

HR in the East Midlands

November 2018



It was great to see colleagues from across the region who attended this week's meeting to explore common workforce priorities and meet with the LGA's Head of Workforce, Naomi Cooke. With seasonal celebrations taking place over the next few weeks, Darren Newman's article is a timely reminder on vicarious liability for the conduct of employees at work social events.

Performance against Apprenticeship Targets

Information has now been published on how councils have performed against their target for new apprenticeship starts in 2017-18. 29% of district/borough councils that met or exceeded their target were from the East Midlands: **Chesterfield, City of Lincoln, Gedling, Kettering** and **Northampton**. Northampton and City of Lincoln were also included in the top 20 public sector employers, based on apprenticeships as a percentage of headcount, and Lincoln City topped the table on this basis. The link to the data published by government is [here](#). The national news section of this bulletin has further information on important developments with the apprenticeship regime.

EMC will be hosting an event in the New Year to enable councils to share their experiences and approaches and to explore ways to collaborate to tap into funding/support available from March.

Xperthr Regional Deal 2019-20

Demonstrating the value of collaborating, EMC negotiates on behalf of our member councils a discounted deal to subscribe to the online information service Xperthr. Costs have been frozen for the period April 2019 - March 2020 based on the current number of licences across the region, representing significant savings for councils as follows:-

Single User Licence - £820.00 per person + VAT, compared to the standard rate card price of £2330 pp + VAT – a saving of 65% per licence.

Public Sector Site Access Fee - £160.00 per organisation + VAT, compared to the standard access fee of £1220 + VAT - an 87% saving per organisation.

If you wish to join the deal or renew your subscription, please contact Lisa Butterfill by **31st January 2019** at the latest.

Projects with Local Authorities

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

- Mediation
- Job evaluation
- Grievance investigation

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

As we near the end of 2018, colleagues at EMC are busy looking to 2019 and planning an exciting range of people focused events. However, depending on the availability of expert speakers, we are hoping to squeeze in a workshop before the Christmas break.

Workshop on Consulting & Negotiating Locally to Implement Change

So far, EMC has provided 3 workshops on implementing new National Pay Spine, which have received positive feedback. The next workshop in the programme will focus on **Consulting and Negotiating Locally to Implement Change**. The date is being finalised, but will either be on 18th December or 8th January, so please pencil it in your diary and we will confirm the details as soon as we can.

People Focused events 2019

People are always at the forefront of what we do at East Midlands Councils. Our vision for 2019 is to offer a suite of HR focused events on issues such as:

- **Managing and Developing people in the context of change**
- **Supporting Wellbeing and Resilience**
- **Attracting and Development Talent**

Tailored events for colleagues from across HR, Organisational Development and Learning and Development will showcase real-world examples, new insights or developments and expert input on the key issues and challenges arising in our people-focused world.

People Conference, 6 February 2019, Melton Mowbray

We will be kick start the programme with a People Conference, aimed at HR/LD & OD professionals and will focus on Managing and Developing people in a changing world. The conference will include aspects such as transformational culture change, improving performance and productivity, leadership in 21st Century, with a number of inspirational and thought provoking speakers. The conference will provide a mix of keynote speakers, case studies and interactive sessions, including:-

Nigel Carruthers, LGA, providing a session on the LGA workforce strategy.

Steve Whiddett, WHE UK Ltd on Maximising Performance and Productivity. Steve will deliver a session on PACE, a performance and capacity enhancement programme. The session will look at using behaviours to manage and enhance capacity and performance, with examples of how PACE is being used to support this approach.

<http://bit.ly/EMCPeopleConference>

East Midlands LA Challenge

It's all Change for 2019

The Local Authority Challenge is a simulation exercise in which teams take on the role of a senior management team at one of four fictitious councils. For 2019, the four councils together form the fictitious Isle of Linfolk. The councils are best described as operating under a 'unitary plus' scheme of arrangement with a unique set of regulations drawn together from across the world! So whether you currently work in a one-tier system, a two-tier system or outside of local authority altogether; for this event everyone will have to assimilate the local arrangements and work to them accordingly! <http://bit.ly/EMLAChallenge2019>

Don't forget our Employment Law early bird offer!

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>

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.

Vicarious Liability

It is such a cliché to warn employers of the risk of discrimination or harassment claims arising from employees' behaviour at Christmas parties; but there is an interesting legal principle involved – the vicarious liability of employers for the actions of their employees.

When will an employee's behaviour at a Christmas party – or other social event for that matter – be treated as the behaviour of the employer?

There are two distinct ways in which vicarious liability arises. There is the common law principle – that means it has been developed over time by the courts – that the employer should in certain circumstances be held liable for the unlawful acts of employees. That applies when the claim being brought is, for example, one for personal injury. When it comes to discrimination, however, the common law rule does not apply. Instead there is Section 109 of the Equality Act which says that anything done by a person in the course of his or her employment must be treated as also having been done by the employer.

We used to think that the Equality Act test was easier to meet than the common law test. This was established as far back as 1996 in the case of *Jones v Tower Boot Co Ltd*. In that case an employee was subjected to appalling racial abuse from colleagues – both verbal and physical. The conduct towards him was so extreme that the Employment Appeal Tribunal held that it was not done 'in the course of employment'. At the time the common law principles of vicarious liability required the conduct in question to be within the scope of the employee's duties – albeit that the employee might be performing those duties in an unauthorised way. The Court of Appeal rejected this technical approach in discrimination cases and held that the phrase 'in the course of employment' had to be given an ordinary, common sense meaning – which clearly covered the abuse to which Mr Jones had been subjected in the workplace.

