



HR in the East Midlands

December 2018

This month's issue provides up-to-date information on all things HR and L&D, along with Darren Newman's insight on employment law developments. Importantly, it is also our chance to say thank you for your continued support throughout the year; we look forward to working with you in 2019. Have a lovely festive break!

Farewell to Sarah

This month we are saying our farewells to Sarah Short. Sarah has been an HR & Development Manager at EMC for more than 10 years and in that time has provided a range of support for networks and organisations across the region. She has also led on the East Midlands Strategic Migration Partnership, which has been held up as a best practice example. We will be sorry to see Sarah leave us but are happy that she will remain part of our regional HR family and wish her well in her role as HR & OD Manager at Leicestershire County Council.



EMC's Christmas Closing Arrangements

Our last working day will be Friday 21st December and our offices will open again on Tuesday 2nd January 2019.

Reminder Alert!



At the regional HR network held on 28th November a request was made that we provide you with a reminder alerts or diary notes, so

we are incorporating that suggestion within our HR Bulletins. Our first reminder is to provide a nudge that this time of year you should be preparing your **pay policy statements** for 2019-20 and covering reports, as these will need to be approved by a full council meeting in time for 1st April 2019.

Projects with Local Authorities

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

- Team development
- Skills audit and development plan
- Psychometric testing

To find out 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



Learning & Development

2018 has been a great year for development at East Midlands Councils, with more than 1400 people attending our events. Over the year we have continued to develop our offering, with the introduction of the LEAN thinking workshops and a programme of free events to support pay spine implementation.

2019 already looks exciting, with an OD/L&D Conference in February, and events in the pipeline on wellbeing/resilience and addressing the gender pay gap. We will also be offering a new Writing Press Releases workshop in March, designed for anyone who'd like a bit of positive publicity for their service or authority.

People Conference, 6 February 2019, Melton Mowbray

We are pleased to announce that Chief Executive of NW Leicestershire DC, Bev Smith, will be chairing our People Conference, which is centred on the theme of **Managing and Development People in a Changing World**. This will be our first major event in next year's programme, and will be of interest to all HR, L&D & OD professionals.

The day will cover issues such as:-

- transformational culture change
- improving performance and productivity

These will be explored through a blend of inspirational and thought-provoking keynote speakers and workshops, so that delegates gain insights and access practical models that help build capacity and performance.

Information on the Conference is available [here](#)

Employment Law early bird offer ends in January

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>

East Midlands LA Challenge

Our second major development event in 2018 will be the East Midlands Local Authority Challenge, taking place on 21st March. This is one of our most popular events, where Councils who have taken part and benefited from the experience previously, are keen to participate again. We're keen to make 2019 the best challenge event yet! The deadline for registration is 7th February, so there is still time to register a team from your organisation.

2019 Awards

For the 2019 Challenge we're working with the MJ, who are sponsoring the 'Best Presentation' award and will be joining the Media team to put the teams through their paces. We've also introduced a new 'Outstanding team player' award. Voted for by the assessors, this recognises the vital role played by team members and will be an opportunity to identify a 'rising star'. The award categories are:-

- East Midlands LA Challenge Winners
- East Midlands LA Challenge Runners up
- Best Chief Executive Officer
- Best Presentation
- Best Residents Magazine
- Best Partnership Working Award
- Outstanding Team Player Award (new for 2019)

Winners across the country

The LA Challenge takes place across the different regions. Three of the LA Challenges have already taken place and the feedback from participants once again has been excellent.

For more information about the Challenge visit our website, or drop Kirsty Lowe a line if you have any questions. [EMLAChallenge2019](#)

Contact Details

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

Sam.Maher@emcouncils.gov.uk,
Lisa.Butterfill@emcouncils.gov.uk,
Kirsty.Lowe@emcouncils.gov.uk



In Deep with Darren

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

Suspension following allegations of misconduct

One of the first employment law issues to be tested in the New Year is the employer's ability to suspend an employee following allegations of misconduct. In late January the Court of Appeal will hear the case of **Agoreyo v London Borough of Lambeth**. Ms Agoreyo was a teacher who was struggling to cope with two particularly disruptive pupils. She was suspended following allegations that on three occasions she had used inappropriate force to deal with them – essentially by dragging them out of the classroom. Her view was that she had behaved appropriately and that it was wrong to suspend her – particularly given that she had been asking the headteacher for additional support in dealing with the children. A series of support measures were indeed just about to be introduced when the suspension took place.

When the allegations were made by a colleague who had witnessed the incidents, the headteacher took the decision to suspend Ms Agoreyo pending an investigation and gave her a letter to that effect on the same day. As soon as she received the letter, she submitted her resignation. Because she did not have two years' service she could not claim unfair constructive dismissal, so instead she brought a contractual claim in the civil courts. Her argument was that the decision to suspend her was a breach of the implied term of trust and confidence.

She lost in the county court, with the judge ruling that the employer effectively had no choice but to suspend her given the nature of the allegations – but she then brought a successful appeal in the High Court. In January the saga continues, with the Court of Appeal considering the employer's appeal.

