



# HR in the East Midlands

March 2021

The signs of Spring, in line with the vaccine roll-out and lifting of restrictions are all providing positive signals of better times to come. With these changes in mind, we are have planned the next East Midlands Exchange in May to cover future and agile working arrangements. This month's issue also provides information on our employment law update event with Darren Newman. For a Darren "fix" ahead of this, we've included an article in which Darren looks at mandatory testing. We also provide our round-up of national news. We hope you enjoy the Easter break.

## Employment Law Update - date for your Diary

Back by popular demand we are holding our employment law update, with Darren Newman on **28<sup>th</sup> April 2021**. It will take place virtually and will run from 9.30 to 11.45 to include a 15-minute break. Darren will be providing his usual overview of the key developments in employment law and caselaw. In addition, the event will include a focused Q&A session to cover questions that you would find most useful. Please email Mila at [mila.pereira@emcouncils.gov.uk](mailto:mila.pereira@emcouncils.gov.uk) by Monday 19<sup>th</sup> April with any questions that you would like to be included within the Q&A session.

The cost to attend is **£65 per delegate** with a discount for multiple bookings (**BUY ONE PLACE AND GET THE OTHER HALF PRICE**) To book places please visit our website [here](http://www.emcouncils.gov.uk)

## East Midlands Exchange – Future & Agile Working Arrangements 12<sup>th</sup> May

Our regional Exchanges have been really popular, with participants finding it helpful to be able to share information and ideas with colleagues across the region. So far, we have held exchanges on COVID and on Wellbeing. Based on your queries and feedback, the next Exchange will be on the theme of **Future & Agile Working Arrangements** and will take place on **12<sup>th</sup> May 2021** from 10.00 to 11.30.

The session will have expert input from Phil Bundy of the LGA to cover any queries you have on legal implications and we will also have feedback from our counterparts in the North East Region on approaches that are being shared as part of their working practices discovery group. If you would like to participate or register a place, please contact Mila at [mila.pereira@emcouncils.gov.uk](mailto:mila.pereira@emcouncils.gov.uk)

## Projects with Local Authorities

This month, we have supported councils with: -

- Team development
- Chief Executive appraisal facilitation
- Psychometric testing

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

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# Learning & Development

## National Local Government Apprentice of the Year 2021

### Do you have an apprentice who has what it takes to be crowned Local Government Apprentice of the Year 2021?

EMC is proud to be supporting a national event to recognise the great apprentices that we have within local government. The event will take place virtually and is being co-ordinated by our counterparts in the East of England on behalf of all regions and we would welcome your engagement and support, to encourage apprentices to sign up for this event.

The Local Government Apprentice of the Year 2021 event is taking place virtually on 22 April 2021. It is a national event, developed by EMC's counterparts in the East of England and South West, and is sponsored by the LGA.

It will provide apprentices with the opportunity to learn, network and showcase their skills, expertise, and initiative. Working in virtual teams to experience the opportunities, risks, and challenges involved in delivering successful local government services, in a developmental environment, it is set to be a really exciting day.

It is open to all level 2 and level 3 apprentices in local government (current apprentices or recently qualified within last 12 months) and a place costs £149.

We hope that many apprentices from the East Midlands participate in this event will participate, as it will provide a great opportunity for their personal development and will highlight the talent we have within our region.

Full details and how to book can be found [here](#).

## Coaching for Transitions

EMC will be hosting a virtual workshop on coaching for transitions, taking place on Friday 18 June 2021 at 9:30 - 12:30. The session will focus on how, as coaches, we can support our coachees to successfully transition into more senior roles with confidence, even during a time of uncertainty. For more information visit [here](#)

## Leadership Development Programme for Senior and Middle Managers in the Public Sector, starting 22 April

East Midlands Councils working with an expert in leadership development has designed a programme of development that helps managers lead people through change and uncertainty.

The overall aim of this unique and focused programme is to provide senior and middle managers with the skills, knowledge, and capability to lead their people through turbulent times.

Developed around four key themes of Self Leadership, Leading the Organisation, Leading People and Leading Teams, this programme will help leaders and managers to:

- Develop self-awareness of their own leadership and resilience during turbulence and change.
- Respond to the challenges a crisis and long-term uncertainty create for organisations, teams, and people.
- Identify ways in which organisations can build their resilience, adapt to change, and engage their people during turbulent times.
- Address key challenges when leading and managing people during change and uncertainty.
- Identify strategies and actions to support performance, engagement, and wellbeing of people during change.

