East Midlands Councils

HR BULLETIN

Top items this month

JUNE 2024

Local Government Recruitment Campaign

Recent Networks

Protection for those taking industrial action

The latest National Developments

ANNUAL SICKNESS ABSENCE SURVEY

Each year EMC conducts a sickness absence survey to benchmark sickness levels across the region. Many councils tell us how useful the survey is for them to understand how their absence levels compare to other councils.

We are now launching this year's survey and encourage all councils to contribute and provide your absence information for 2023/2024. The closing date is Friday 19th July 2024.

It is a simple survey on MS Forms which should be quick to complete. We will share the results with contributors shortly after the survey closes.

The link to the survey is here - https://forms.office.com/e/EPiz3wnkz0

HR METRICS AND PAY BENCHMARKING SYSTEM - FURTHER DEMO

We've had lots of interest in the Infinistats system that EMC is offering councils in the region to better benchmark pay and other HR metrics. We've already received confirmation from councils in East Midlands who want to sign up and join the 100+ councils nationally who benchmark their pay and HR data through Infinistats. More information is on our website: HR Metrics & Pay Benchmarking (emcouncils.gov.uk)

Due to demand, we have arranged a further demonstration of the system at a virtual session on Monday 12 August 2024 at 3.00pm. To register your interest in Infinistats, or to book a place at the demo session or if you'd like any further information, email Mark.

CONTACT MARK

PROJECTS WITH LOCAL AUTHORITIES

During June EMC has supported councils with:

- Disciplinary investigation
- Restructuring support
- Councillor development charter assessment and accreditation

To find out how EMC could support an area of work for you, then please contact Sam, Lisa, or Mark.

CONTACT SAM

CONTACT LISA

CONTACT MARK

LEARNING & DEVELOPMENT

QUALITY TRAINING DISCOUNTED FOR EMC AUTHORITIES

EMC have secured the following discounted training for EMC members from Challenge Consulting only when booked directly through ourselves.

Courageous Conversations – The Right Way—9th July 2024 9.30am—4.30pm

Suitable for those who manage staff, or deal with others where they are required to give feedback which may not always be welcome, or where difficult and sensitive subjects may be raised.

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Time Management—19th July 2024 9.30am—4.30pm

A course, which examines how time is used at work and identifies good practice to get your role under control! The aim is to enable delegates to identify "lost" time at work and to plan and prioritise tasks to make best use of time and enhance productivity.

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Leadership and Management Accredited Development

We have an extensive range of accredited Leadership and Management Courses starting later this year, catering from junior managers to senior leaders with options at the award and certificate level too, to help build the talent leadership pipeline. In October there are courses at Levels 3 & 5 and in November courses at Levels 2 and 7.

Coaching Skills Development

To help develop the skills, knowledge and understanding required to be an effective coach and to support the embedding of a coaching culture, accredited coaching qualification courses at Levels 3, 5 & 7 are available from November 2024.

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In-house course options are also available and for further discussions please contact Lisa Butterfill

CONTACT LISA

LEARNING & DEVELOPMENT AND O.D. NETWORK UPDATE

At our June regional L&OD network we heard from Sara Gordon at North East Derbyshire DC regarding their talent pipeline strategy which was very well received and generated lots of useful discussion. Piers Szczepanski, from SHL, also joined us to talk about Leadership Talent and Succession Planning, sharing their research on good leadership and the contextual challenges. SHL have an online succession planning platform and EMC is arranging an opportunity to see how it works and the benefits it can provide to both individual authorities and from a regional collaboration perspective. Contact Lisa if you would you like to be part of this network and/or have other questions.

CONTACT LISA

EQUALITY DIVERSITY AND INCLUSION (EDI) NETWORK

The June EDI network received an interesting and useful presentation from Rebecca Purnell of West Northamptonshire on their approach to employee groups. This was a useful starting point for the Special Interest Group (SIG) that is looking to make progress on this topic at its first virtual meeting on 3rd July - contact Sam Maher if you would like to join this SIG. The network meeting enabled participants to share information and advice and hear back from the different SIGs. A reminder, that if your council has got experience to share of seeking to diversify occupational groups then please let Sam know, as this is an area that the regional unions and councillors on the Regional Joint Committee would like to promote to help improve the gender pay gap.

CONTACT SAM

PROTECTION OF TRADE UNION MEMBERS TAKING PART IN UNION ACTIVITIES

The Supreme Court has identified a gap in the protection of trade union members taking part in industrial action. In Secretary of State for Business and Trade v Mercer the employee was involved in planning industrial action at her workplace and was subjected to disciplinary action after she took part in a strike. While the warning she received was overturned on appeal, she was suspended for a time and missed out on overtime that she would otherwise have earned. She argued that she had been subjected to an unlawful detriment for taking part in trade union activities.

Here is her problem. Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 prohibits an employer from subjecting a worker to a detriment for taking part in trade union activities "at an appropriate time". An "appropriate time" is then defined as a period outside working hours or at a time that has been agreed with the employer. So a union member cannot be subjected to a detriment for handing out trade union leaflets during a break, before the start of the working day, or for what they say during a union meeting that has been arranged with the employer's agreement. But industrial action is necessarily something that takes place during working hours and against the wishes of the employer. It does not take place at "an appropriate time".

