



HR in the East Midlands

May 2017

We hope you enjoyed the Spring bank holiday (despite the traditional downpours), and had the opportunity for rest and relaxation. Rest is the theme of Darren Newman's article this month, in which he sets out latest developments on sleeping in shifts and how they relate to the National Minimum Wage. Some of us may be pleased that being at work and not being conscious could count as working hours!

Date for the diary - Pay Consultation Meeting

EMC is hosting a consultation meeting on developments with national pay on **Wednesday 19th July 2017**. The meeting will take place at 10.30 at Pera, in Melton Mowbray.

This will be an opportunity for local authorities in the region to discuss and give feedback that will inform national pay negotiations. This is a particularly important meeting, as it will focus on potential options arising from the joint national working group that has been working on a new national pay spine in order to address National Living Wage projections.

If you wish to attend the meeting, then please contact Lisa Hopkins – lisa.hopkins@emcouncils.gov.uk to reserve a place.

Mediation

Mediation support continues to be a popular service provided by EMC, with authorities particularly valuing the independence we can bring to the process as qualified and experienced mediators.

To support in-house mediation, EMC is hosting a regional course in Mediation leading to an ILM qualification. As well as providing delegates with the skills to mediate, the course is also helpful for those who are buying-in mediation support, as it gives delegates a clear understanding of how best to use mediation as part of your other HR practices and processes. The 3-day practical programme costs £1,250 plus VAT per delegate, including ILM registration. To book a place or get further information, please contact Lisa Butterfill or Sam Maher.

Projects with Local Authorities

In addition to the mediation referred to above, this month we have also provided individual authorities with support on a range of projects and issues, including-

- Advising a Member Panel for a Dismissal Appeal
- Team development
- Investigation as part of a whistleblowing procedure

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

Development is always a key area of work for EMC, but 2017 appears of to be year of new opportunities. In the coming weeks and months EMC will be launching a Housing CPD programme, the first PA Conference for the East Midlands, and will also be launching proactive support for local authorities on Apprenticeships and how to get the most out of the Levy.

East Midlands Coaching Conference 2017

On 13 June 2017 EMC will proudly host our 5th annual Coaching Conference, offering an antidote to the election focus of the last few weeks. The Conference offers an exciting mix of practical workshops, exploring some key themes in Coaching including; alternative models to GROW;

“GROW lives at the core of most coaches. Most coaching models and processes (of which there are many) are GROW renamed, rebranded, and re-used. Whilst the debate around an overly goal focussed coaching approach still rumbles, there are models which allow more of an exploration of the transformational, rather than the (potentially) transactional nature of the GROW model. One such model is the ‘cycle of performance’ – which we’ll explore practically in this workshop.

To register your place, or to find out more about what the conference has to offer visit <http://bit.ly/EMCcoaching2017>

EM LA Challenge2017

EMC recently caught up with Dave Senior from Breckland Training Services who gave us an insight into this year’s LA Challenge:

“The LA Challenge is constantly evolving, pretty much from event to event, as part of our drive for continuous improvement. Whilst the broad concept remains the same from 2016 the scenario and framework that supports it has undergone considerable change. Without wishing to spoil the ‘surprise’ too much it would be fair to say that there is a bit more reliance on IT (for both teams and partners) plus a couple of new twists designed to keep everyone focussed on their development throughout the day. More importantly we have further refined the assessment process to

ensure that, post-event, team members will receive useful, relevant and focussed developmental feedback which will allow them not only to reflect on their own performance on the day but also take back to their own teams in their normal place of work.

All in all, this year’s Challenge is going to be the best yet – yes, as the name suggests, it will be a challenge and yes, it will require an element of individual robustness to undertake what is a full-on, non-stop, training day but the benefits to both the individual and the team are enormous. And don’t forget, whilst the primary focus remains fully on learning and development, one team out there has got to take home the Winning Team Award at the end of the evening! All of us here at Breckland Training Services are really looking forward to meeting the teams at Donington Race Track in November in what we know will be one of the most memorable developmental challenges you will ever undertake”.

Team registration is now open, avoid disappointment and register here <http://bit.ly/EMLAChallenge2017>

Development News

PA Conference 2017 - EMC is proudly introducing a one day conference designed to support Office Managers, Secretaries, PAs, Team Administrators – in fact anyone who organises others to achieve their goals. <http://bit.ly/EMCPAConference>

Housing CPD Programme - EMC will be launching a programme of CPD for Housing Officers. This is an exciting addition to our extremely popular suite of CPD programmes, EMC launched the Environmental Health CPD programme in 2008 and the Planners programme in 2011. Each programme offers;

- At least 18 officers attending the 6 seminars
- At least 100 hours of development.
- A cost saving of over £2000.

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

Sleep-over Shifts

There are some jobs that you really can do in your sleep. And this fact lies at the heart of a very tricky issue when it comes to calculating working hours for the purposes of the National Minimum Wage. Think of a care worker who works a ‘sleep-over’ shift. He or she may work a normal shift during the day and then stay over, ready to be woken if needed, but otherwise allowed to sleep through the night. We have known for some time that for the purposes of the Working Time Regulations, all of the time spent ‘on call’ at the worker’s place of work will count as working time (this raises the interesting prospect of having to wake someone up when it is time for their rest break) but the position is much less straightforward when it comes to the minimum wage.