The cost per place to include all webinars, action learning sets and access to the resource library will be £850 plus VAT (we are also offering group discounts, for bookings of 5 or more).

Full information on the programme can be found [here](#).

### Contact Details

For further information about any of our work please contact the team:-

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## In Deep with Darren

### This month, Darren Newman looks at mandatory testing

The past year has involved major changes for everyone. Our lifestyles have been transformed and our working patterns – even for those who cannot work from home – have also been drastically altered. Local authorities face a particular challenge as so much of their work consists of delivering vital public services to communities – often focussing on particularly vulnerable people. So much of this work simply cannot be done from a laptop on a kitchen table. The challenge is to get this work done while also keeping colleagues and members of the public safe.

Masks and social distancing are obviously a major part of the mix. But testing is also a vital component. Clearly if someone has covid – and it is estimated that up to 1 in 3 people with the virus will have no symptoms, then it is better if they are kept away from the workplace no matter how 'covid-secure' the employer has made it.

Covid testing needs to be thought through carefully. The employer needs to make sure that the results of covid tests are handled carefully. They will count as special category data under the GDPR. That should not present a major difficulty – the need to protect public health or health and safety at work will provide a lawful basis for the processing. There is no need for the employee to give explicit consent to that processing provided one of those criteria are met. But whatever the basis for collecting the data, the employer should be very careful about who has access to the data and ensure that it is not stored for longer than is necessary.

From an employment law perspective, the main problem with testing is that it is intrusive. The process is unpleasant and the consequences for someone who tests positive can involve considerable inconvenience. What if an employee refuses? The employer obviously cannot hold them down and test them against their will – but what can be done? Can the employee be disciplined? Dismissed? Sent home without pay? And isn't there a human rights issue underlying the idea that individuals can be pressurised into undergoing a test that they might not want to take?

The idea of requiring employees to undergo workplace testing is not new. Drug and alcohol testing is well established in many industries – such as public transport – where employers have a particular need to ensure that employees are not 'under the influence'. Such tests may be random in that the employer does not need to have specific grounds to believe that a particular employee has been drinking or taking drugs and it is perfectly normal for a refusal to take a test to be treated as a disciplinary matter.

In those cases of course the duty to submit to testing is a contractual requirement. The employer has made agreeing to the testing regime a condition of employment. I am not aware of any employers that have made similar provision for covid testing.

Do they need to? The question is whether, in the current circumstances, requiring an employee to subject themselves to testing is a reasonable instruction. The contract of employment is an inherently flexible thing and employees have a duty to obey reasonable instructions given to them by their employer. But is it reasonable to require employees to submit to a covid test?

Government guidance is likely to be an important factor. The latest government guidance for schools is that 'testing is voluntary, but strongly encouraged'. The Government's latest guidance on care homes similarly states that staff should not be 'compelled' to provide their consent. An employer in these settings may struggle to explain why it was necessary to go further in imposing testing on employees than is currently envisaged by the Government.

There are no straight answers in employment law, so it is of course open to an employer to explain why it is reasonable to require all employees to be tested. It may be that the level of infection in the local community, or the difficulty of observing social distancing or other precautions makes the need for testing more compelling. It may be that the employer has attempted to introduce testing on a voluntary basis but the take-up has not been sufficient to ensure that the workplace will be safe.



Clearly, however, a general feeling that all employees should participate will not do. An employer will have to show that it has carried out a detailed risk assessment that concluded that introducing testing as a mandatory requirement was necessary. These matters should, of course, be kept under review. Mandatory testing should not be kept in place for longer than is justified by the evidence.

If an employer is confident that mandatory testing is needed, then it has a choice. The legally cautious approach is to propose a requirement to cooperate with its testing programme as an amendment to contracts of employment. That may not be a practical option. It is time consuming and risks creating resentment. If employees resist the change then the employer is left with the option of dismissing and reengaging on the new terms, which is far from risk-free in legal terms. Employees could sue for unfair dismissal and if more than 20 employees hold out then that can trigger the obligation to go through the same collective consultation process as for 20 or more redundancies.

That leaves mandatory testing as a reasonable instruction not requiring a formal change in contracts. An employer going down this route should make its position clear to employees and invite those who have concerns to discuss them. It may be that there are legitimate reasons why an individual is unable to consent to being tested and the employer should make allowances wherever possible. It may also be possible to redeploy the employee to a role where the need for testing is not so acute.

