



Sickness Absence
Benchmarking Information



Darren Newman's advice on
Part-Time Workers
Regulations



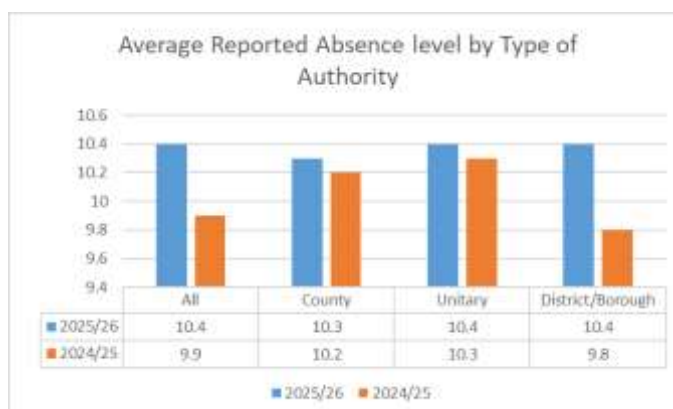
Learning & Development
Support



National Developments

REGIONAL SICKNESS ABSENCE PAY BENCHMARKING INFORMATION

Thank you to all councils that provided their sickness absence information – you will receive a report with more detailed information on the survey results to support your benchmarking. This year we received a good response rate, with 82% of local authorities in EMC membership providing their sickness absence data. The average level councils reported their absence rate was 10.4 days lost in 2025/26, compared to 9.9 days lost in the previous year - 2024/25. The information by type of council is provided below.



The highest sickness level reported for 2025/26 was 14.2 days lost on average per FTE, with 5.5 days as the lowest level. Looking at levels in 135 councils outside of the East Midlands, our region had a slightly higher rate, as the average reported level was 9.9 days lost per FTE. Mental ill-health, musculo-skeletal and surgery/post-operative recovery were the top 3 reasons for absence. EMC will be reflecting the support requested by councils in our service plan over the coming year, which includes continuing to provide benchmarking information. We will be working jointly with unions on this issue through the Regional Joint Council. If your organisation has found effective ways to improve absence, please let us know.

CONTACT SAM

PROJECTS WITH LOCAL AUTHORITIES

In September EMC has supported authorities with:

- Grievance investigations
- Mediations
- Psychometric tests to support recruitment and development

Contact Sam or Lisa to discuss how EMC can support your organisation.

CONTACT SAM

CONTACT LISA



LEARNING & DEVELOPMENT SUPPORT

With the recent announcement on the “pause” of Local Government Reorganisation and the uncertainty this puts on local authority employees, East Midlands Councils are continuing to deliver and support your learning and development needs and below are just some of the reasons why we are best placed to help.

- EMC has a significant track record in providing quality, cost effective learning and development support that our authorities tell us is highly valued
- We are part of the local government family, but the fact that we are an independent organisation is valued and trusted by our members.
- We have achieved significant cost savings for our member authorities, in particular relating to our regional coaching and mentoring network and our ILM accredited programmes.
- Our collaborative approach helps to achieve even further efficiencies and increases opportunities for authorities to work and learn together.
- Our knowledge, experience and flexible approach means we can work with you to understand your learning and development needs and then design and deliver the most appropriate development.
- In addition to the development our team can provide we have access to many quality trainers and facilitators who receive excellent feedback which very often results in repeat or additional development.
- Signposting and connecting you with others is a key feature of our support to save your time and avoid duplication.

We are currently supporting senior leadership teams, through a facilitative approach, to better position themselves to work together to lead through uncertainty and change. The content is driven by the needs and outcomes of each authority SLT, but often includes shaping organisational culture, bringing people with you and building individual, team and organisational resilience. Executive coaching also remains an area where we continue to provide support.

We also continue to deliver ILM accredited programmes either in house or as a collaboration in county-based areas, to support the fundamental leadership and management knowledge and skills required to be competent and confident in this area.

[READ MORE](#)

Our next virtual Learning and OD Network will take place on Wednesday 4th November 2026 10am – 11.30am.

This is a valuable opportunity to share and learn with colleagues to support your key areas of L&OD interest and activity. We welcome agenda items to ensure the network is relevant and valuable to your work. Please email lisa.butterfill@emcouncils.gov.uk with any suggestions and/or for a calendar invite!

