



Darren Newman on the duty to prevent sexual harassment



Update Meeting: Roll out of LG Recruitment Advertising Campaign



L&D and Networking



Regional Coaching Network and CPD Session

UPDATE: NATIONAL RECRUITMENT CAMPAIGN ROLL-OUT TO THE EAST MIDLANDS

Earlier this month, we held an update meeting for HR and Communications colleagues to discuss the roll-out of the national recruitment campaign for local government. Will Oldham from the LGA outlined recent developments which included market research testing with members of the public and creative development and refinement of the campaign. He also shared next steps and milestones, confirming that the launch date for the campaign is Monday 4th November 2024. The regional jobs portal, EMJobs is also being updated to support the campaign. Councils have been sent information on the contents of the toolkit and resources that will be available in early October. A request for data has also been made to enable the impact of the campaign to be evaluated – please make sure you submit your information, as this can support future funding if we can show the value of the initiative. For further information please contact Sam.

[CONTACT SAM](#)

REGIONAL EMPLOYERS' BOARD AND JOINT COUNCIL MEETING

This month, the Regional Employers' Board and Joint Council met to discuss key developments on workforce issues. Of particular interest was the discussion on sickness absence, and the results of this year's regional survey. The Regional Joint Council has asked that EMC gather further information to get a greater understanding of particular service areas affected by absence, and the absences related to mental health and musculo-skeletal issues, which were the top two reasons for absence across the region. This would help inform any joint working and support that can be provided to councils and employees.

On pay, the Regional Joint Council agreed to write to Government to lobby for funding to the sector.

PROJECTS WITH LOCAL AUTHORITIES

During September, EMC has supported councils with:

- Job evaluation appeal
- Code of Conduct complaint investigation
- Grievance hearing appeal support

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

LEARNING AND OD NETWORK

TUESDAY 15 OCTOBER 2024 | 10.00—11.30 | VIRTUAL

Join us at our next L&OD network meeting where attendees requested the focus to be on appraisals and learning management systems. It's a great way to be connected with your L&OD colleagues across the region, ask questions and share learning! For a calendar invite please contact lisa.butterfill@emcouncils.gov.uk

CONTACT LISA

EMPLOYMENT LAW UPDATE – BACK BY POPULAR DEMAND!

THURSDAY 7 NOV 2024 | 10.00—12.15 | VIRTUAL

With employment law changes coming in and an increase in focus on the Employment Rights Bill coming into force in the Autumn, this update will be particularly useful and timely. Here all about this changes from our expert Darren Newman and take advantage of our “buy one get one free” offer too! For more information and to book - [Employment Law Update \(emcouncils.gov.uk\)](#)

EDI NETWORK – SPECIAL INTEREST GROUP: EQUALITY IMPACT ASSESSMENTS

TUESDAY 8TH OCT 2024 | 10.30—11.30 | VIRTUAL

The next meeting of the Special Interest Group from the regional EDI Network is taking place on 8th October at 10.30am, providing an opportunity to make progress and share approaches on Equality Impact Assessments. To participate or find out more information, contact Suzanne Boulty at suzanne.boulty@emcouncils.gov.uk.

REGIONAL COACHING AND MENTORING NETWORK INCLUDING CPD SESSIONS

Our regional coaching and mentoring network continues to go from strength to strength. For an extremely cost-effective price, subscribing authorities to the network can gain instant access to qualified coaches across the region, support coaches with 4 practical coaching CPD sessions each year and have access to a significant bank of coaching resources. The network guide can be found here: [EM Coaching & Mentoring Network \(emcouncils.gov.uk\)](#). Contact Lisa to see how we can help.

Our most recent CPD session focused on Leadership Coaching; by supporting coaches to explore the issues, opportunities and solutions. Coaches were able to identify and discuss their challenges and opportunities when coaching leaders at all levels in the organisation, share ideas, learning and practical tools with each other as well as benefitting from the knowledge and expertise of our facilitator Dr Suzanne Ross.

