



HR in the East Midlands

March 2018

It was good to see so many of you at our Employment Law update with Darren Newman earlier this month. Feedback from the event was extremely positive, so we will be following this up with further sessions on specific areas of interest over the forthcoming year. As well as an article from Darren – on the subject of term time holiday – this month's bulletin covers the latest on the national pay negotiations, survey results on your current redundancy policies and learning and development opportunities that are available for you to tap into.

Gender Pay Gap Reporting

The deadline for publishing gender pay gap information is 31st March 2018. Although there is little value in comparing figures across councils as so much depends on the make-up of services within the organisation, the information on policies and approaches being used to reduce any gender pay gap will be of value. EMC will be working on collating and reviewing this information with a view to sharing initiatives and good practice across the region. Contact Sam Maher if this is an area of interest to you, or if your organisation has ideas and good initiatives to share with others.

Survey Results: Redundancy Pay

This month we conducted a survey into how authorities across the region are calculating redundancy pay – whether there are any enhancements offered.

The full results of the survey will be circulated separately, but the summary of your responses show that almost all Councils base redundancy pay on an actual week's pay, rather than applying the statutory cap to a week's pay. The majority of responders also enhance redundancy pay, mostly by applying a multiplier to the statutory calculator. A multiplier of 1.5 was the most common enhancement made.

Thank you to everyone for providing your information.

Projects with Local Authorities

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

- HR Service Reviews
- Disciplinary investigations
- Psychometric testing

We are pleased that Sarah Short will be returning to work on HR support, in addition to her work on strategic migration. To find out how EMC could support an area of work for you, then please contact Sam Maher at sam.maher@emcouncils.gov.uk, Lisa Butterfill at lisa.butterfill@emcouncils.gov.uk or Sarah Short at sarah.short@emcouncils.gov.uk



Learning & Development

With spring (almost) in the air we thought we would take the opportunity to share with you some of our in-house work, to give you an idea of how we use our knowledge, experience, creativity and listening skills to develop bespoke in house sessions, as well as take a look forward to upcoming development opportunities.

Managing Performance

EMC In-house Managing Performance workshops

It's that time of year again when the "dreaded appraisal" comes round! One East Midlands authority was keen to explore how they could focus on developing employees buy-in and engagement in the performance management process, including exploring ways in which the appraisal discussion could be genuinely two-way, meaningful, relevant and even enjoyable!

EMC were contacted to facilitate both a 1 day workshop in delivering effective appraisals (for managers new to the role) and also shorter "bite-size" workshops to stimulate discussion and engagement in creating a meaningful, constructive and positive experience for both parties. Linked to the latest performance management research, culture of the organisation and good practice that already existed, the bite-size workshop facilitated by EMC, provided an opportunity to explore the purpose, benefits and share learning which included 6 top tips! These workshops also stimulated discussions which will contribute to their forthcoming PDR review. For more information, contact Lisa Butterfill.

Upcoming Open Programmes and Events

LEAN Practitioner

New to 2018, EMC are offering authorities the opportunity to take part in a two day LEAN Practitioner programme.

The LEAN Practitioner Training will develop delegates understanding of how using a variety of LEAN thinking and improvement tools can achieve improved services and outcomes. It will also address the wider cultural and people factors that affect organisational improvement and performance.

Day 2 will provide a practical opportunity to develop a mini Lean service review applying learning from day one.

Coaching Conference 2018, 3 July 2018

Less is more will be the theme for the 2018 Coaching conference. When working with coaching clients the feedback, we as coaches receive, is often how valuable coachees find it to have space and dedicated time to explore themselves and their current situation, including the luxury of having someone to listen and reflect back. This years Coaching Conference picks up on this theme and will offer a focused space for coaches to develop themselves.

The conference will include;

Finding your Authentic Coaching Voice, a stimulating session that will allow coaches to become familiar with the theory of Structural Dynamics, an approach based on the work of a leading systems psychologist who spent decades studying how communication works, and from his research has derived a model, Structural Dynamics, that sets out how communication in face-to-face contexts either succeeds or fails.

