



HR in the East Midlands

Welcome to the first of a monthly bulletin that East Midlands Councils is providing for HR colleagues in local authorities and member organisations.

These will provide an update of key developments and information tailored to our sector and will include an article from top Employment Law specialist Darren Newman *'In Deep with Darren'* on a topical employment law issue, along with the implications for local government and other public sector organisations. Darren has spent many years in the employment law field and regularly writes in wellknown HR journals.

HR Research & Information Results

This month, EMC conducted research on the implementation of the **Living Wage**. This showed that 22 local authorities have implemented the Living Wage (at the level set by the Living Wage Foundation) and 3 authorities are accredited with the Living Wage Foundation.

In another research enquiry, we asked authorities if they base **redundancy pay** according to the

statutory week's pay (currently capped at £475) or if they use their discretion to base the calculation on employees' actual weekly pay. We received 17 responses and all but one council use actual pay.

Local Government Terms & Conditions Update:

Working Arrangements: Christmas and New Year 2015/16

Ho, ho ho! A circular has been issued setting out the national agreement for working arrangements this Christmas and New Year. <http://bit.ly/1JdkCHL>

Pay Negotiations 2016

Our regional pay briefing is being held on 18th September 2015. Pay was the focus of the Regional Joint Council meeting held on 11th September 2015, with joint trades unions putting forward to Members their views and information in support of their pay claim. <http://bit.ly/1P6MHpj>

Projects with Local Authorities

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

- Developing a Learning & Development Strategy
- Coaching
- Psychometric testing
- In-house recruitment & selection training



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

ILM Level 5 Award in Leadership and Management

EMC is offering an exciting opportunity to join an ILM 5 Award in Leadership and Management, starting on 20 November 2015. This six day programme will provide cutting edge leadership development which will enable your leaders to:

1. Lead change and take people with them
2. Challenge both their own thinking and that of others to be open to new opportunities
3. Have a positive impact on their colleagues and wider teams and achieve their objectives
4. Give delegates an internationally recognised leadership and management qualification.
5. Challenge their thinking and enable them to adopt new behaviours

Further information about the course is available form <http://bit.ly/1QlxvJA>

Coaching in the East Midlands

EMC launched the East Midlands Coaching Network in 2012, since then 11 organisations, 56 coaches, 5 independent coaches and 2 coaching supervisors have joined the network.

The East Midlands Coaching Network provides an online matching services to enable coachees to access coaches from across the East Midlands.

The Network is committed to supporting the development of coaches and this year has delivered some exciting and innovate sessions, these have included;

- Coaching "difficult" Coachees
- Self-Awareness in Coaching, using Transactional Analysis
- Coaching Conference, which included Intuition in Coaching, Personal Resilience and Neuroscience in Coaching.

Coaching and Change Management

The next CPD session for Coaches in the network on 3 December is on Coaching and Change Management and is to be led by one of the networks independent coaches John Collins. In this session Coaches will;

- Explore what change means both from an organisational and an individual context.
- Share some experiences of change, the impact and outcomes for individuals, organisations and coaches.
- Explore some tools and approaches to take away that will help you to support you coachees on their change journey.

Further information about the course is available form <http://bit.ly/1Ljb8kn>

ILM Level 5 in Coaching and Mentoring

Keen to support the development of coaching in the East Midlands, EMC is delivering an ILM 5 Programme in Coaching and Mentoring. The 5 day programme starts on 27 November 2015.

The aim of the ILM 5 Certificate in Coaching and Mentoring in Management is to enable delegates to effectively coach other individuals and where required to act as a coaching resource for their organisation and other organisations.

The business benefit of this training is that Coaching is more cost effective than recruiting. It means staff will be more engaged and effective, able to achieve better business results and deliver on plans. Further information about the course is available form <http://bit.ly/1UX6OrU>

Contact Details

For further information about any of our services or activities 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's in-depth analysis of a topical HR issue

Employment Law & Social Media

Social media has revolutionised the way in which we interact and communicate with each other. This poses a challenge for employers. To what extent can the online activities of an employee be something that an employer can impose limits on? When can online comments made be the subject of disciplinary action?

As with any other area of off-duty conduct, the answer depends on the extent to which the employee's activities impact on the legitimate business interests of the employer. Employees have a duty to render faithful service to the employer and publishing derogatory comments can be a breach of that duty. What an employee says online may also provide evidence that they are not a suitable person to be employed in a particular role.

Take the recent case of **The British Waterways Board v Smith**¹. Mr Smith was a manual worker who was required to be on 24-hour standby one week in every five to deal with any emergencies that might occur. The team in which he worked was not a happy one and a number of grievances were raised about alleged bullying. Just before Mr Smith's complaint was due to be heard, however, he was accused of gross misconduct based on comments he had made on Facebook.