Our next virtual CPD session for Coaches is on 4 December at 10.00am and will concentrate on understanding the dynamics of **Team Coaching** and the skills and approaches required for an effective team coach. For more information and to book: [Team Coaching – CPD Session for Coaches \(emcouncils.gov.uk\)](#)

Our current priority is to increase capacity and skills in relation to mentoring, where possible, connected to skills shortage areas, such as planning. Watch this space for more information!

We also support the attainment of coaching skills through our ILM Coaching and Mentoring programmes at levels 3, 5 & 7. [Events - East Midlands Councils \(emcouncils.gov.uk\)](#)

CONTACT LISA



DUTY TO PREVENT SEXUAL HARASSMENT

While we are all waiting for the Government to launch its Employment Rights Bill, an Act that was passed by the previous Government is about to come into force. The Worker Protection (Amendment of Equality Act 2010) Act 2023 was given Royal Assent on 26 October 2023. This is important because its main provisions come into force one year after that date – 25 October 2024.

From that date, the Act provides that all employers are under a legal duty to take reasonable steps to ensure that employees are not subjected to sexual harassment in the course of their employment.

Prior to this Act employers could of course be held liable for the sexual harassment of employees but there was no specific duty to try to prevent it. If no-one was actually subject to harassment, then the employer had done nothing wrong – even it had taken no steps at all. Under the new law employers could in theory face legal action for failing to prevent harassment – even if there is no evidence that harassment has occurred.

I say 'in theory' because employees themselves cannot simply sue an employer who is failing to take reasonable steps to prevent sexual harassment. That power is left to the Equality Commission and realistically it does not have the resources to roam the country checking that employers are doing what they can to prevent sexual harassment even if there is no complaint of harassment actually occurring. I do not expect the Commission to take action in any but the most high-profile and serious cases of sexual harassment that has effectively been tolerated by an employer.

Nevertheless, local authorities will want to ensure that they comply with the law whatever the chances of them coming under scrutiny from the Commission, so it is worth looking at what the law involves.

The first point to make is that the new law only applies to sexual harassment. That is not any form of harassment based around the protected characteristic of sex. Rather, it is specifically defined in the Equality Act as unwanted conduct 'of a sexual nature' which has the purpose or effect of violating the employee's dignity of creating an 'intimidating, hostile, degrading, humiliating or offensive environment'. The new Act places no duty on employers to take steps to prevent generally unwanted conduct based on sex if that conduct is not of a 'sexual nature'.

The second point is that the duty clearly extends to sexual harassment committed by third parties. In other words, employers are placed under a duty to take reasonable steps to prevent employees from being sexually harassed by customers, clients, service users, members of the public and contractors. This is despite the fact that employers are not liable for the harassment that actually occurs in those circumstances. Originally the Bill did make provision for employers to be liable for the harassment carried out by third parties, but this proposal was dropped. However, the duty to take reasonable steps to prevent such harassment remains.

While enforcement action from the Commission may be a remote prospect, there is one aspect of the new Act that will have a direct impact on actual claims of sexual harassment. The Act provides that were an employee succeeds in a claim for sexual harassment and the employer is found to have failed in its duty to take reasonable steps to prevent it, then the compensation awarded by the Tribunal may be increased by as much as 25 per cent. So if an employee wins a sexual harassment claim and the Tribunal assesses compensation at £100,000, then it may award as much as £125,000 if the employer has failed in its duty to take reasonable steps to prevent sexual harassment.



IN DEEP WITH DARREN

And it usually will have done – almost by definition.