Over the years since that case, however, the common-law approach to vicarious liability has shifted quite dramatically. The test now is whether there is a sufficient connection between the employees 'field of activities' and his or her wrongful conduct to make it right for the employer to be held liable for it.

This approach can be seen in the recent case of **Bellman v Northampton Recruitment Ltd** the employer was a small business whose managing director – Mr Major – organised a Christmas party for the staff at a local golf club. When the party broke up he invited a number of colleagues and their partners to return to his hotel for further drinks. One of those was Mr Bellman, a sales manager. At about 2.45 am an argument developed about the pay of one of the employees and Mr Major took exception to what he considered to be a challenge to his authority. He lost his temper and punched Mr Bellman in the face. He was restrained but broke free and punched Mr Bellman again, this time knocking him out. Mr Bellman fell and knocked his head on the floor, suffering a fractured skull and permanent brain damage.

The Court of Appeal held that the employer was liable for Mr Major's conduct and the injury that it caused. He was the 'directing mind' of the company and discussing company matters with staff – even during the early hours of the morning and under the influence of alcohol - fell within his 'field of activities' as managing director. When he assaulted Mr Bellman he had been lecturing assembled members of staff about his authority to do as he saw fit with the company. Indeed, the incident itself arose as a result of a disagreement about staffing matters rather than about anything personal or disconnected from the workplace. In other words, Mr Major was acting as the managing director of the company when he assaulted Mr Bellman. The fact that the drinking session was unscheduled and that employees were not required to attend it did not alter the fact that there was such a close connection between Mr Major's wrongdoing and his work that it was right for the company to be held liable for it.

This is probably the same approach that would be taken if the claim was one brought under the Equality Act. But that does not mean that all activities taking place after a work-related party will be the employer's



responsibility. It is noticeable that the Court relied on the fact that the conversation that led to the assault was work-related and that Mr Major was used to giving directions related to work at all times of the day – he had no fixed working hours. Indeed, the Court of Appeal emphasised that he assaulted the employee in the course of seeking to assert control and dominance in relation to staffing matters. This was not merely a social drink between a number of colleagues which went wrong – the late-night drinking session was, in effect, an extension of the working day.

Darren's Advice for Employers

It is generally accepted that behaviour at a social event organised by the employer and which employees are expected to attend will be seen as taking place 'in the course of employment'. But the Bellman case suggests that it is only in very limited circumstances that anything taking place before or after the event itself will be treated in the same way. The further removed the incident is from the work that the employees are employed to do, the less likely it is that the employer will be held liable.

Nevertheless, employers would be wise to take advantage of a unique feature of vicarious liability in discrimination claims. Under s.109(4) of the Equality Act the employer has a defence if it can show that it took all reasonable steps to prevent employees from committing the act complained of. So it does make sense for employers to do what they can to ensure that employees behave in an appropriate way at a Christmas party. But what is needed is a comprehensive approach to dignity at work involving clear codes of conduct consistently applied and supported by training and awareness raising where appropriate. An intolerance for harassment in any circumstances needs to be embedded in the culture of an organisation for the defence to apply. When that is done right, then not only will the employer be protected against legal action, but there is also a decent chance that the harassment will not occur in the first place. But if these steps are not taken then just sending an email to all employees before the event telling them to behave themselves is not going to be enough and will usually just invite ridicule. Dignity at work is for the whole year round – not just for Christmas.

More information can be found on Twitter:
@daznewman

National Developments

Apprenticeships

There have been important developments nationally with apprenticeships. In particular, this week the government announced **changes being made to the Register of Apprenticeship Training Providers** in order to improve confidence in the quality and capacity of training. The full announcement is [here](#), but in summary:

- The Register will re-open for applications on 12 December and will remain open.
- All organisations wanting to access ESFA funding to deliver apprenticeship training must now be on the register, including subcontractors delivering less than £100k a year.
- Of particular significance is the requirement for **any existing providers on the register, including employer-providers to reapply** in phases over the next 12 months so that the registration process has been consistent for all providers.
- Further information can be found [here](#) and guidance will be available on 12 December 2018.

The **social worker apprenticeship standard** has now been approved by the IfA and is due to be published imminently. Further information is available on the Skills for Care website [here](#).

The November edition of the **LGA's apprenticeship newsletter** is available [here](#). It includes:-

- details of webinars planned during December:
 - Practical guide to apprenticeship documentation for employers (6th December 9.30 – 10.45)
 - Practical guide to apprenticeship documentation for employer-providers (6th December 11.30 – 12.45)
 - Practical guide to apprenticeship pay systems and structures (14th December 9.30 – 11.00)
- Links to recordings/slides of past webinars
- Updates on standards being developed
- Entry information for PPMA's Apprentice of the Year Award 2019



Soulbury Workforce Earning Survey

Earlier this month we circulated the final report of the the Soulbury Workforce Earning Survey conducted by the LGA. This provides information on educational improvement professionals, educational psychologists and young people's/community service managers, covering pay and grading, working status, vacancies, workforce characteristics, recruitment difficulties, and information about recruits. A copy is available [here](#)

Coroners' Pay Survey

This week the LGA circulated a report on a survey it conducted into coroners' pay. The report can be accessed here: [coroners pay survey report](#)

National Workforce Strategy

Following feedback on its consultation documentation, the LGA will be publishing imminently a new national local government workforce strategy. As soon as the strategy is launched, EMC will ensure you receive a copy.

