



Employment Law Update on
7 November 2024



Update Meeting: Roll out of
LG Recruitment Advertising
Campaign



L&D and OD Networks and
Discounted training for EMC
Authorities



Regional Sickness Absence
Benchmarking Results

UPDATE MEETING: ROLL OUT OF LOCAL GOVERNMENT RECRUITMENT ADVERTISING CAMPAIGN

WEDNESDAY 18 SEPT 2024 | 10.00—11.00 | VIRTUAL

Following the successful National Recruitment Campaign event held in Leicester in July which was jointly hosted with EMC and the LGA, we are pleased to share with you details of an update meeting taking place via MS Teams on 18th September.

At the meeting, the LGA will provide an update on the developments with the national recruitment campaign, and we will look ahead to next steps in rolling out the toolkit of resources to support councils. To book, please use the link below.

[READ MORE](#)

REGIONAL SICKNESS ABSENCE BENCHMARKING 2023-2024

Each year, EMC conducts sickness absence benchmarking and feedback from councils has been that the information is helpful in understanding your own organisation's situation, successes and challenges compared to similar councils.

We will be circulating a full report soon to all councils that contributed their data, but in the meantime, the following headline information on sickness absence in 2023/24 will be of interest. The average level of absence that was reported to EMC was 9.6 days lost per FTE, similar to last year's figure of 9.7. The lowest sickness level reported to EMC was 5.2 days lost per FTE and the highest level was 16.5 days lost per FTE. 70% of respondents reported absence has improved, while the remaining 30% reported a worsening in absence rates from the previous year.

EMC will arrange a virtual information exchange to follow up on the issues that councils have said they want to explore further, including sharing any initiatives that organisations have found to be effective in addressing sickness absence.

PROJECTS WITH LOCAL AUTHORITIES

During August, EMC has supported councils with:

- Disciplinary hearing and investigation support
- Mediation
- Psychometric testing

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

[CONTACT SAM](#)

[CONTACT LISA](#)



LEARNING & DEVELOPMENT

EMPLOYMENT LAW UPDATE WITH DARREN NEWMAN

THURSDAY 7 NOV 2024 | 10.00—12.15 | VIRTUAL

Darren's updates are always popular, as he tailors the content for our sector and offers pragmatic advice on employment law issues. This event is particularly timely, with a range of employment law changes being introduced, as the Employment Rights Bill is progressed this Autumn.

The Bill brings with it a whole host of changes, including: the plan to place significant restrictions on the ability of employers to "fire and rehire" employees, changes to day-one rights to include: parental leave, protection from unfair dismissal, sick pay and flexible working, banning exploitative zero hour contracts, the creation of a Fair Work Agency, reforms around trade union laws and establishing a Fair Pay Agreement, amongst others.

The cost to attend is £70 per delegate for member organisations. We are offering an additional place at half-price for every member place booked. To book, please use the link below.

[READ MORE](#)

EMC LEARNING AND ORGANISATIONAL DEVELOPMENT NETWORK

TUESDAY 15 OCT 2024 | 10.00—11.30 | VIRTUAL

At the next virtual meeting of the regional L&OD network on 15 October at 10.00am we will include sharing information on your Learning Management Systems (LMS) and also discuss your approach to appraisals. If you would like to include any other agenda items and/or receive a calendar invite, please contact Lisa Butterfill.

Following on from the interesting presentations on talent management/succession planning at the June L&OD network, EMC is undertaking further discussions regarding opportunities to use SHL's an online succession planning platform on an individual and regional basis.

[CONTACT LISA](#)

QUALITY LEADERSHIP AND COACHING TRAINING DISCOUNTED FOR EMC AUTHORITIES

East Midlands Councils continues to work with Challenge Consulting to provide a quality learning and development offer for EMC members to attend at discounted rates only when booking through ourselves. Below is just a snapshot of the support available:

- ILM3, 5 and ILM 7 in Leadership & Management
- ILM 2, 3, 5 and ILM 7 in Effective Coaching and Mentoring
- ILM2 Award in Customer Care

There are also 1- or 2-day courses in these popular development areas too:

- Presentation Skills; Influencing & Persuading Others; Assertiveness & Personal Effectiveness; The Effective Team Leader and Time Management.

Full information on the content, dates, venue and booking process can be found on our website.

[READ MORE](#)



IN DEEP WITH DARREN

NAVIGATING THE TENSIONS BETWEEN EMPLOYMENT LAW AND CRIMINAL JUSTICE

The recent controversy over Huw Edwards' departure from the BBC highlighted a problem that will be familiar to HR professionals in local government. There are obviously some criminal offences that are so serious that the employer cannot be expected to continue employing someone who has committed them. On the other hand, we have the fundamental principle that someone is innocent until proven guilty. How does employment law address the tension between these two propositions?

The question of whether someone is guilty of a crime is for the courts to decide and the standard of proof that applies is 'beyond all reasonable doubt'. In practice, judges direct juries that they should only convict if they are 'sure' that the defendant is guilty. In employment law, where we are concerned with whether an employee can be dismissed, there are really two questions: is it reasonable to dismiss and what is the employee's contractual entitlement?

In local government it is not unusual for employees to be accused of crimes that mean that they cannot be allowed to continue working while the justice system takes its majestic course. This is particularly so where there is a safeguarding risk – for example, when the employee is accused of conduct that poses a risk to the safety and wellbeing of a child or vulnerable adult. In most cases the employee will be suspended – but does the employer then have to wait for a verdict in the case before deciding what to do?

