millennia – that we have 3 centres of intelligence – our head, heart and gut. She'll explore how mBIT Coaching offers us practical, potent and immediate ways to make wiser decisions, live more fully and create generative change in both our coaching clients and ourselves.

Thinking Ahead

- Building on recent work to support PAs, we're planning a PA Conference in November, with further information to follow.
- Collaboration Skills Programmes

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

Online Employment Tribunal Decisions

It used to be that if you wanted to read up on recent Employment Tribunal decisions you had to undergo something of an ordeal. First you had to go to Bury St Edmunds, which is a lovely place but by a strange topographical quirk is largely inaccessible from anywhere else in the country. You then had to go to the Employment Tribunal offices and ask to be taken to the public reading room. You could use a database to find a particular case, but that would only give you a reference number leading you to a cardboard box packed with 250 Tribunal decisions. You would then have to flick through those until you found the one you wanted and then photocopy it. It was a very pleasant way for an employment law researcher to pass a few hours, but it meant that only the most interesting and important decisions ever saw the light of day.

No more. This year the Government has actually implemented a longstanding promise to make all Employment Tribunal decisions freely available online, in a searchable database. This is tremendous news for those of us who rely on this raw material to tell us what is going on in the world of employment law, but it presents particular challenges for the parties to a dispute – both employers and employees. Employees may worry that a potential employer will look for any Tribunal cases involving them before deciding whether or not to offer them a job. But employers will also have to get to grips with what it means for them when their potentially rather dirty laundry is aired in such a very public manner.

Any large employer is likely to have some tribunal claims that go all the way to a final decision. I spoke to one local authority recently who had lost an unfair dismissal claim with the Tribunal making a number of rather pointed criticisms of the managers involved. The winning employee had boasted of his success to a number of former colleagues and a link to the full

decision was being widely shared among the workforce, causing considerable upset and embarrassment to the managers concerned. In the past the employee would have received a paper copy of the decision, but sharing that with colleagues would involve a laborious copying process. An internet link, however, can be included in a tweet or a facebook post with no trouble whatsoever and be enjoyed by hundreds of people within minutes.

Implications for Local Authorities

There really isn’t much that an employer can do about this. A Tribunal will of course protect the anonymity of children and other vulnerable people, but will not avoid mentioning names simply to save an employer’s embarrassment. Employment Tribunal hearings are public and their decisions are public records. I don’t see that you can forbid employees from reading them or sharing them with colleagues. Indeed a successful claimant is perfectly entitled to shout his or her success from the rooftops.

If a case settles, of course, then that is a different matter. Settlement agreements routinely include confidentiality clauses preventing the employee from discussing any aspects of the case with others. Such clauses may be difficult to enforce, but they certainly help to keep the lid on a case that you would rather keep quiet. They should be used with care, however. They can’t be used to prevent an employee from repeating allegations that qualify for whistleblowing protection - and public bodies are likely to be criticised if the perception is created that they are subjecting former staff to ‘gagging clauses’.

In the absence of a settlement however, it is still not inevitable that the full details of a case will be made public. Not all employment tribunal cases get a full write up. In fact, in most cases the Tribunal gives its reasons orally at the end of a hearing and the written judgment is just a couple of paragraphs long - summarising the outcome but not going into any of the detail of the claim or the evidence. There are actually only two circumstances in which full written reasons are produced by the Tribunal. The first is where the case ends and the Tribunal reserves its decision – that is, it tells the parties that the outcome will be notified to them



by post. If the decision is given in writing then full written reasons for the decision must also be given. So it might be a good idea to make sure that the evidence in a case is dealt with promptly and the Tribunal has time to give its reasons at the end of a hearing if you want to avoid a detailed decision being published.

The other circumstance in which full reasons are produced is when one of the parties asks for them. Once the oral reasons are given each side has 14 days to request full written reasons – which are needed if you are contemplating appeal. As an advocate, my habit was always to ask for full written reasons if I lost - if for no other reason than to make the Tribunal that had found against me do some extra work. Even if an appeal seemed unlikely there was the possibility that a legal error would creep into the written reasons and, perhaps more importantly, a detailed document setting out why the Tribunal reached its decision could help a client to understand what went wrong and what lessons could be drawn from the experience.

Now though, I think I would be far less ready to ask a Tribunal to produce full written reasons. Why force the Tribunal to create a document that will then be published online and available for anyone to see? The trouble is, you can't stop the other side from asking for full reasons and can't object if they do.

