



HR in the East Midlands

November 2016

This bulletin gives an update on national developments including the National Living Wage, apprenticeships, exit pay and term-time working. We also share the outcomes from our key leadership development event – the Local Government Challenge, which provided leadership experience and feedback in a fun and dynamic context. Darren Newman, provides advice from recent case law on TUPE and changing terms and conditions.

Apprenticeships

Over 100 people attended this month's free event on apprenticeships, hosted by EMC. This was an opportunity to hear directly from the national bodies on how the new framework for apprenticeships will work. The event included workshops to share information and identify how we can collaborate to support apprenticeships and maximize a return on the levy. The presentations (in pdf format) from the event, can be accessed [here](#). To access the Government's finalized policy for funding apprenticeships from May 2017, please click on the following link: [funding policy](#).

The National Living Wage

The National Living Wage (NLW) will increase to **£7.50** per hour from April 2017 for workers aged over 25. This month the Living Wage Foundation raised its rate for workers outside of London to **£8.45** an hour,

thereby keeping a significant gap between this voluntary scheme and the compulsory NLW.

To inform the employers' approach to pay negotiations with the unions, research was commissioned from Incomes Data Research (IDR) on the potential impact of the NLW. To access the findings of the research, click [here](#).

National work is progressing on a jointly agreed new pay spine to reflect the Government's future aims for the National Living Wage. By March 2017, we will be in a position to know whether or not it is likely to get an agreed pay spine with trade unions. If agreement won't be possible, then we will at least have an employers' advisory pay spine that local authorities can introduce.

Projects with Local Authorities

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

- Top Team Away Day facilitation
- Pay benchmarking
- Harassment & Bullying investigation

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

November has been a very busy month for EMC Staff, with the successful Apprenticeship event at the start of the month and the fantastic high of the Local Authority Challenge at the end.

East Midlands Local Authority Challenge

After a fantastic energy filled day at the East Midlands Local Authority Challenge last week we are pleased to share with you the results. Congratulations go to all teams and all those who made the day possible.

Local Authority Challenge East Midlands Winner



Winning Team - South Kesteven District Council, team Members; Anne-Marie Coulthard, Paul Thomas, Ed Palmer, Heather Green, Neil Moverley and Gary Andrew.

Runners up - North Kesteven District Council, team Members; Michelle Hoyles, Chris Flannery, Scott Masterman, Hayley Kent-Simpson, Jack Turner and Jason Hippisley.

Best Chief Executive - Phil Norman, South Holland District Council

Best Media and Customer Interaction - Mansfield and Ashfield Joint Team

Best Presentation - Derbyshire Dales District Council

Best Recovery Plan - North Kesteven District Council

Just some of the Feedback from Participants:-

"Many thanks to you and the team for putting on a great event last week, the group really enjoyed the experience and would without doubt recommend it to others".

"I certainly would recommend the Local Authority Challenge to others".

And their proud Chief Executives:-

"They are a fantastic group, and we are very proud of their achievement. It is a great event, please pass on thanks to the organising team".

"It was a fantastic result - the team really are a talented group of people- our future stars and we are very proud of them. I understand it was a very well run, high energy event so the organising team certainly need a mention and a big thank you".

In the coming weeks, each team will receive a feedback report on their performance to support the learning from the day and their reflections. EMC are keen to provide ongoing support to teams and authorities and will be happy to provide tailored support, through development such as Coaching, Action Learning or Myers Briggs development workshops. **We look forward welcoming teams to the 2017 Challenge on 16 November 2017!**

Coming up in 2017

- **Secretaries - Develop Yourself Workshop**, 2 February 2017
- **Developing a Coaching Culture Workshop**, 8 February 2016
- **Report Writing**, 22 February 2017
- **Employment Law Update**, 15 March 2017
- **ILM Certificate in Coaching and Mentoring Level 5**, dates to follow
- **Telephone Coaching**, 23 March 2017

<http://bit.ly/EMCEvents>

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

TUPE – Economic, Technical or Organisational (ETO) Reasons to avoid Automatic Unfair Dismissal

The purpose of the Transfer of Undertakings Regulations (TUPE) is to protect workers when their employer changes. But the protection that TUPE offers falls well short of guaranteeing those workers that they will still have a job when the dust of a transfer has settled. Dismissing an employee simply because of transfer is automatically unfair. But an employer can justify a dismissal if the reason for it is ‘an economic technical or organisational reason entailing changes in the workforce’.

That is quite a mouthful and so it is not surprising that people tend to use the shorthand of an ‘ETO’ dismissal. The danger of using this handy TLA (three-letter acronym) however is that we focus on the wrong thing. Almost any business reason for dismissal will be either economic, technical or organisational. The key requirement of an ETO reason is that it ‘entails changes to the workforce’. That means - as the Court of Appeal held in *Berriman v Delabole Slate Ltd* – that the reason involves changes to either the *size* or *composition* of the workforce.