There is a careful balancing act to perform here. The employer might conclude that once an employee has been arrested and charged with an offence, it is not realistic to suppose that they will be able to return to their old job. A not-guilty verdict merely means that the Jury were not 'sure' of the employee's guilt. If the safety of children and vulnerable adults is at stake an employer is unlikely to regard that as good enough. And if an acquittal would not be enough to persuade the employer that the employee should return, then what is the justification for waiting for the verdict before deciding to dismiss?

In a fair dismissal for misconduct the employer must have an 'honest belief' in the guilt of the employee, based on reasonable grounds and following a reasonable investigation. This falls well short of the requirements for a criminal conviction. But in many cases the employer will not have sufficient evidence to support such a belief. It is not that the employer believes the employee is guilty, but rather that there is a risk that they might be.

The dismissal of someone because there is a risk that they are guilty of an offence is potentially fair. It falls under the catch-all category of 'some other substantial reason' and the question is then simply whether the employer has behaved reasonably.

It is important to bear in mind that an employee dismissed in these circumstances will usually be entitled to notice or a payment in lieu. In a contractual claim for unpaid notice pay (ie a claim for *wrongful* rather than *unfair* dismissal) the question is not whether the employer has behaved reasonably but whether the employee is actually guilty of gross misconduct. So, to dismiss without notice, the employer needs to be confident not only that the employee is guilty of the offence, but that committing the offence was a breach of their contract of employment. In most cases the easier and cheaper course is to give the employee notice rather than spend significant time and resources litigating the question.



IN DEEP WITH DARREN

As it happens, with Huw Edwards I would expect the contractual issue to have been the key one. For someone on his salary, compensation for unfair dismissal would be insignificant. But he was probably on a contract with an extended notice period well in excess of the three months that most senior employees would have. A claim for wrongful dismissal would have been very expensive and, when he was arrested, the BBC would have had no way of knowing that he was actually guilty of an offence.

Most employers in local government will be much more concerned with the prospect of an unfair dismissal claim. And while it may be fair to dismiss an employee before their case comes to trial – it is still important that the overall process is fair and that an arrest does not provoke a knee-jerk reaction. At the time an employee is arrested it may not be clear what the allegations are or whether there is any substance to them at all. Particularly where employees are vulnerable to false claim, employers will not want to jump to conclusions and will need to know more before a decision can be made. It is important that employers do not send the message that all it takes to have someone dismissed is to make a vexatious allegation to the police. Other employees will also need to know that their employer will not abandon them as soon as an allegation is made without any consideration of its substance.

Broadly speaking then, an employer will be expected to do what it can to investigate the allegations to satisfy itself that there is real substance to them. Of course, their ability to investigate may be severely hampered by the fact that the conduct took place out of work and all the evidence is in the hands of the authorities who may be unable or disinclined to share it with the employer. But the obligation is simply to act reasonably and so the employer need only do the best that it can. Technically, the disciplinary procedure will probably not apply, but the employer should still conduct a fair hearing – where the employee has the right to be accompanied - before deciding what to do. Dismissals in these circumstances always carry a risk that the Tribunal will still think that the employer has acted too hastily. But if an employer genuinely believes that the employee poses a safeguarding risk then it may conclude that it is better to risk an adverse finding from a Tribunal than take the risk that allowing the employee to return to work would present.

All in all, I think most of the criticism of the BBC's handling of Huw Edwards' departure has been misplaced. He was arrested in November 2023 and resigned in April 2024 – apparently without agreeing any sort of additional payment. I think most public sector employers would have struggled to resolve a similar situation so quickly.

Don't forget that you can hear directly from Darren and ask him your burning questions at our employment law update on 7th November 2024. Book a place here:

[READ MORE](#)



NATIONAL DEVELOPMENTS

NATIONAL PAY NEGOTIATIONS

Earlier this month, the national unions wrote to the National Employers requesting a review of the pay offer that was made in light of the Government's decisions on pay for public sector workers. The National Employers highlighted the difference in funding provisions and reconfirmed their offer was final, as it represented the limit of affordability for councils. Copies of the letters within this exchange are available here:

[READ MORE](#)

Unite and Unison are balloting for industrial action imminently, with ballots closing on 15th and 16th October respectively. We will keep you posted of any further developments.

LATEST LOCAL GOVERNMENT PENSION BULLETIN

The July 2024 issue of the LGPS bulletin includes updates on the abolition of the lifetime allowance, the McCloud remedy and pensions dashboards. You can access the bulletin through the link below.

[READ MORE](#)

NATIONAL CULTURE AND OD NETWORK – STRATEGIC CHANGE AND TRANSFORMATION CONVERSATION

The National Culture and OD Network (CODE) is hosting a virtual conversation around strategic change and transformation on **Tuesday 3rd September 2024** from **10.00-11.30**.

The idea is to spark a discussion around what true transformation looks like, the conditions for doing it well and the skills needed - so lots of opportunities to share and learn together. Information about the CODE network can be found here [Home \(basecamp.com\)](https://basecamp.com) and to join the network (and also request your place at the event) please email: info@wmemployers.org.uk.

NATIONAL LOCAL GOVERNMENT GRADUATE PROGRAMME – IMPACT

The national graduate programme for local government which is provided by the LGA has been re-branded as Impact and was formerly known as the NGDP scheme. Councils can sign up now to participate in the scheme for 2025. The sign-up window closes in February. For more information on the scheme, click on the link below.

[READ MORE](#)