The comments had been taken directly from his Facebook page and some of them dated back up to two years. Most of them simply stated that he hated his work and described his supervisors in (very) unflattering terms. More seriously, some of his comments referred to drinking while on standby –

something strictly prohibited and regarded by the employer as gross misconduct.

Mr Smith argued that all of his comments – including those about drinking while on standby – were 'banter'. He hadn't intended them for public consumption, but his Facebook account had been hacked and the privacy settings changed so that anyone could read them. The employer didn't believe him and decided that he must have been drinking while on stand-by, so he was sacked for gross misconduct.

The Tribunal found that the dismissal was unfair. Mr Smith had 8 years of unblemished service and consistently good performance reviews. The employer had actually known about the comments for some period of time before deciding to act and the Tribunal took this to show that the matter was less serious than the employer subsequently claimed. The Tribunal also noted that the comments were made on a social media site used for 'chat' and which 'frequently involves people making claims which are either exaggerated or simply not in fact true'.

The EAT overturned the decision, however. The Tribunal had fallen into the trap of substituting its own view for that of a reasonable employer. Given that a fair procedure had been followed and the employer honestly believed that Mr Smith had been drinking while on standby the only option open to the Tribunal was to find that the dismissal was fair.

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

Frankly I think the employer had a lucky escape here. It does seem quite harsh to take everything someone says on their Facebook page - aimed solely at their own circle of friends - as the literal truth. I can certainly imagine that someone would boast about drinking while on standby in order to seem cool and rebellious while staying scrupulously sober - and the employer had no other evidence that the employee had been drinking when he shouldn't. But even if we take this case as

¹ EAT (0004/15/SM) 3 August 2015



being a close-run thing, there are still lessons that we can learn from it.

In the first place, it is clear that the fact that an employee makes comments on his or her own personal Facebook page does not place them 'out of bounds' when it came to disciplinary proceedings. If the employer actually hacks into an employee's account and obtains information illegally, then that is a different matter. But, in general, any evidence that an employer can lawfully access online is fair game.

I also think it was significant that some of the comments could be used as evidence of specific misconduct – drinking while on standby – as opposed to the employer's concern that Mr Smith's other comments had risked bringing the employer into disrepute. We all moan about our work – don't we? Requiring employees to be positive and engaged while writing about their day on Facebook or Twitter is surely taking things too far. Employers may worry that when negative comments are published online they can be seen by the whole world. However the reality is that most comments on social media are seen by almost no-one. It is important to keep a sense of perspective and think carefully about how much harm has actually been done.

Where there is a more specific concern, however, then the employer is justified in taking a much harder line. In the Smith case the issue was drinking on stand-by. In a lot of local authority work the concern will be over information regarding children or vulnerable people. Making an online comment – even in jest - that could lead to a vulnerable person being identified, or which might give the impression that appropriate care was not being given, is the sort of thing that an employer will be entitled to have no sense of humour about.

One of the key questions in an unfair dismissal case is often whether the employee should have understood that the conduct in question could lead to dismissal. Where employees work with vulnerable groups – or where the employer has some other specific reason to be concerned about what might be said on social media - then it is worth making this clear, either in a general code of conduct or a specific social media policy.

It is best not to get carried away. A policy that is too restrictive will be widely ignored and will do more harm than good. Employers should appreciate that employees will say things online that they wouldn't say in the workplace. However, where an employee's role causes a particular risk of harm if comments are misjudged or taken out of context then a strict policy is justified – and also helps protect the employee. One misplaced comment about a care home or school could erupt into a Twitter storm that can be a nightmare for the individual concerned as well as causing damage to the employer. If employees are given clear boundaries about referring to work on social media then most will be grateful to be given good practical advice.

More information can be found on Twitter @daznewman

Case Law Newsflash!

The case is **Federacion de Servicios Privados v Tyco Integrated Security SA** Case C 266/14 ECJ

The European Court of Justice (ECJ) has ruled that **time spent travelling to and from home by employees without a fixed working base should count towards time worked** under the Working Time Directive. The ruling is likely to have most impact on local authorities providing care services. The decision will affect how maximum weekly working hours and rest break entitlements are calculated. It does not change how commuting is treated for those with a fixed place of work.

Consultation on Employment Law Changes

EMC provided a regional response to the Government's consultation on **capping exit payments** in the public sector and supported the LGA with its response to Government on behalf of the sector.

The Government has also consulted on aspects of the **Trade Union Bill** and is currently consulting on proposals to change the way in which **termination payments are treated for tax and NI**.

