

HR in the East Midlands

September 2017



One of the most frequently asked questions we receive is about the exit pay cap proposals – and we now have some news to share (see below). Our national round-up includes guidance on off-the-job training for apprenticeships, pay negotiations and guidance on schoolteachers' pay. In this month's article, Darren Newman provides advice on the legal implications of monitoring staff in terms of potential infringements to employees' rights to privacy.

Exit Pay Cap Consultation

The Government has recently indicated that it will launch fresh consultation on proposals to implement exit pay recovery provisions and a cap on exit pay. Depending on there being sufficient space within the parliamentary timetable, any new provisions for both the recovery and the cap on exit pay could be implemented during the first half of 2018.

Health & Social Care Integration

The LGA has been working with DH, NHS Employers, Skills for Care and others to identify key workforce challenges and potential solutions in health and care integration. As an outcome, a presentation has been developed to aid local research and discussions on integrated services and new care models. This can be accessed at the following link: [presentation](#)

Charging Unions for “Check Off”

We recently circulated a request for information on the amount that councils will be/are charging unions for the “check off” facility, where employees can pay their union subscriptions via payroll. Many of you have expressed an interest in the results and so any information that you can provide on this will be much appreciated. Results so far indicate a charge of 2 or 2.5% as the most common rate.

Projects with Local Authorities

During September EMC has provided individual assistance to councils on the following types of project:-

- Pay and Grading Review
- Top Team Development
- Coaching

To find out 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

We have a range of exciting events taking place over the autumn, from one off conferences, like the PA Conference in November, to the programme of CPD support we are introducing for Housing professionals. We're committed to supporting our local authority member organisations with your learning and development needs, so if there are areas you are interested in please let us know.

Coaching Support

Coaching is a key area of support we provide to local authorities, in coming months we have a range of opportunities for new and experienced coaches. This year we have delivered two cohorts of ILM 5 level Coaching and Mentoring training. In 2018 we will be looking at supporting coaches to take a step further, exploring a regional ILM Level 7 course in coaching.

If you missed it, this week we held a Coaching Creatively CPD session, with fantastic feedback "*I have to say, that was one of the best CPD sessions I have attended. I think because Sandra shared lots of powerful tools. It was really practical*". The next scheduled CPD session is..

Coaching Tools Boot Camp, 7 December 2017

The East Midlands Coaching Network is offering a half day workshop for the development of coaches in the East Midlands. This workshop will focus on tools used within coaching sessions. We all have our favourite things and coaches are no different, this CPD session will enable coaches to share with one another their favourite coaching tools. Facilitated by experienced executive coach Cathy Lasher the workshop will help to develop coaches knowledge and skills when using coaching tools, enabling coaches to have access to a variety of different tools and understand when they are most effective.

Trying new tools in coaching can be an exposing experience when you are working with a client. This workshop looks to provide the safe environment and positive feedback to fully enable the development of coaches. Bring your favourite tool, or bring the tool you have always wanted to try and we will provide you with the safe environment for you to experience how the tool works and the benefits that it can bring to your clients.

We will be doing some practice using these tools. So please also bring along a small issue that you would benefit from having a bit of coaching on yourself, or a coaching topic from one of your coachees.

At the end of the workshop the tools shared will be collated and distributed to all those who have taken part, as well as be added to the East Midlands Coaching Network Resource Bank.

We would ask that coaches bring with them their favourite tool for sharing, however if you don't have a tool for sharing Cathy will be bringing a collection of her own. <http://bit.ly/EMCCoachingTools>

EM LA Challenge 2017

The LA Challenge 2017 is fast approaching, we still have team places left, but would encourage sign up as soon as possible. To give you a flavour of who will be taking part here is a small sample of who is taking part...

- Assistant Manager - Leisure & Culture
- Business Change Manager
- Business Transformation Officer
- Children's Services Team Manager
- Council Tax & Benefits Supervisor
- Customer Finance Team Leader
- Economic Development Support Officer
- Enterprise Growth Team Leader
- Head of Housing, Health & Community Services
- Health & Housing Manager
- Revenues Manager
- Senior Customer Services Advisor
- Senior Operations Engineer-ICT
- Senior Transport Assistant
- Solicitor

Register a team place here

<http://bit.ly/EMLAChallenge2017>

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

Employee Monitoring

Can an employee expect to be granted privacy in the workplace? Time spent at work is, after all, something that the employer is paying for. In that sense the time ‘belongs’ to the employer and the employer is entitled to know what the employee is doing with it. On the other hand, we all have private moments in the workplace where we would certainly object if we discovered that the employer was watching our every move. Article 8 of the European Convention on Human Rights guarantees everyone the right to respect for his or her ‘private life and correspondence’ and a recent decision from the Grand Chamber of the European Court of Human Rights (ECHR) makes it clear that this is a right that employers need to respect.

In *Bărbulescu v Romania*, Mr Bărbulescu was a technician who was asked to set up a What’s App account to deal with customer enquiries. His workplace had a very strict rule against any personal use of the internet or computer systems and he was accused of using the account to conduct personal conversations with, among others, his fiancé. When he denied this, the employer produced 45 pages of transcripts of those conversations - and he was sacked.

