



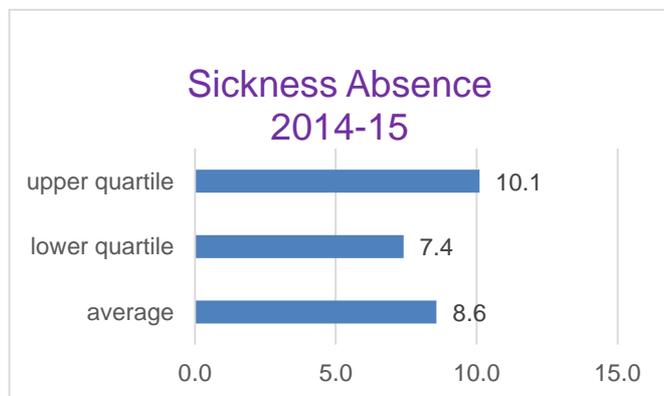
HR in the East Midlands

October 2015

Welcome to the second edition of our new monthly bulletin. Thank you for the great feedback on the first edition – we're pleased you found it useful. This month, our in-depth article from employment law specialist Darren Newman, focuses on Working Time Regulations and the 'Tyco Case'.

HR Research & Information Results

EMC's annual **sickness absence benchmarking** exercise attracted responses from 25 local authorities across the region. The average sickness absence level in 2014/15 was 8.8 days lost per FTE for Districts & Boroughs and 7.4 days for County & Unitary Councils. The chart below shows the overall results.



HR Business Partnering

The events section of this bulletin has details of **Aspire**, a development programme created in partnership with the CIPD specifically for our sector. The first cohort in our region will start in the New Year and will be cross-regional with colleagues from the West Midlands. Those interested, can attend a free celebration event on 1st November 2015 and hear first-hand from delegates just completing the programme. Click here for details

EMC can also provide a 360° feedback tool to support HR Business Partnering, **HRBP360**. We recently offered an LGA subsidy to use the tool in our region, which was taken **up a County Council**.

Projects with Local Authorities

We have been working with local authorities on a range of activities and issues recently. These have included:-

- Disciplinary Investigation
- Staff Survey
- Chief Executive Appraisal Facilitation
- HR Policy Development

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

Aspire – HR Business Partnering Programme, starting

Aspire is a personal development programme for strategic HR & OD professionals within the public sector with a key aim to enhance self-awareness, build confidence and help individuals develop a strong personal profile within their own organisation and with their stakeholders. It is delivered in conjunction with CIPD and comprises 5 different modules on:-

- Strategic context and challenges
- Getting under the skin of the business
- Win friends and influence people - the organisational dimension
- Win friends and influence people -the personal dimension
- Using technology and business tools

The programme comprises 10 sessions and a Webinar and will include

- 360 Review
- Modules (listed above)
- Project Days – where delegates will have the opportunity to work on a selected topic and issue and work with your peers to contribute to finding solutions
- Celebration Day

Through the programme delegates will:

- Understand the difference between advocacy and inquiry and be able to capture learning from collaborative situations and organisational analysis.
- Develop a more detailed awareness and understanding of the business context in which they operate.
- Understand the personal characteristics, qualities and behaviours that will enhance their influence within the organisation and as a leader within their profession.
- Gain confidence in applying organisational insight by using models that strengthen understanding and enable joint analysis, diagnosis and problem solving with service leads to operate effectively as an internal collaborative consultant.

For further information about the course visit <http://bit.ly/1Mihywk>

New Ways of Working – Managing Remotely & Working Remotely with Confidence

In recent weeks EMC staff have developed and delivered two new workshops on New Ways of Working, for both managers and employees. These workshops have been designed in response to the increasing trend within local government of remote working and the need to support staff and managers to ensure the effective implementation.

We've built into the programme time to explore transitioning to a culture of staying in touch – connectivity rather than visibility, along with an opportunity to action plan. EMC staff are currently rolling out 7 half day sessions across a district authority. If you would like to talk about this further please drop Lisa Butterfill a line.

Coaching in the East Midlands

A central part of the East Midlands Coaching network is the online management system, which facilitates the matching of coachees with coaches. At the time of selection it was the large resource bank that won us over. This library of resources remains a key strength of the offer from the network, with now over 180 different resources available, including diagnostics, exercises, guidelines, hand-outs, as well as network documents such as a sample coaching contract.

The current top 5 used resources are;

1. Assessing My Work Relationships
2. Establishing Framework for Communication
3. Coach Self-assessment Profile
4. Challenging Constructively-exercise
5. Situational Leadership Handout

To find out more about our network visit and the 11 authorities already subscribed visit <http://bit.ly/SdsdEr>

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

Working Time Regulations

More than 15 years after the Working Time Regulations implemented the Working Time Directive, we have still not completely figured out just what working time actually is. It's an easy enough concept for factory workers or those whose work is confined to an office – but what about workers who are on the move? Does their time spent travelling count towards their overall total?

