



HR in the East Midlands

October 2016

In this month's bulletin, as well as offering our compendium of all things HR at regional and national level, we provide advice from our friendly employment law expert, Darren Newman, on one of the first cases of shared parental pay and sex discrimination, relating to enhanced maternity pay.

Apprenticeships

We are keen to help authorities to meet the challenges and maximize the opportunities provided by the new apprenticeship regime being introduced in April 2017, which will see the introduction of a levy and targets. As part of our support, we are pleased to be hosting a free event on **Tuesday 8th November 2016** at Pera Business Park, Melton Mowbray, Leicestershire.

The day will enable delegates to find out the latest information from the key national bodies, and will provide a chance to network and collaborate on aspects such as maximizing a return on the levy, developing standards, becoming a provider and using an external provider.

The event is aimed primarily at the HR community who manage schemes where apprentices are employed by the local authority and it will include a mix of lead government speakers, panel sessions and the opportunity to participate in workshop and networking sessions to share learning and identify opportunities to collaborate.

Hearing directly from government about their proposals and from other authorities, the agenda will include:-

- o Digital Apprenticeship Service (DAS) - apprenticeship fees, funding bands, spending funding and targets
- o The Levy and digital vouchers
- o Standards – for employers and providers
- o Traineeships / routes into apprenticeships
- o Growing your apprenticeship programme
- o Provision of training and how to set up your organisation to deliver apprenticeship training.

To book a place, click on: <http://www.kc-jones.co.uk/levyworkshop>

Projects with Local Authorities

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

- An independent investigation of a harassment and bullying complaint
- Facilitation of development for Cabinet Members
- Chief Executive appraisal facilitation

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

This Autumn EMC are providing a range of support for local authorities, from **support for PAs** to development for coaches and our grand **LA Challenge** event in November.

<http://www.emcouncils.gov.uk/Officer-Events>

Developing a Coaching Culture, February 2017

EMC has been directly supporting local authorities with Coaching, through the East Midlands Coaching Network for over four years now. In February we are offering councils a practical workshop that will show the work and benefits of the East Midlands Coaching Network, along with an opportunity to hear directly from local authorities on their work to support the development of a coaching culture. The event will include:-

- **East Midlands Coaching Network** – Exploring what the network is, how it operates and the commitment to continuing professional development for coaches
- **Case Study** – local authority case studies on how they have developed their coaching culture and their continuing work to support
- **Mye-Coach** – Exploring the benefits of the Mye-Coach online matching website
- **Skills Gym**

More information on this event will follow in future bulletins.

Coaching Blog

Capturing and articulating a coaching story can be difficult, but very powerful in aiding the discussion of the value and impact that coaching can have on those involved. Here is a Coaching story that we have found useful in understanding how coaching can help individuals...

"I asked for some coaching to help me manage the transition of moving into a more senior role shortly after returning from maternity leave with my first child. I expected the transition to be tricky and was prepared to feel the tension of balancing home and work, at least initially, when I agreed to take on additional

responsibilities. I noticed that my default way of coping with the additional demands of the new role would normally have been to "put more hours in". However, this simply wasn't possible when factoring in the additional responsibilities of being a parent. I could feel my stress mounting as I felt like I was constantly compromising either what I did for my family or the organisation.

I worked with a coach over a period of 6 months, more intensively at the start but generally on a monthly basis. I found the process an enlightening experience. I enjoyed the opportunity to express what I was really thinking and feeling to someone who had no pre-conception of me. Some of our sessions were really practical helping me rehearse difficult conversations (so that I could be more assertive with my own needs) or coming up with creative alternatives to tasks which were sucking up time. My coach also challenged some of my thinking that seemed to be holding me back. I was half expecting her to help me find my "old self" before being a parent. But actually I discovered a new me, a person that I am only just getting to know.

At times behaving differently is tricky, as they say old habits die hard. And yet I am also finding out that I am more resourceful than I ever imagined and I am finding new ways of working that will serve me and everyone around me much better in the longer run. I'm now thriving in my new role, and feel satisfied that I am doing my best as a parent too ... and on the rare occasion I catch myself wondering if I could take on more!"

To find out more about the Network visit <http://bit.ly/EMCoachingNetwork>

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

Shared Parental Leave

If an employer pays an enhanced rate of Statutory Maternity Pay (SMP), must it also pay an enhanced rate in respect of Shared Parental Leave (SPL)?

There was quite a stir caused by a Scottish Employment Tribunal recently in which a male employee successfully claimed indirect sex discrimination and was awarded almost £30,000 in compensation because his employer only paid the statutory minimum rate in respect of his SPL.

We’ve been waiting for a case to settle this question – but *Snell v Network Rail* isn’t it. Crucially, the employer conceded before the hearing began that its SPL policy amounted to indirect sex discrimination – so the Tribunal’s job was simply to work out his compensation. This means that there can be no appeal on the question of whether the policy was discriminatory or not and this case cannot be used to set any sort of precedent.