Team coaching - Led by an experienced Coach and former Chief Executive from the region the session will explore;

- the potential of Team Coaching
- how Team Coaching could work in your organisation
- models used in public sector Team Coaching programmes and a range of Team Coaching Tools

More information on the Coaching Conference will be available in the April HR Bulletin.

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,
Sarah.Short@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

The Employment Appeal Tribunal has ruled that it was not sufficient to set the holiday pay of a term-time only worker at the same 12.07% of earnings applied to those who worked throughout the year. This makes perfect sense if you just follow the logic of the Working Time Regulations.

There are two key things to remember about holiday entitlement. The first is that entitlement is expressed in weeks rather than days. We might talk about workers being entitled to 28 days’ holiday, but it is always worth remembering that the entitlement is set out in the Working Time Regulations as 5.6 weeks. This leads to the next key point, which is that workers who work less than 5 days a week are also entitled to 5.6 weeks’ leave. An employer should be able to point to 5.6 weeks in the calendar year and say ‘in these weeks, the worker was not required to come into work, but was still paid as normal’. Of course, then we have to figure out what ‘paid as normal’ means.

In **Brazel v The Harpur Trust** the worker was a casual music teacher at a school. Her hours of work varied and she only worked during term time. That meant that over the course of the year she would only be asked to work for between 32 and 35 weeks. Her contract specified, quite rightly, that she was entitled to 5.6 weeks’ holiday per year. The issue was how the employer paid her for that holiday.

Her holiday pay was paid three times a year – at the end of April, August and December – so that her designated holiday period was always outside term-time. Her payment was based on the monthly time sheets she submitted showing the amount she had actually earned in the relevant reference period. This was clearly right. As a worker whose work varied with the amount of work done, she was entitled to have her holiday pay calculated on the basis of an average of the previous 12 weeks’ earnings.

The problem came when the school sought to ‘cap’ her holiday pay at 12.07% of her overall earnings. That figure was based on Acas guidance on calculating holiday pay for a casual worker. The guidance assumed that the worker works for 46.4 weeks in the year (that is, 52 weeks minus the 5.6 week holiday entitlement). In other words, if you take the hours worked over 46.4 weeks, the pay for an additional 5.6 weeks will work out as 12.07% of the amount paid for the hours worked.

Ms Brazel, however, only worked during term time. If, in a year, she only worked 32 weeks, then pay for an additional 5.6 weeks would amount to 17.5% of the money she earned during the year. The school’s position was that it was appropriate to ‘pro-rata’ her holiday pay so that she was not put in a more favourable position than a worker who worked throughout the year. Ms Brazel argued that the Working Time Regulations clearly gave her a right to 5.6 weeks’ paid leave based on the amount she earned in the weeks she actually worked.

The Tribunal rejected her claim, finding that the school was entitled to calculate her holiday pay in that way. They relied on two ECJ cases (**Greenfield v The Care Bureau Ltd** [2016] IRLR 62 and **Zentralbetriebsrat der Landeskrankenhäuser Tirols v Land Tirol** [2010] IRLR 631) which held that it was appropriate for holiday entitlement for part-timers to be calculated on a pro-rata basis.

The EAT nevertheless allowed the appeal. The pro-rata principle was a way of making sure that part-time workers were not placed at a disadvantage. There was no legal principle that prevented part-time workers being placed in a more favourable position than full-time workers. There was therefore no reason not to apply the clear words of the Working Time Regulations, which set out the basis on which a worker’s holiday pay was to be calculated.

Ms Brazel was entitled, just like any other worker, to 5.6 weeks’ holiday. Her holiday pay, under the Regulations, fell to be calculated on the basis of an average of the hours she worked in the previous 12-week period and there was no basis for applying any



cap to that entitlement just because she was a term-time only worker.

The result of this case may seem like a windfall for the worker - but it strikes me as being right. Once you surrender to the logic of the Working Time Regulations, it follows that all workers are entitled to 5.6 weeks' leave and that leave should be calculated based on the amount they are normally paid when they are working. If Ms Brazel's holiday was taken in three instalments at the end of each term then her holiday pay had to be calculated as an average of the previous 12 weeks' earnings in each case. The fact that there were also a number of weeks in the year when she was not working and not entitled to be paid was neither here nor there.