The definition in the Directive (copied out in the Regulations) says that working time is any time when the worker is 'working' – a helpful start – 'at the employer's disposal' and 'carrying out his [or her] activity or duties'. All three of these elements must be present for working time to count.

So if we look at time spent travelling, one question we might ask is whether the travel is something the employee is required to do as part of his or her job. If the employer requires the travelling to be done then it would seem that it is one of the employee's duties and that the employee is at the employer's disposal when carrying it out.

So it makes sense that time spent travelling during the working day – to a meeting, for example, or a particular site – would count as working time. But travelling from home to work is surely different. The employer requires the employee to turn up to work at a certain time, but has no particular interest in how the employee achieves that. The employee may choose to live right next to the workplace and spend five minutes walking to work - or may choose to live in a different town entirely and have to commute for an hour or more.

I think it is clear that time spent travelling to work – and back home again is not 'working time' that needs to be counted under the Regulations. But we now have an important qualification to add where the employee

has no fixed place of work and the first journey of the day is to visit a customer or site specified by the employer.

In *Federación de Servicios Privados del sindicato Comisiones obreras v Tyco Integrated Security SL* – lets just call it the 'Tyco' case – Tyco employed technicians across Spain whose job was to install security systems in private houses. Each of them had a company car, which they used to take them from their homes to the various customers houses through the day. None of them had a central office that they had to report to – although once a week they had to visit the office of a logistics company in order to pick up supplies.

Their work was controlled by an app on their phone which set them each day's timetable of visits and which they used to plan their own routes. Tyco treated the time that the workers spent travelling from one client to another as working time, but the time spent travelling from home to the first assignment of the day – and from the last assignment of the day back to the worker's home – was treated as a rest period. The European Court of Justice has now held that this was wrong.

The Court held that by choosing not to have a fixed place of work the employer had removed the choice from the employee over how far to travel at the start and end of the working day. By sending instructions to the worker the night before, the employer was instructing them to carry out a particular journey and they were therefore performing their duties and acting at the employer's disposal when they did so. It followed that they were 'working' and the time spent doing so could not count as a rest break.

Darren's Analysis and Advice for Employers....

For local authorities, the obvious impact of this case will be on mobile care workers visiting service users in their home. It seems clear that such workers will have to be regarded as working not only when they are actually providing care, but also when they are travelling to a service user's home. Where the first assignment of the day is not fixed, then time spent travelling to that assignment from home must also count – and the same with the journey home after the last assignment. It



could still be argued – just – that where the first assignment of the day is always the same, the journey to that assignment is a matter for the employee and does not count as working time but I don't think it is really worth trying to insist on that point.

We need to remember that this case is about working time in the context of Working Time Regulations. It applies when counting up a worker's total working time and in determining whether they have been given adequate rest breaks. There is nothing in this case that affects how much workers should be paid for the time that they spend travelling – or even whether they should be paid at all. The Court could not have been clearer about this. It expressly says (paragraph 49 if you're keen) that the 'method of remunerating workers' is a matter for national law.

In the UK, that method is set out in the newly consolidated National Minimum Wage Regulations 2015. These provide that travel time should generally be counted as working time unless it is time spent travelling between home and the workplace or the first and last assignment of the day. That initial and final journey is clearly envisaged as not being time that must be paid at the NMW rate.

Even with travel between assignments the right to pay is limited. The Regulations do not provide that travel time should be remunerated at the normal contractual rate. What matters is that if you add all of the worker's pay in the relevant period and divide it by the number of working hours, then the amount you get should at least be the National Minimum Wage. This means that if the normal working hours are paid at above the NMW rate then it will be possible to pay less than the NMW for travel time – because the one compensates for the other.

While the Tyco case does not affect the issue of pay, it does mean that employers should be careful that proper rest breaks are being observed in relation to mobile workers. The Regulations require an 11 hour rest break between working days and it is now clear that, for mobile workers, those 11 hours only run between the employee arriving back from the last assignment of the day and starting the first journey of the following day. That is surely as it should be, bearing in mind that the Regulations are a health and safety measure. We shouldn't send workers out on

the road if they have not had the chance to get adequate rest.

More information can be found on Twitter @daznewman

National Developments:

Consultation on Employment Law Changes

The Government has amended one aspect of its proposals to [cap exit payments](#) in the public sector, following the consultation responses. The cap will now exclude pay for accrued annual leave that hasn't been taken. The Government is considering excluding TUPE protected terms and conditions. Further details on the implementation of the cap, including its effective date are still awaited.

The Government announced that it will be introducing a requirement for [all public sector staff working in customer-facing roles to speak fluent English](#). This means that public sector employers will have to ensure that existing and new staff can communicate effectively with the public to at least 'level 2', which is equivalent to a C or above at GCSE. The requirement will also increase depending on the role or profession. We will circulate information on the details of the proposals and the consultation exercise as they are announced.

Local Government Pay

The series of regional pay consultation meetings have now taken place across the country. National level meetings are now being arranged to conduct negotiations.