This is frankly a surprising concession from Network Rail and I would be fascinated to know why they made it. The problem may have been that the employer’s policy did not draw a clear distinction between maternity leave and Shared Parental Leave. It appears that the two were integrated into an overall shared parental leave policy and that may well have muddied the waters. Maternity Leave and Shared Parental Leave are two distinct rights and an employer’s policy on family leave should certainly draw a clear distinction between the two. Nevertheless, many employers worry that paying the minimum statutory rate in relation to SPL but more than the minimum in relation to SMP is discriminatory. I am by no means convinced.

In the first place – at the risk of seeming overly picky – this is a matter of the employee’s contractual entitlement. That means that it should really be taken as an equal pay claim under the Equality Act rather than an indirect discrimination claim. An equal pay

claim requires a clearly identified comparator of the opposite sex doing equal work - and issues of indirect discrimination only arise when the employer has identified the reason for the difference in pay and the question is whether that is ‘tainted’ in some way by sex discrimination.

But even if we leave aside that point, showing that the employers approach to SPL and SMP is discriminatory is still far from straightforward.

Shared Parental leave is a distinct legal right from Maternity Leave and it is one that is enjoyed by both men and women. A woman taking SPL will often, of course, have taken Maternity Leave first – but not necessarily so. A woman may qualify for Shared Parental Leave as the partner of someone who gives birth and will be in exactly the same situation as a man who qualifies on the same basis. Provided both are paid at the same rate, it cannot be argued that paying a lower rate for shared parental leave than maternity leave amounts to direct discrimination.

That still leaves indirect discrimination to consider. But indirect discrimination is not some consolation prize you get when your direct discrimination claim falls just short. You have to show that the employer is applying a ‘provision, criterion or practice’ that puts people who share a protected characteristic - in this case, men - at a particular disadvantage when compared with those who do not share the characteristic – in this case women.

I don’t think we can simply assume that men are inherently more likely to take SPL than women. The essence of SPL is that it can be shared. It might be that what often happens is that a woman takes a period of maternity leave and then hands over to her partner (more likely, on average, to be a man than a woman) who then takes Shared Parental Leave. But it is just as likely that after ending her maternity leave, a woman shares the remaining leave with her partner. It is far from clear that an employer’s policy of paying only the statutory rate puts men at a particular disadvantage when compared with women.



To make indirect discrimination stick you would have to compare people taking Shared Parental Leave with those taking Maternity Leave. But are the two situations really comparable? Even in indirect discrimination, like must be compared with like - and women on maternity leave have just given birth (or are about to) whereas men on shared parental leave have not. That's a pretty big difference between the two groups and it has always been accepted that women are entitled to special rights and protections in respect of childbirth.

Even if a claimant did persuade a Tribunal that there was a substantial disadvantage, however, that would still leave open the question of justification. There is no indirect discrimination if the employer can show that the provision criterion or practice is a 'proportionate means of achieving a legitimate aim'. **So can an employer justify paying an enhanced rate for maternity leave but not for shared parental leave**

Implications for Local Authorities

? The obvious issue to raise here is affordability. If everyone who qualifies for Shared Parental Leave has to be paid at the same enhanced rate, then that could make the benefit prohibitively expensive. Money alone is not a safe basis for justifying discrimination however, so we need to look deeper into why an enhanced rate is paid in the first place.

One key aim of maternity leave is to allow women to remain in post when they have children - and paying an enhanced rate of maternity pay better enables an employer to retain women who might otherwise leave. An employer could avoid the risk of discrimination by simply paying all forms of family-related leave at the minimum statutory rate – indeed there are reports that Network Rail have responded to the Snell case by doing just that. But taking that approach is likely to reduce women's participation in the workforce – particularly at higher grades – and exacerbate the gender pay gap. That seems to me to be a sound basis for operating a system of enhanced maternity pay alongside a system of paying only the statutory minimum in terms of shared parental leave.

We can't be fully confident of the legal position until a properly contested case makes its way to the EAT or Court of Appeal – and that may well take several years. In the meantime, however, it makes no sense

to change course just because of this one case. In particular, levelling down the rates of pay so that everyone is just paid the statutory minimum simply to avoid the risk of a discrimination claim would be a huge over-reaction and bound to cause more problems than it solves.

More information can be found on Twitter: @daznewman

National Developments

Circulars

In case you've missed our emails, this month we circulated the following Circulars:-

- The [revised Chief Executives' Handbook](#) and covering [circular](#) which includes an updated model disciplinary procedure;
- The [Soulbury](#) pay award for 2016 and 2017;
- An update on the situation regarding [Coroners](#)

Results of Youth & Community Worker Survey

Results of the first national joint survey since 2013 of the youth and community workforce have been published this month. Within its key findings, the report highlighted that the overall number of youth & community workers fell by 36% in the last 3 years, with the number of full-time staff falling by 56%. There are now 10,624 people (4,436 FTEs) employed by councils as youth and community workers, the majority of whom are paid on JNC for Youth and Community Workers' pay rates. The report also provides salary information for different levels of youth and community workers and can be accessed at: [Y&CW Report](#)

A New Deal for the Local Government Workforce

The LGA is launching its latest report on ways to tackle recruitment and retention challenges at a free event taking place on 8th December from 6pm-8pm, at New Zealand House, 80 Haymarket, London. Places are limited and those wanting to attend should email rsvp@nlgn.org.uk to secure a place.