Remember that an employer has a defence to any claim of harassment if it can show that it took all reasonable steps to prevent the harassment from taking place. So, if an employee succeeds in a harassment complaint, that can only be because the employer was unable to establish that defence. Now the defence is that the employer has taken ‘all reasonable steps’ and the duty to prevent sexual harassment is a duty to take ‘reasonable steps’. Is there a difference between taking ‘reasonable steps’ and taking ‘all reasonable steps’? Perhaps there is. Certainly, the decision not to make the duty a duty to take ‘all’ reasonable steps was a deliberate one made at the time the Bill was going through the House of Lords. But in practice, I would expect that any employer found liable for sexual harassment will be found to be in breach of the preventative duty and liable for increased compensation.

Which leaves us in an odd place. It seems as though, all else being equal, damages for sexual harassment will be higher than damages for harassment based on other protected characteristics such as race or disability. Why should that be? Indeed, why should an employer be under a greater duty to prevent sexual harassment – within its narrow sense of unwanted conduct ‘of a sexual nature’ – than to prevent harassment based on race.

This might well be something that the new Government will want to address. The Labour manifesto pledged to implement ‘Labour’s Plan to Make Work Pay’ by introducing legislation within the first 100 days of Government – giving a deadline of 12 October. On the subject of harassment, the Plan says:

“Labour will require employers to create and maintain workplaces and working conditions free from harassment, including by third parties. And Labour would properly tackle sexual harassment at work. One in two of all women have been sexually harassed at work; this must change. Labour will strengthen the legal duty for employers to take all reasonable steps to stop sexual harassment before it starts.”

I have absolutely no idea what that actually means – but we may find out soon.

What we can say is that the issue of preventing harassment before it begins is likely to be the subject of further reform. Employers should be looking at their overall approach to preventing harassment to see what more can be done. Since preventing harassment is clearly a desirable outcome there should be no need to wait for the law to change before employers address the issue.

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 SPINE REVIEW

Work has begun in preparation of reviewing the national pay spine. This work will also feed into the Government's intention to create a separate negotiating body for School Support Staff who currently fall within Local Government Services (the Green Book). The National Employers have asked councils to provide information to help inform the work and understand any impact of potential proposals. The deadline for responses was Friday, but if you have had any difficulties in providing a response for your council, then please get in touch with Sam and she will liaise with national colleagues.

CONTACT SAM

DUTY TO PREVENT SEXUAL HARASSMENT

As mentioned in Darren Newman's article this month, on 26th October 2024 the Worker Protection (Amendment of Equality Act 2010) Act 2023 comes into force. This creates a new pro-active duty on employers to take reasonable steps to prevent the sexual harassment (ie unwanted conduct of a sexual nature) of employees in the workplace. The new duty is an **anticipatory duty**, and employers should not wait for an incident of harassment or a complaint before they act. If an Employment Tribunal upholds a claim of sexual harassment and finds that the employer has failed to take such steps, then it can increase the compensation award by up to 25%. The new duty will also be enforced by the Equality and Human Rights Commission (EHRC). The EHRC updated its guidance in relation to the Act on Thursday 26th September – you can access it through the link below:-

READ MORE

WORKFORCE CAPACITY INFORMATION

To improve the speed and availability of benchmarking on data linked to workforce capacity, councils will no longer be providing that information to the LGA. The Infinistats system will be the new platform for the data and EMC will be putting in place arrangements for councils to sign up to that system. EMC will be paying for the cost of this on behalf of councils.

This arrangement is focused on the key workforce data linked to capacity, and therefore does not include the full functionality and pay benchmarking data available from Infinistats. Councils can have the benefits of the full functionality of Infinistats through a subscription. We already have a number of councils in the region subscribing and joining the large number of councils nationally who share their data and have the ability to generate tailored reports on key workforce issues.

EMC will be contacting councils soon to provide further details on workforce capacity data. In the meantime, you can email Suzanne at suzanne.boultyby@emcouncils.gov.uk to confirm who the ideal contact will be for your council for us to liaise with. If you are interested in signing up to the full functionality of Infinistats, then please contact Sam or Suzanne.

CONTACT SAM