Sending an employee home without pay – or taking disciplinary action - should really be a last resort. Since the outcome may well be litigation – with no certain outcome – employers will only want to rely on this approach if they believe that the case for mandatory testing is overwhelming.

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

## National Developments

### Pay Negotiations

It was good to see so many of you at our regional pay consultation briefing that we hosted on 15<sup>th</sup> March 2021. The National Employers met today to consider feedback from this event and others held across all regions. We will keep you informed of developments.

#### Craftworkers' Pay Claim

The National Employers have received from the NJC unions (Unite and GMB) a pay claim for local authority Craftworkers which seeks:

- A 10% increase across all pay rates and allowances
- An increase in Grade and recognition for craft operatives that regularly use additional skills to support employer business needs
- A substantial increase in stand-by payments
- Reduction in the working week to 35hr with no loss of pay
- Extra day of annual leave entitlement
- Recognition of the increased use of technology supported by an additional payment
- Modernisation of tool allowance to accurately reflect the cost of tools provided by the worker – or all tools must be provided by the employer
- Increase in tool insurance to reflect the actual cost of replacing tools
- Maintenance of the Red Book Agreement
- Commitment to insourcing of work and implementation of the Construction Charter

A copy of the claim is available [here](#)

#### Chief Executive's Pay Claim

Earlier in March the National Employers received a pay claim from ALACE in respect of local authority Chief Executives. The claim seeks parity with any headline increase that might be agreed for the main bulk of local government staff covered by the 'Green Book' NJC. A copy of the claim is available [here](#).



## Chief Officer's Pay Claim

Today the National Employers received a pay claim from representatives of Chief Officers. It seeks a **substantial increase on all salaries and relevant allowances** "We note the claim for a substantial increase with a minimum of 10% on all spinal column points made by the Staff Side of the NJC for Local Government Services, and we expect parity of treatment for all local government employees."

A copy of the claim can be accessed [here](#)

## Apprenticeships

### Public Sector Target for 2021/22 Confirmed

The government has published guidance in relation to the public sector apprenticeship target for 2021/22. The target will remain the same as before – public bodies with a headcount of 250 employees or more on 31 March 2021 will need to create apprenticeship starts equivalent to 2.3% of their headcount between 1 April 2021 and 31 March 2022. That means if your headcount on 31 March is 1,000 employees, you would need to create 23 apprenticeship starts during the course of the year. If your headcount is 249 or less, you are exempt from the target.

Other things to be aware of:-

- This is a new target and not a continuation of the old one. Therefore if you meet the target in 2021/22 you will be considered to have met it in full, rather than in the current system where you would need to have achieved an average performance of 2.3% apprenticeship starts across the four year period to have met the target;
- There remain no negative consequences for employers if they don't meet the target. As with the current target, you only need to 'have regard' to it. If you miss the target, you will be expected to explain how you have had regard to it in your return to government during the reporting period in the same way you do now.

The guidance published by government on the new target includes the following line:

*In response to queries where the Council/Local Authority (LA) is the employer for schools and fire and rescue services, each LA may choose to show the information required for these organisations separately within their Returns.*

The LGA has previously raised with government the importance of local authorities being able to report maintained schools' apprenticeship numbers separately as part of our return. This would be helpful both to fully illustrate how local government is progressing (usually maintained schools' performance has been worse than our own performance, dragging down the sector's overall numbers) and to enable a full and accurate picture of apprenticeship numbers in schools to be collected. (Currently the government provides a figure each year on schools' performance that is based half on real numbers from non-maintained schools subject to the target and half of estimates of how government thinks maintained schools have done.)

It is not clear if this wording means that there will be some edits to the reporting system from next April to allow us to do this or whether this is restating the government's previous policy of allowing councils to report these figures voluntarily in part 2 of the return (the section where you explain how you have had regard to the target), but the LGA is seeking clarification on that point and will report back in a future Apprenticeship newsletter.

The LGA hopes to have further discussions with government over the coming year to influence the development of any future longer-term apprenticeships target, which can hopefully take into account the extensive feedback from councils on how it has operated and help to shape a more practical and achievable target moving forward.

You can read the government's guidance in full [here](#)

### LGA Apprenticeship Newsletters, March 2021

The latest LGA apprenticeship newsletter can be found [here](#).