His dismissal was held to be lawful in Romania and he took his case to the ECHR. He failed at the first hearing but appealed to the Grand Chamber which held that there had indeed been a breach of Article 8.

Now we need to be careful with this case. Mr Bărbulescu was bringing his claim against the state of Romania, not against his employer. Human rights must be guaranteed by the state and what the ECHR found was that, in not sufficiently scrutinising the employer’s actions, the Romanian Courts failed to ensure that Mr Bărbulescu rights under Article 8 were protected. The Romania courts had not asked whether Mr Bărbulescu was told that his What’s App communications could be monitored and whether that might involve the employer actually reading the contents of any

messages that were sent. Nor had the courts expressly considered how many people had read the messages in question and the time period over which the monitoring had taken place. There was a balance to be struck between the rights of the employer to protect its business from employees misusing their working time and the rights of an employee to have the privacy of his or her correspondence protected. The Romanian Courts had failed to conduct this balancing exercise and had not given Mr Bărbulescu the protection to which he was entitled.

This falls somewhat short of a finding that the employer was wrong to check the content of his What’s App messages – and it should be remembered that he had vigorously denied that there were any private messages for them to read! The ECHR clearly did not think that there had been any egregious violation of rights here because they expressly declined to award Mr Bărbulescu any damages. Nevertheless, the case has important lessons for employers in the UK.

Implications for Local Authorities

There are basically two ways in which an employer’s monitoring of an employee’s online activities may come under scrutiny in the UK. The first is where an employment tribunal is considering an unfair dismissal claim and the tribunal needs to look at the monitoring to determine whether the dismissal was reasonable or (in a constructive dismissal case) whether the employee was entitled to resign without notice because the monitoring was a breach of mutual trust and confidence. The other (rather less likely) scenario is where a complaint has been made to the Information Commissioner who then queries whether the monitoring complied with the Data Protection Act requirement for ‘fair and lawful’ processing of personal data.

Perhaps the most important point made by the ECHR is that an employer cannot completely erase an employee’s reasonable expectation of privacy in the workplace. Simply telling employees that anything they do at work may be subject to monitoring will not be enough – additional safeguards are needed to protect the right to a private life set out in Article 8.



Fundamentally it is a question of balance. Does the reason that the employer has for monitoring the employee's activities justify the extent of intrusion involved? An employer may be entitled to ensure that an employee is not using too much working time on personal matters – but that is something that can be checked without actually reading emails that appear to be personal. To justify that level of intrusion, an employer would probably need to show that it was investigating serious allegations of misconduct and that it was necessary to read the actual emails in order to protect its vital interests.

Clarity and transparency are also key issues. Part 3 of The Information Commissioner's Employment Practices Code makes a number of good practice recommendations on employee monitoring and it is worth ensuring that there is a policy in place that broadly reflects those recommendations. In broad terms, this means giving as much clarity as possible about the circumstances in which an employee's online activity will be monitored and the extent to which the monitoring might involve reading the content of otherwise private communications. An important point for any policy to stress is that the employer will not intrude on an employee's correspondence more than is necessary to ensure that the system is not being misused and that the actual content will only be looked at if there is no reasonable alternative available. Any viewing of the content of correspondence should only take place where it is necessary to deal with specific allegations and the policy should make it clear that the contents will only be shared on a need-to-know basis.

As for Mr Bărbulescu, it does seem a bit cheeky of him to complain that the employer printed out copies of messages that he had assured them did not exist. It may well be that printing out his messages was the only way of demonstrating that he had broken the rules. But to protect an employee's right to privacy, the ECHR has made it clear that courts and tribunals must insist that an employer has proper safeguards in place to prevent abuse. I am normally loath to react to a new case by telling employers to take a close look at their policies and procedures - but this case really does make that a good idea.

More information can be found on Twitter:
[@daznewman](#)

National Developments

Pay Negotiations Update

As discussed at the pay consultation meeting hosted by EMC in July, articles in the press over the last couple of months and lifting the pay increase cap for some strands of the public sector would all support a view that the prospect of achieving an agreement from the unions to a headline pay deal of 1% next year is now pretty much nil.

The National Employers will be meeting on 18th October 2017. It is not clear that a pay offer will emerge from that meeting, as the Employers may want to wait for the Chancellor's Budget in November to inform any offer. As usual, EMC will circulate any information on developments with pay immediately to local authorities.

Schoolteachers (STPCD) 2017 – applying pay flexibility & pay modelling tool

The LGA has issued guidance to local authorities on potential approaches to applying the flexibility on pay provided for within the 2017 School Teachers' Pay & Conditions Document. A pay modelling tool has also been produced to enable alternative approaches to be costed. Links are provided below:-

- [guidance](#)
- [pay modelling tool](#)

Apprenticeships – Off-the-Job Training Guidance

The ESFA has circulated draft policy background information and examples as guidance relating to the 20% off-the-job training element required within apprenticeships. The document can be accessed at: [OTJ Draft Guide](#)