So employees transferred under TUPE are not protected from redundancy - at least where that involves a reduction in employee numbers. More difficult is when the new employer needs the same number of employees, but wants to operate from a different location. This is an issue that has really come to the fore in recent years as services can increasingly be provided by contractors operating remotely. A key part of the economies that a contractor can provide often comes from operating from their established locations – which could be anywhere in the UK. Local Government employees on the other hand are usually employed under contracts that specify a place of work within a limited geographical area. The new employer cannot simply instruct them to relocate –

but can it dismiss them and offer them alternative work in a new location?

In the recent case of *Osborne and 29 others v Capita Business Services Ltd* Barnet Council had contracted out a wide range of services – including human resources - to Capita. There was no doubt that this was a TUPE transfer and the staff assigned to those services duly transferred to the new employer. That was not the end of the matter, however, and over the course of the next nine months the 30 claimants found themselves without a job. Each of their circumstances was different but it seems that services that had previously been carried out within Barnet itself were, after the transfer, disbursed among various locations operated by Capita. Some jobs were located in Coventry, others in Belfast, and others in Blackburn, Carlisle, Sheffield and Darlington. All of the employees were offered continued employment - but it seems that they weren’t willing to relocate and were eventually dismissed. The question was whether the dismissals were automatically unfair or whether they were for an ETO reason.

It was accepted in this case that a mere change in location was not a change in the workforce and so could not amount to an ETO reason. Luckily for Capita it had not only relocated most roles but also split them up so that one person’s functions were to be divided between two or more different locations. The EAT held that the dismissal of those employees was for an ETO reason because there had been a change in the functions carried out by employees – not just a change in their location.

It would take a very cynical person to suggest that the dividing of roles in this way was a deliberate ruse by Capita to ensure that there was an ETO reason for the dismissal of any employees who refused to relocate. But in any event there is no need to go to such lengths in the future. The rules have now changed.

The Collective Redundancies and Transfer of Undertakings (Protection of Employment) Amendment Regulations 2014 (CRATUPEAR for short!) changed the definition of ETO reasons in respect of transfers which take place on or after 31 January 2015. Under the new provisions the phrase ‘changes in the



workforce' includes a change to the place where the employee works. A dismissal for refusing to move to a new location would now count as an ETO dismissal and will not be automatically unfair. Where the move is supported by a genuine business need on the part of the contractor and where there is appropriate consultation and consideration of alternatives then the dismissal will probably be fair. If the Tribunal thinks that the contractor is simply trying to engineer a situation in which employees are forced to leave, then that will of course be a different matter.

Implications for Local Authorities

What the Osborne case shows is that TUPE does not really protect employees from losing their jobs after a transfer. Ironically, it is still quite difficult to change terms and conditions following a transfer - harmonisation is a real no-no - but it seems that it is relatively straightforward (legally at least) to completely change someone's job and move them to a far-flung location. If the change is significant enough then an employee who is presented with the choice will be regarded as having been dismissed – even if he or she accepts the new role. The offer of a completely new job as a fait accompli is taken by the Tribunal to amount to dismissing the employee and offering alternative work - a principle first established in the case of Hogg v Dover College back in 1990.

Such a dismissal would probably amount to a redundancy on the basis that the employer no longer needs the employee to work in the place where he or she is currently employed. If the employee refuses to accept the alternative role then he or she is likely to be entitled to a redundancy payment. In theory the employer can withhold a redundancy payment suitable alternative work is unreasonably refused – but no tribunal is likely to find that it is unreasonable of an employee to refuse a job that would involve moving house

More information can be found on Twitter: @daznewman

National Developments

Review of Term Time Working

As part of the 2016-18 pay deal, the NJC for Green Book employees agreed to conduct a joint review of term-time working to consider “an NJC approach to deliver fair, consistent and transparent contracts for school support staff and term-time only staff not employed in schools”. The Terms of Reference for the review have been agreed. To access these, click [here](#)

Both Sides will liaise with colleagues who have practical and technical expertise in the issues to be covered by the review to provide advice to the Joint Secretaries during the review process. The aim is to conclude the review by 30 June 2017. EMC will keep authorities updated on any developments.

Exit Pay Recovery and Cap – Latest Update

This month, the Government provided an update from on the implementation of the recovery regulations and the £95,000 exit pay cap and there has been some slippage in the timetable, as follows:-

Recovery Regulations: they will hopefully be laid before Parliament just before or after the New Year, so the effective date should be early 2017 if that happens.

Exit pay cap: new draft regulations and guidance is expected to go out for consultation either with or just after the recovery regulations are laid before Parliament. There will then be a 4- to 6-week consultation period, followed by a response through Parliament, so we are probably looking at Spring next year for the effective date, provided that timetable holds.

We will keep you posted of any further information as it becomes available.