It is worth noting that the provisions in the Employment Rights Act 1996 setting out the 12 week average, make it clear that any week in which no work is done is not counted (see s.223(1) if you're keen). So if the employer in this case had insisted on Ms Brazel taking her holiday just before the start of each term, following a period when she was not working, then her entitlement would have been the same. The weeks of school holiday in which she did not work would not count towards the calculation of her average week's pay.

Another lesson emerging from this case is that employers should make it clear when a term-time only worker is actually on annual leave. The right, after all, is to take paid leave – not just to be given a payment representing holiday pay. It will not quite do to simply 'roll-up' holiday pay into an overall rate for a casual worker, because the amount of that entitlement will vary through the year and depend on exactly when holiday is taken. We should also remember that rolled-up holiday pay has been held to be a breach of the Working Time Directive (see the ECJ's decision in **Robinson-Steel v RD Retail Services Ltd** [2006] IRLR 386). On balance it is better if possible to designate fixed weeks in the year as holiday and make sure that the worker is paid for those weeks in the normal way.

More information can be found on Twitter:
@daznewman

National Developments

Pay Negotiations Update

This month we learned the outcome of union ballots on the pay offer for Green Book:-

- GMB voted in favour of accepting the offer (by 94%)
- Unite voted to reject the offer (by 75%) and has indicated that it will not be signing nor be party to the joint circular on pay and will resist any attempt to use the pay offer as an excuse to attack local terms and conditions.
- Unison's members voted by 50.44% to reject the offer, but branches and regions voted to accept the offer. Unison is therefore conducting further consultation on a revised recommendation to accept the offer. The consultation period will end on 5th April.

The next steps will be for the joint unions to meet shortly after Unison's consultation ends to identify whether consensus can be reached. The employers' side will be meeting on 10th April 2018. We will keep you posted of any developments.

LGA's Consultation on Workforce Priorities

[Great people for growing places: working together for the future of local government](#)

The LGA has suggested suggested priorities for the local government workforce - and is giving councils the chance to have their say on the development of strategic proposals to help the sector focus efforts over the next few years:-

<https://www.local.gov.uk/our-support/workforce-and-hr-support/great-people-growing-places-working-together-future-local>

In launching this, the LGA has stated:-

“Councils have been working hard for many years to ensure that their people can achieve their full potential but there is always more to be done. As the wider public sector focuses on joint community outcomes, we



need to continue to collaborate with our partner and provider organisations to ensure our workforces are aligned to help the most vulnerable and also to help communities do things for themselves. To drive our thinking, the LGA has set out a suggested vision for the workforce over the next five to ten years. With your help, we will refine this vision and use it as a steer for new projects and programmes to support Councils in workforce development. Our shared vision of course needs a to take full account of the great issues of the day including austerity, demographic change, increased demand, changing expectations and Brexit, so we really need your help.

We must also agree some common priorities for action so that scarce resources can be used to maximum effect - both locally and within the LGA. As a starting point, we need new kinds of visionary leadership and innovative ways to help people embrace change. We need to think about our employer brand and how we attract and retain high calibre creative people especially for those jobs we find hard to fill. And we need to up our game in helping people to develop the skills they need as well as rewarding them properly for their efforts.

Like everyone else, we always have to make hard choices about best use of limited resources so we can't promise to do everything. That's why we have set out our priorities in five key areas which we think have the biggest impact on the workforce and therefore on productivity: leadership; organisational development; skills; recruitment and reward.

We are also determined to ensure that our new priorities have the right fit with related work being done elsewhere, so we are making links with the health and care workforce strategies that are under development. And because our people are part of our communities we will also assess links to ideas around local skills and economic growth through the LGA's [Work Local campaign](#)

The LGA workforce team is here to help councils get the best out of their people. We'd like to invite you to take part in a consultation exercise that will help us shape our support programme over the coming years. We've set out a series of [questions on our priorities](#) and we'd be grateful if you could take a little time to answer them."

