



HR in the East Midlands

January 2018

In response to your requests, we are holding a regional GDPR event that is tailored for the HR community on 1st March 2018 – see our Learning & Development section for further details. The section also gives details of this year's National Graduate Development Programme. All of this month's pay developments are corralled in the national update section. Darren Newman's article looks at collective bargaining and illegal inducements, following a recent EAT ruling – an article that will be of interest for those of us involved in negotiating changes to terms and conditions.

EMC's Regional Discount for XperthR

XperthR is an online HR information system that is constantly being updated, with new content and extra services being added to ensure that the provision remains up-to-date and relevant for our needs.

For a number of years, EMC has been able to negotiate with XperthR to achieve a regional deal, providing a discount for our local authorities. We are pleased to confirm that a regional deal can be offered for the period April 2018 to March 2019 which, based

on a minimum of 72 licences across the region, would provide significant discounts for authorities:-

Single User Licence - £809.00 per person + VAT. The standard rate card pricing structure is £2230 pp + VAT therefore our regional deal represents a saving of at 63% per licence.

Public Sector Site Access Fee - £160.00 per organisation + VAT. The standard public sector site access fee is £1220 + VAT, so we are offering an 87% saving per organisation.

Other products and services are also available, eg legal advice. If you would like to take advantage of this discount, or have any queries, then please contact Lisa Butterfill at lisa.butterfill@emcouncils.gov.uk by 28th February.

Projects with Local Authorities

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

- Disciplinary investigations
- Restructuring support
- Mediation

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

The New Year often provides a new focus on personal development, with individuals and organisations taking the time to explore their future needs. Let us know how we can support you and your organisation with your learning and development needs, whether through traditional training sessions, coaching or in-house tailored programmes. Here is a snapshot of what's available....

GDPR for HR, 1 March

With GDPR coming into force in May 2018 and organisations becoming increasingly dependent on data, it is now more crucial than ever for organisations to ensure compliance with the highest standards of data protection. HR has a unique role, since the department holds some of the organisation's most personal information.

Our GDPR for HR course, led by Lynn Wyeth, takes an overview of GDPR requirements and looks specifically at the requirements of HR people and departments.

Delegates will gain a clear understanding of the GDPR reforms to data protection, learn the tools to effectively identify and manage risk, avoid punitive fines, and leave with the confidence and knowledge to comply with the Data Protection Act and GDPR. They will be capable of sharing what they learn with HR colleagues and other departments in their organisation as HR Business Partners. Click here for more details:-

[GDPR for HR](#)

Employment Law Update

The annual EMC Employment Law update will take place on 8 March in Melton Mowbray.

This employment law update will take you through the latest developments in employment law and look forward to what will be happening in 2018 and beyond. With current issues such as employment status, unfair dismissal and discrimination and recent cases on changing trade union relationships, whistleblowing, gross misconduct and disability discrimination, there will be a lot to talk about. We will also be considering whether the General Data Protection Regulation is worth all of the fuss that is being made about it, and will cover the implications for local government of the requirement to report on the gender pay gap.

As ever there will be lots of time for questions and discussion and a chance to share knowledge and experiences with colleagues from around the region. This is always an enjoyable and informative day, full of practical advice and tips for handling tricky situations.

Our Early Bird offer runs out on 31 January, the early bird cost is £99 + VAT per delegate, saving £76 on each place. [Employment Law 2018](#)

Coaching Supervision, 21 March

Coaching supervision is an essential part of any coaching practice and helps to maintain the professional competence of individual coaches. This workshop will help coaches to:

- strengthen their coaching skills and knowledge, and deepen their self-awareness
- handle challenging coaching situations
- pay attention to the ethics of coaching

[Coaching Supervision](#)

National Graduate Development Programme (NGDP)

This year's NGDP has received a record number of applications this year, and a number have indicated a preference for a placement in our region.

Opportunities still remain for councils to offer placements either to take an NGDP trainee or to pitch in with other councils to share the costs. The closing date for council sign up is **30 March**. **If you would like to know more, you can meet Welna Bowden, LGA Adviser, at EMC on Friday 23rd February.** For more information see here: [NGDP](#)

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

Unlawful Inducements & Collective Bargaining

Tucked away in the Trade Union and Labour Relations (Consolidation) Act 1992 is a little known provision that can be a major hazard for any employer seeking to change its relationship with a trade union or move away from formal collective bargaining.

Union recognition can’t really function without the agreement of both the employer and the relevant trade unions. That’s why – despite the statutory recognition procedure – most collective bargaining arrangements are entirely voluntary. They continue because they suit both sides of the negotiation. If they break down, the employer is free to derecognise, and although the union could, if supported by the workforce, seek an order for recognition from the Central Arbitration Committee a more immediate – and more likely – outcome is an industrial dispute. There is a strong tradition in the UK that issues of recognition and derecognition belong primarily in the field of industrial relations and employment law has a relatively limited role to play.