This is a difficult case, but one point made by the High Court is surely correct – suspending an employee cannot be described as a 'neutral act'. Attitudes have changed in recent years. It used to be the case that provided the employer continued to pay the

employee in full it did not matter if the employee was told not to come in to work. But the development of the implied term of mutual trust and confidence has placed the issue of suspension under new scrutiny. There is now a general acceptance that suspension is extremely stressful and unpleasant for the employee concerned and can have a seriously damaging effect on the employment relationship. If that damage is inflicted without proper cause, then suspension can certainly amount to a fundamental breach of contract.

In analysing the decision to suspend Ms Agoreyo the High Court was critical of the haste with which it was reached. In particular, there was no consideration of her version of the events which led to the decision, nor of any alternatives to suspension. The employer's letter to Ms Agoreyo claimed that the purpose of the suspension was 'to allow the investigation to be conducted fairly' but it was not clear what would have prevented a fair investigation if she had been allowed to remain in work.

This reference to a fair investigation in the suspension letter caused an additional problem for the employer. Before the High Court they argued that the suspension of a teacher accused of using inappropriate force was a child protection measure. The High Court pointed out that there was no suggestion in the letter that the purpose of the suspension was the protection of children. The alleged misconduct was not of such a nature that there were genuine concerns that Ms Agoreyo was a risk to children.

It is, of course, one thing to tell employers that suspension should not be a knee-jerk reaction to an allegation of misconduct, but in a safeguarding context a school is likely to regard suspension -at least for a short period – as a matter of urgency while the seriousness of the allegation and its implications are assessed. Schools that I have spoken to about this case are distinctly worried at the suggestion that they cannot take urgent action to remove an accused teacher from the premises but must instead embark on a search for alternatives. Apart from anything else, what realistic alternatives are there likely to be for a teacher whose role necessarily involves close contact with children?



Some employers I have talked to take a two-stage approach. When an allegation is initially made they send the employee home, making it clear that this is a short-term measure to allow a proper assessment of the situation. Discussions are then held internally and with the Local Authority Dedicated Officer when appropriate before a formal decision is taken that the employee needs to be suspended. This way, when formal notification of suspension is given a few days later, the employer can show that it has not made a hasty decision and has done its best to consider any alternatives that there may be.

There is perhaps some sleight of hand here (what is the difference between suspending an employee and sending them home for a few days?) but it strikes me as a smart way of maintaining trust and confidence in what is inevitably a difficult situation. It also ensures that the formal letter of suspension is properly thought out and accurate.

Of course, it is not just at the point of suspension that the employer needs to be careful. The real damage to trust and confidence surely comes when a suspension continues for an extended period of time while the investigation slowly grinds on. The longer a suspension lasts, the harder it is to envisage a smooth and successful return to work if the allegations are eventually rejected. A sense of urgency is vital when an employee is suspended – especially when the allegations involve safeguarding issues.

We will have to wait and see what the Court of Appeal makes of all this – and an eventual appeal to the Supreme Court cannot be ruled out. This is certainly an opportunity for the Courts to lay down some definitive guidance as to when suspension is appropriate and how the employer should go about it. Let us hope that they take proper account of the particular obligations placed on schools to ensure the protection of children and the difficulty of balancing those obligations with the rights of employees accused of misconduct.

More information can be found on Twitter:
@daznewman

National Developments

EU Settlement Scheme Pilot

The Government has now launched the EU settlement scheme pilot. Employees working in the higher education, health or social care sectors are eligible for this pilot. A template email for employers to send to relevant staff is available on the following link <http://bit.ly/2GusTmy>.

Further information and guidance is available on the Government's website. The following links may be particularly relevant:-

[Pilot scheme applicant information](#)

[Settled and pre-settled status for EU citizens and their families](#)

The scheme will be fully open by 30th March 2019.

Apprenticeship Standard in Health & Care Intelligence

A trailblazer group has been set up, chaired by John Battersby, Public Health England, to develop a new masters level apprenticeship standard in Health and Care Intelligence. The **Institute for Apprenticeships (IfA)** have linked the group up with Jill Nicholls, relationship manager for science related occupations, who will help the group through each stage of development.

Occupational Proposal

The trailblazer group have reached the first formal stage in developing a standard, which is submitting what the IfA calls the "occupational proposal". More information about this, and the various stages of the development of a standard can be found on the IfA website using the following [link](#).

The expectation is that the apprenticeship standard will include the activities of Population and Public Health, in addition to NHS and other care providers.



To help the group develop an occupational proposal, they are requesting that any local authorities that are not currently involved but would like to be to get in touch. The group are looking for councils who would like to be involved or would like to find out more about the trailblazer group and the standards being developed. For more information, please contact John Battersby at john.battersby@phe.gov.uk and copy in Lisa.Mabbs@phe.gov.uk who is supporting John.

Brexit HR Summary

A Brexit deal has been negotiated, but its passage through the UK parliament looks far from assured. No-deal remains a very distinct possibility, while a second referendum appears more likely than before.

Eversheds has produced a useful 1-page summary of the possible implications of deal or no-deal scenarios from an employment and immigration law perspective. It can be accessed [here](#)

Good Work Plan: changes to employment law following Taylor Review

This week the Government published information on the employment law changes being proposed as an outcome of the Taylor Review. The main changes being proposed are:-

- Improved rights for agency and zero-hours workers
- Clarifying employment status
- Increasing the period between employments before continuity is broken

The proposals can be accessed through the following link: [Good Work Plan](#)

We will keep you informed of any developments as the proposals are taken forward.