[CONTACT LISA](#)

*IN DEEP WITH DARREN***PART-TIME WORKERS REGULATIONS**

I have never been very excited by the Part-Time Workers Regulations. By the time they were introduced in the year 2000 UK employers were already well used to ensuring that part-timers were treated equally – on a pro-rata basis – with their full-time equivalents. In most workplaces and in relation to most roles part-timers are significantly more likely to be women and so any less favourable treatment based on part-time status is likely to amount to indirect discrimination – unless of course the employer can show that the treatment is a proportionate means of achieving a legitimate aim.

As a result, we have had relatively few cases on the meaning of the Regulations themselves. They tend to arise only when the part-time workers in question are just as likely to be men as their full-time comparators. Retained firefighters for example or, in the recent case of *Augustine v Data Cars Ltd*, drivers.

Mr Augustine was a private hire driver who worked on average just under 35 hours per week. That may not make him sound much like a part-timer, but under the Regulations a part-time worker is defined as someone whose pay depends on the number of hours they work and who is not a full-time worker. To say the least, that is not a very precise definition, but it means that Mr Augustine could qualify because most of the other drivers worked more hours than him. On average they worked more than 43 hours per week – with some working considerably more than that.

He brought a claim under the Regulations because all drivers were required to pay Data Cars a fixed circuit fee of £148 per week for access to the booking despatch system. That was a fixed amount that was payable no matter how many hours the driver worked. That meant that the more hours worked, the lower the cost per hour of the fixed circuit fee. Or to put it another way, part time drivers were effectively paid less per hour than those who worked more hours.

I am a little surprised that the case has made it all the way to the Supreme Court and has done so on quite a technical question. In the Tribunal, Mr Augustine's claim was dismissed firstly on the grounds that Mr Augustine was not treated less favourably than a full-time driver and alternatively that if he was, the reason for the less favourable treatment was not the fact that he was part time but that the employer needed to charge a fixed circuit fee in order to make revenue for the business. The Tribunal sought to cover itself even more by saying that even if his part-time status was part of the reason for the less favourable treatment, it was not the sole reason.

At the EAT, and then the Court of Appeal it was held that there was less favourable treatment that was at least partly the result of the fact that he was a part timer. However, the 2007 decision of the Court of Session in *McMenemy v Capita Business Services Ltd* had established that part



time status had to be the sole cause of the less favourable treatment and the Tribunal had found as a fact that in Mr Augustine's case, it was not.

So, the question for the Supreme Court was whether the regulations covered situation in which being a part-timer was just one of the causes of the less favourable treatment or whether it had to be the sole cause.

The Part-Time Workers Regulations (or to give them their full title - the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000) were passed to implement the EU Part-Time Work Directive which was in turn implementing a Framework Agreement on part-time work reached by the EU level trade unions and employers' associations (known as the EU 'social partners'). It is that Framework Agreement that provides that less favourable treatment should be unlawful only if it is 'solely because' the worker in question is part-time. In the UK Regulations what matters is whether someone is treated less favourably than a comparable full-time worker "on the ground that the worker is a part-time worker". So, does that preserve the 'solely' requirement or does the law in the UK reach wider than that?

Under the Equality Act direct discrimination must be 'because of a protected characteristic' and the predecessor legislation talked of treatment that was 'on the grounds of' sex, or race or disability etc. It has been held time and time again, however, that a protected characteristic does not have to be sole cause of the treatment – only a substantive or contributing cause. If you refuse to employ women over thirty then that is sex discrimination. The fact that there are two reasons for the treatment – sex and age – does not prevent it from being sex discrimination. By the same reasoning of course such a policy would also amount to age discrimination.

In the Supreme Court the employers argued that whatever the position in discrimination law, the use of the word 'solely' in the Framework Agreement was important and meant that a narrower view had to be taken in deciding whether the less favourable treatment was on the ground that the worker was part-time. the Supreme Court pointed out, however, that the Regulations were not issued solely to implement the Directive. The Employment Relations Act 1999 authorised Regulations that went beyond whatever the Directive required. In any event it appeared to the Supreme Court that the European Court of Justice had never made a clear ruling on the question of what the Directive and Framework Agreement actually meant.

In the end, the Supreme Court adopted the same approach used in discrimination law. The fact that the worker is a part-timer must be one of the contributing causes of the less favourable treatment but does not have to be the sole cause.