For employers with a high profile the publication of Tribunal decisions adds an interesting dimension to the question of whether to settle a case or fight it. Very often local authority employers have tried to avoid comment on the individual circumstances of cases, but that may cease to be tenable if those circumstances are freely available online. A more considered strategy may be needed to provide context and balance to the opinions expressed by an employment judge.

More information can be found on Twitter:
@daznewman

National Developments

Brexit Implications

Brexit implications will be coming more to the fore now that Article 50 has been triggered. EMC is a member of CEEP UK, which represents the interests of public

sector employers at European level negotiations through its role in CEEP, which is a social dialogue partner. Cllr Tom Beattie, Chairman of the Regional Employers' Board and Leader of Corby Borough Council, is President of CEEP UK and Vice President of CEEP. His appointments have facilitated an increased influence for the region on developments in employment and social policy and legislation at European level.

On 17th January the Prime Minister set out the "Plan for Britain" including the 12 priorities that the UK Government will use to negotiate Brexit. This includes taking back control of laws and ending the jurisdiction of the European Court of Justice. This week the Government announced its proposals for a Great Repeal Bill so that post-Brexit agreements reached by the European Social Partners through "Social Dialogue" and other laws and regulations produced by the European institutions will no longer apply to the UK. EMC will be reviewing its future relationship with CEEP accordingly. The proposals include plans to subsequently change the legislation covered within the Repeal through statutory instruments, leading to concerns from some areas that revised legislation may not be subject to the usual levels of scrutiny, challenge and consultation.

A significant issue for employers of Brexit will be implications for the status of employees who are non-UK EU nationals. Earlier this month we conducted a survey on behalf of national employers and only 4 respondents from our region currently have records that enable them to know which of their employees are non-UK EU nationals and could be affected by the outcome of Brexit negotiations.

Review of the National Pay Spine

Work is continuing at national level to develop a new national pay spine for local government employees that will be compliant with the Government's targets for the National Living Wage for 2020. Colleagues will be aware that the joint working group has agreed on a without prejudice basis to proceed according to three principles:-

- A revised pay spine should look similar to the existing one, i.e. individual pay points matched to a specific salary figure



- The differentials between each of the pay points should be consistent
- A revised pay spine should be extended beyond the existing pay point 49.

The aim is to have an outcome of the joint work by June.

EMC is part of the national employers' working group. We will be attending a meeting with national and other regional employers to discuss progress to date on 25th April 2017. Any information available will be shared following that meeting and an update provided in next month's HR Bulletin. We are planning to host any pay consultation meetings within the region during autumn 2017 to enable councils be consulted on the proposed new pay spine and to influence national pay negotiations.

Intermediaries – Review of IR35

From 6th April 2017, the Government is changing the rules relating to Intermediaries – eg consultants operating within the public sector and moving the responsibility to the end user for checking employment status and where a worker falls within scope, paying tax/NI. An on-line questionnaire has been developed by HMRC to help organisations identify whether or not a worker would be in scope of the regulations.

There have been reports of difficulties with the new arrangements and the on-line system. EMC attended a workshop yesterday with HMRC's technical and policy experts go through the Employment Status Service, including the on-line tool. If you have queries about IR35 then please let us know. The key points to share from the workshop were:-

- HMRC will stand by assessments undertaken on HMRC's online tool after 3rd March 2017 as long as the information inserted is accurate and provided in good faith.
- The above assurance will not apply to assessments using tools from other providers.
- Amendments will be made to the on-line tool to provide clarity.
- If the worker is covering a statutory office-holder post, eg Monitoring Officer, Head of Paid Service, they would be within scope.

- The new rules apply to payments on or after 6th April 2017, including for work undertaken prior to that date.
- If the person you contract with asks for reasons why you have determined their status, you must give those reasons within 31 days of receiving the request or you will automatically become the fee-payer. The reasons can be simple, eg "because it was the result of having completed HMRC's on-line tool."
- You could also become liable if you do not take reasonable care in determining the worker's status, eg having a blanket rule.
- Significant issues appear to be substitutions for the worker and control.

This week, the LGA's Chairman wrote to the Minister asking to delay implementation. We will let you know if there are any further developments, but it is likely that the new regime will be introduced as scheduled.

Follow these links to the [Guidance](#) and the [online tool](#)

Apprenticeships

This month, the Government published additional information in relation to the new apprenticeship regime. There is now:-

- [guidance for schools](#)
- [the register](#) of organisations that are approved to deliver apprenticeship training to employers using the apprenticeship service.

The LGA has developed a knowledge hub for local authorities relating to apprenticeships, which can be accessed through the following link:

<https://khub.net/register>