At first sight the National Minimum Wage Regulations 2015 seem to have it covered. Regulation 32 says that time spent by a worker ‘on call’ at or near his or her place of work will count as working time unless the worker is provided with suitable ‘facilities’ for sleeping, in which case the time spent asleep will not count. This led most people to assume that provided an employee is given a proper place to sleep, time spent actually sleeping will not count for the purposes of the minimum wage. But this is not what the case law suggests. A recent decision of the EAT in three joined cases **Focus Care Agency Ltd v Roberts; Frudd v The Partington Group Ltd and Royal Mencap Society v Tomlinson-Blake (EAT, 21 April 2017)** says that a range of factors have to be weighed up when considering whether time spent sleeping counts as working time.

The central problem is that Regulation 32 only applies to time that would not otherwise count as working time. Being ‘on call’ suggests that the worker isn’t doing any work at the moment – but may be asked to do some at short notice. But if it is part of the employee’s job to sleep over on the premises then that might not be

seen as being ‘on call’ at all; being present in the workplace is part of the employee’s job. And if it is, then why would it matter whether the employee is allowed to go to sleep for all or part of that time? As the EAT put it in *Whittlestone v BJP Home Support Ltd [2014] IRLR 176*: ‘work is not to be equated to any particular level of activity’.

Of the factors identified by the EAT in the Focus Care cases, the most important is probably whether the employer has a regulatory requirement to ensure that a certain number of staff are on the premises at all times. In such cases it is easy to see the value that the employee provides to the employer simply by being present – conscious or otherwise. Other factors likely to be important include whether the employee is free to leave the premises during the shift or is obliged to remain throughout and the degree of responsibility that the employee has. It may be, for instance that if the premises are staffed through the night by employees working a night shift, then workers who are sleeping on the premises just in case they are needed are less likely to be viewed as working in their sleep.

Implications for Local Authorities

These cases are likely to go to the Court of Appeal - permission has already been granted – but in the meantime the position is that anyone who works a sleep-over shift because the employer needs to provide a certain level of cover during the night would probably be held to be working. That does not mean, of course, that they need to get paid the full minimum wage of £7.50 per hour for each hour of their sleep-over shift. The minimum wage does not apply on an hour-by-hour basis but is averaged over the course of each pay reference period.

For a monthly paid employee, you need to take the amount that the employee is paid over the course of a particular month (or week for weekly paid workers) and divide that by the number of hours worked. It is that average hourly rate that needs to be at least equivalent to the rate of National Minimum Wage.



This means that if the worker's normal hourly pay is in excess of the minimum wage, then that creates a 'buffer zone' that can absorb some of the shortfall in the payment for sleep-over shifts. Of course part-time care workers will, inevitably, have less of a buffer zone because they are working fewer hours at a rate above the minimum wage. Their work may need to be monitored carefully because if they also take a significant number of sleepover shifts their overall pay could well fall below the legal minimum.

For the future, the most significant factor is that the minimum wage is on the rise. Gone are the days when the rate was set cautiously by the Low pay Commission with the key aim of not adversely affecting employment levels. Labour proposes a £10 rate by 2020 – and would also abolish the lower rates applying for younger workers. Under a (perhaps more likely) Conservative Government, the rate will rise to 60 per cent of median earnings by 2020 and then continue to rise in line with those earnings. Combine this rise with continuing pay restraint in the public sector and any buffer zone local authorities might have had will soon be a thing of the past.

The cost of social care is a key issue whoever emerges victorious from the general election campaign. One hidden cost is that increases in the minimum wage will have a bigger effect on the pay of care workers than may currently be realised.

More information can be found on Twitter:
@daznewman

Regionally Negotiated Pay

Caretakers Letting Fees

The Regional Joint Council negotiates caretakers' letting fees. The current fees, effective from 1st April 2016 are available at the following link: [caretakers fees](#) The fees to be paid with effect from 1st April 2017 will be the subject of discussion at next month's Regional Joint Council meeting.

National Developments

Apprenticeships

This month, councils should have received payments into their digital accounts from their apprenticeship levy.

As part of its support to councils across the regions, the LGA has set up a national apprenticeships Knowledge Hub (online community). The aim of the Knowledge Hub is to facilitate discussion, share knowledge and signpost to good practice. Workshops and guides will be available through the Hub. You can sign up to the Knowledge Hub here: [hub](#) If you have any queries about the online community specifically please send them to Sadique Miah - Sadique.Miah@local.gov.uk

Secondment Opportunity at the LGA

There is a vacancy for a Principal Negotiating Officer at the LGA which may be of interest to colleagues who would like the opportunity of a 12-month secondment. For further details click here: [vacancy](#)

Coroners' Pay

A circular was issued this month providing an update on progress with a joint job evaluation exercise being carried out relating to Coroners. A final report arising from the work is expected soon. To access the circular, click [here](#)

Update on Term-time Working Review

Earlier this month we issued a circular providing an update on the work taking place jointly at national level to review term-time working terms and conditions. To access the circular, please click here [term-time review circular](#)