That may, perhaps, be why both employers and trade unions have paid little attention to s.145B of the 1992 Act. This gives individual workers the right not to have their employer make them any sort of ‘offer’ – described as an ‘unlawful inducement’ - with the purpose of persuading them to agree that the terms of their employment will not, or will no longer, be determined through a collective agreement. The provision was inserted into the 1992 Act in 2004 as part of the Government’s response to the ruling of the European Court of Human Rights in the case of *Wilson & Palmer v United Kingdom*. That case involved employers offering increased pay awards to employees who opted out of collective bargaining and chose to negotiate their terms directly with the employer. The Court held that it was a breach of Article 11 of the Convention (the right to freedom of association) for

UK law to allow the purpose of trade unions to be undermined in this way.

So S.145B was passed without much fanfare, and it has not been much used in the decade since. This is perhaps because the rather ironic central message behind the provision is that an employer who wants to derecognise a union is better off simply imposing the new regime rather than trying to persuade employees to accept it. Back in 2014 Bromley Council was ordered to pay compensation to 18 employees after it withdrew from national collective bargaining and moved to localised pay and conditions determined each year by the Council. To sweeten the deal, employees who signed up to the new arrangements were offered a one-off payment of £200. Oddly, both the employer and the union seem to have gone through the whole process without either side realising that this would be held to amount to an unlawful inducement.

Frankly, Bromley should be relieved that so few employees had the presence of mind to bring a claim. It is, after all, the mere making of the ‘offer’ that is unlawful – a claim can be brought irrespective of whether the employee accepts or declines that offer. There is no need to show that the employee was upset, or suffered any kind of detriment. And although Bromley had initially offered a £200 payment, there is also no requirement in the legislation for a financial inducement. Any offer will do.

If you think about it, any change in terms and conditions involves some sort of offer being made by the employer – that is how contracts are formed. This means that any council that wants to move away from national bargaining should move to a comprehensive local bargaining framework. Replacing a collective agreement that has been incorporated into the contract with a consultative arrangement may simply be impossible.

But in any event, it now seems that s.145B is not even confined to cases where the employer is seeking to get out of collective bargaining altogether. In **Kostal UK Ltd v Dunkley and others** (EAT, December 2017) the employer had only recently recognised a trade union and their first round of negotiations ended in stalemate. Frustrated at the lack of progress the employer went



over the union's head and made a direct offer to employees – arguing that an early resolution was needed to ensure that Christmas bonuses were paid. Eventually the union accepted the proposed terms and a collective agreement was reached. The company was perfectly happy to bargain with the union – it just wanted to be able to talk to employees directly if negotiations failed.

In the meantime, however, 57 employees (backed by the union) brought claims alleging that they had been subjected to unlawful inducements when the employer made its direct pay offer. And they won. The EAT agreed that the purpose of the offer made by the employer was that –for one pay round at least – the pay of employees would not be determined by collective bargaining but by individual negotiation. There was no requirement, said the EAT, that an individual offer would only amount to an unlawful inducement if it sought to permanently remove the employee from the scope of collective bargaining.

That is quite a draconian conclusion – even more so when you consider the compensation that is awarded in cases of unlawful inducement. There is a fixed penalty that a Tribunal must impose on employers of just over £3,900 for each employee to whom an unlawful offer is made. Unfortunately for the employer in the Kostal case they actually made the same offer twice – once before Christmas and once after. That means that their attempt to break an impasse with a trade union by talking to the employees directly is going to cost them almost £400,000 in compensation. That seems like a lot of money for conduct which, while a breach of the etiquette of collective bargaining, is hardly sinister.

[Advice on Implications for Local Authorities](#)

I would expect an appeal in this case. But it is clear that any local authority employer that is thinking of changing the way in which it deals with trade unions or collective agreements needs to tread very carefully indeed. The cost of getting it wrong can be eye-watering.

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

National Developments

Green Book Negotiations

The National Employers last week issued a circular to local authorities providing an update on the pay negotiations. Trade unions are now consulting their members, with two unions – Unite and Unison – recommending the offer be rejected, and GMB recommending acceptance on the basis that this is the best that could be achieved. The outcome of the ballots will be known in early March. If agreement can't be reached, then councils will need to implement the new National Living Wage (NLW) on 1st April 2018, as the current pay level of the bottom spinal column point will be below the NLW. The circular can be accessed here: [pay update circular](#)

Chief Executive's Pay Claim

ALACE, the Officers' Side of the Chief Executives' Joint Negotiating Committee has submitted a claim on behalf of Local Authority Chief Executives. The claim covers 2018 and 2019 and seeks pay increases for each year that match whatever is implemented for generality of staff covered by the Green Book. A copy of the claim can be accessed at: [Chief Executives](#)

Coroners

This month a Joint Circular was issued from the JNC for Coroners. The Circular provides guidance on the implementation of the agreement reached on pay (as set out in Circular No. 61), to assist local decision-making in determining pay within the appropriate range. If you have any queries on this, you can send them to: coroners.queries@local.gov.uk A copy of both circulars can be found at: [Coroners](#)

English Language Requirement

The Cabinet Office is evaluating the implementation of English Language Speaking Requirements, one year on. EMC will be providing further information on this review and how you can input your views and comments.