Darren's Advice to Councils

This seems sensible enough. Very few of us ever have a sole cause for anything we do – there are always a range of reasons why a particular course of action can be followed and if an employer could defeat a claim by pointing to some other motive behind what it was doing then

that would be overly restrictive. An odd thing about the Augustine case, however, is that while it is all about the question of what happens when there is more than one reason for the less

favourable treatment of a part-timer, there doesn't seem to have been any finding of another cause for Mr Augustine's treatment other than the number of hours he worked.

There was of course the business reason behind the rule – the need to raise revenue to maintain the business. But the Supreme Court said that was better left to the question of justification – there is no breach of the Regulations if the less favourable treatment is 'justified on objective grounds'. As it happens, the employer did not argue that its treatment of Mr Augustine was justified. In retrospect that may have been an error because the result is that Mr Augustine wins his case.



NATIONAL DEVELOPMENTS

2027 PAY CLAIM EXPECTED

Unions representing employees covered by Local Government Services (Green Book) are intending to submit their national pay claim for 2027 during week commencing 16th November. Hopefully, the representatives of Chief Officers and Chief Executives can work to a similar timeline. The situation regarding Craftworkers remains unclear.

Given this timeframe, we are aiming to arrange a regional pay consultation briefing on the pay claim and to gather views on any potential response before Christmas if possible. We will hold the meeting virtually to enable as many senior officers and Members with a resources/HR portfolio to attend. As soon as a date and time for the briefing is confirmed, we will share the details.

As in previous years, a pre-briefing questionnaire will be sent to enable councils to provide responses in support of the consultation and briefing exercise. We will offer an opportunity for unions to present their claim at a pre-meeting. For any queries, please contact Sam.

[CONTACT SAM](#)

CARETAKERS LETTING FEES 2026 UPLIFT

For those councils who apply the regionally agreed caretakers' letting fees, agreement was reached on 25th September 2026 by the East Midlands Regional Joint Council to increase the allowances by 3.3%. This reflects the increase to allowances that was agreed nationally for Local Government Services (Green Book) employees. A copy of the revised allowances are available through the link below. For any queries, please contact Sam at sam.maher@emcouncils.gov.uk.

[READ MORE](#)

CHRISTMAS WORKING ARRANGEMENTS

The NJC for Local Government Services (Green Book) employees issues guidance about working arrangements in years when Christmas/New Year falls over a weekend. Earlier this month we shared a national circular relating to working arrangements for Christmas 2026 and the New Year. You can see the circular via the link below.

[READ MORE](#)



LOCAL GOVERNMENT PENSION SCHEME (LGPS) BULLETIN 282

The most recent bulletin for the LGPS Scheme was issued last month. It includes updated member presentations to support pension and retirement planning conversations with employees; pensions dashboards guidance highlighting the importance of accurate member data; the Scheme Advisory Board's statement on the purpose and governance of the LGPS. The bulletin can be accessed through the link below.

[READ MORE](#)

EMPLOYMENT RIGHTS ACT 2025 – SUMMARY OF MAIN CHANGES COMING IN OCTOBER

Regulations come into force from 1st October 2026 to extend the timeframe for most employment tribunal claims from 3 to 6 months. Transitional provisions mean that the time limit change applies where the "relevant date", defined separately for the individual complaints that are affected, is on or after 1 October 2026. Where a relevant date is not specified, it will be the date of the act, conduct or failure complained of, or the date of the last act or failure in that series where there is a series of acts or failures. Claims based on a relevant date before 1 October 2026 remain subject to the previous 3-month limitation rule.

The extension of the timeframe for employment tribunal claims is likely to lead to an increase in claims and will also increase the importance of retaining good contemporaneous records to support fair and consistent processes.

From 30 October 2026, the following changes will be introduced:

- The duty on employers to take steps to prevent sexual harassment shifts from taking "reasonable steps" to "all reasonable steps" to prevent harassment, including liability for harassment by third parties such as clients/customers.
- A new duty for employers to inform workers of their right to join a trade union.
- Updated rules on a trade union's right of access to the workplace.
- A new right to reasonable accommodation and facilities for trade union representatives carrying out their duties.
- A new right to time off for union equality representatives to carry out their duties.
- Workers taking part in industrial action will be protected against 'detriment' (being treated less favourably by an employer, not including wage deduction for strike action), in addition to unfair dismissal.