For an employee taking part in lawfully organised industrial action there is protection against dismissal. Section 238A of the 1992 Act provides that a dismissal is automatically unfair if the reason for it is that the employee has taken part in lawfully organised industrial action (meaning that the union has complied with all of its obligations in relation to the holding of a ballot etc.). so we have the odd situation that while an employee cannot lawfully be dismissed for taking part in a strike, there is nothing that expressly protects them against action short of dismissal.

Ms Mercer claimed that this gap in the law amounted to a contravention of Article 11 of the European Convention on Human Rights which protects the right of individuals to 'form and join trade unions for the protection of [their] interests". Case law from the European Court of Human Rights had made it clear that this right went well beyond protecting mere union membership and encompassed a right to take part in industrial action. She argued that the UK courts should interpret the requirement for trade union activities to take place "at an appropriate time" to include times when employees were taking part in lawfully organised industrial action.

Her case proceeded on the preliminary point of whether this argument could succeed as a matter of law. The Tribunal therefore assumed that the purpose of the disciplinary proceedings was to penalise her for taking part in industrial action or to deter her from doing so. If her preliminary point succeeded then her employer would still be able to argue that the disciplinary action was for its stated reason that she had left a shift without permission and spoken the press in way that violated its policies.

Her argument failed in the Employment Tribunal, succeeded at the EAT and then failed again at the Court of Appeal. Her employer did not appeal against the EAT decision but the Secretary of State for Business was given permission to join the proceedings as a party (an 'intervenor" in the jargon) with a legitimate interest in the issue being decided (that is why the case is recorded as Secretary of State for Business v Trade v Mercer even though Ms Mercer was employed by a private sector care provider).

The Supreme Court accepted that there was a gap in the protection provided by the 1992 Act. Someone taking part in lawfully organised industrial action was protected against dismissal but not against disciplinary action – or any other detriment – falling short of that. The Supreme Court was satisfied that this constituted a breach of Article 11. They did accept that the UK had a wide 'margin of appreciation' in striking a fair balance between the rights of workers, the rights of the employer and interests of society as a whole. It was not the case that any detriment in relation to any lawfully organised industrial action had to be unlawful. However, the UK legislation failed to strike any balance at all and it was clear from the case law of the European Court of Human Rights that some sort of protection against detriment was required.

Having made that finding the Supreme Court then held that it was unable to interpret the 1992 Act in a way that complied with Article 11. There was more than one way in which compliance could be achieved and the Court held that determining the circumstances in which a detriment would be unlawful went beyond its powers to interpret legislation in compliance with Convention rights. The gap was one that could only be filled through legislation.

The result was that Ms Mercer lost her claim, but the Supreme Court did make a declaration that S.146 of the 1992 Act was incompatible with Article 11 in so far as it failed to provide any protection against sanctions short of dismissal intended to deter trade union members from taking part in lawfully organised industrial action.

Such a declaration may seem something of a small consolation prize for the claimant after years of litigation. But it does amount to a definitive legal ruling that our current law does not meet the requirements of Article 11. For local authorities that might mean that any detriment imposed on an employee taking part in industrial action (which would not include a proportionate deduction of pay to represent the work not done) would be unlawful in itself as public bodies are required by S.6(1) of the Human Rights Act to act in accordance with the Convention.

Of wider significance is that the Supreme Court's declaration under the Human Rights Act 1998 allows a Government Minister to rectify the situation by Regulation rather than by the more time consuming process of an Act of Parliament. When the case was decided back in April this year, the Government would not have been sympathetic to the need for change – and a declaration of incompatibility places no obligation on the Government to do anything at all. At the time of writing, however, a change in Government seems imminent. The likely winners will be much more open to the idea of plugging the gap found by the Supreme Court. Indeed, over the coming five years we are likely to see considerable changes in trade union law and it would be surprising if a new right protecting employees from suffering a detriment for taking part in industrial action was not among the first reforms to be introduced.

NATIONAL DEVELOPMENTS

NATIONAL PAY NEGOTIATIONS

We thought it may be useful to provide a reminder of the timetable for the unions' consultations on the national pay offers.

- Unison's consultation ends today (28th June) and in balloting its members is recommending they reject the offer.
- GMB's ballot closes on Friday 5th July and it is not making any recommendation on whether to accept or reject the offer.
- Unite is balloting its members with a recommendation to reject the offer.

We will keep you posted on the ballot outcomes and any further developments.

IMPACT - THE NEW NAME OF THE LGA'S NATIONAL GRADUATE DEVELOPMENT PROGRAMME (NGDP)

The LGA has rebranded the national graduate development programme for local government. The programme's new name is Impact. The rebrand is the first since the programme began more than 20 years ago.

Councils that would like to participate in the Programme for the latest cohort can sign up on the LGA's website or by emailing **impact@local.gov.uk**.

READ MORE

EAST MIDLANDS ROLL-OUT OF LOCAL GOVERNMENT RECRUITMENT ADVERTISING CAMPAIGN - 11TH JULY

We've had great interest in the event we are hosting with the LGA to roll-out a recruitment campaign for local government in the East Midlands region, following a successful pilot in the North East.

The event is taking place on 11th July at the King Power Stadium in Leicester and is for HR and Communications colleagues to learn about the campaign and to input on how it would be tailored for you.

The closing date for bookings is 4th July but if you would like to book a place please register here:

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