



HR in the East Midlands

January 2021

As we continue to work remotely, many of us are looking for ways to support managers and new employees to connect with colleagues and feel part of the organisation. You can see how this is being achieved in one council through action learning – see our L&D section. In the national news section, you will see that national guidance is being planned on vaccinations, but ahead of that, Darren Newman's article flags up some of the issues for employers relating to vaccinations and testing.

Regional Pay Consultation

A pay claim from national trade unions is expected at any time in respect of pay for the different employee groups in local government for 2021.

EMC will host a regional consultation meeting in March (to take place virtually) which will enable lead Members and officers from councils across the East Midlands to talk with the national Member and Officer negotiators and to help inform the national negotiations. We will notify you of the date and the arrangements for the meeting as soon as these have been finalised.

Kickstart in the East Midlands

EMC has applied to be a gateway organisation for councils across the region to access the funding for work experience placements as part of the Kickstart scheme. We should hear about our application in the next couple of weeks.

Earlier this week the Government announced it is changing the Kickstart scheme to relax the requirement for at least 30 placements to be offered by an employer. Government will be honouring the gateway agreements that had already been applied for and we will keep councils who are collaborating on this scheme posted.

EMC is also offering to provide the development that is required to be given to support people on their placements and to help their future employability. As a gateway organisation, we would be able to add councils to our scheme on an ongoing basis and this may be of interest to those councils for whom the time isn't yet right to be able to offer placements given the current restrictions. For further information, contact Suzanne at Suzanne.boulty@emcouncils.gov.uk

Projects with Local Authorities

During January we have provided support to councils on individual assignments including: -

- Chief Officer Recruitment & Selection
- Career transition support
- Mediation
- Psychometric testing

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

Sam.Maher@emcouncils.gov.uk

Lisa.Butterfill@emcouncils.gov.uk



Learning & Development

Action Learning to support managers appointed during the pandemic and remote working

Over the past month EMC colleagues have been working with a group of managers from across a variety of services areas within an authority. What united these managers was that they had all been recruited and started during the pandemic.

We facilitated action learning sets which provided each manager with time and space to work on challenges where they wanted to make progress, as well as enabling them to make connections outside of their service area. The group explored issues such as developing their team cultures and managing people remotely.

This programme was delivered virtually and included:

- One-hour workshop, introducing the concept of action learning, questioning, insight and working through a problem.
- A 3-hour action learning set, hosted by EMC experienced facilitators, enabling participants to spend time on their chosen problem/challenge.
- A follow-up 3-hour action learning session, providing space to reflect on the thinking and commitments from the previous session and allow individuals to choose to either make progress on the same problem or bring a new problem/opportunity.

While this particular programme was delivered in 3 parts, programmes are tailored to meet the organisation's needs. Contact **Lisa** or **Kirsty** to discuss Action Learning or visit [here](#) for more information.

Climate Change workshops for Councillors

EMC is working in partnership with the LGA to offer a series of virtual interactive workshops for councillors on climate change.

The interactive virtual workshops will provide Councillors from across the East Midlands with the opportunity to hear from both Councillors and Officers on innovative approaches to climate change reduction plans and initiatives.

The workshops will include both keynote presentations and small group working, providing opportunities for discussion, sharing and exploring 'what does this

mean for me and my community?' and 'what role can I play?'.

A series of workshops will be held in early 2021, the themes will explore: Transport, Housing and Energy and green recovery. Our first workshop on community engagement was held earlier this month. For more details of the programme contact **Kirsty**.

Leading through turbulent times – Leadership Development Programme

We are delighted to be able to share with you details of our Leadership Development programme 'Leading through turbulent times'.

Our first programme will start on 25 February, with further cohorts running later in the year. The programme will run virtually using MS Teams.

The costs are included in the programme information booklet, and we are offering a discount for bookings of over 5 places. Although we believe in the benefits of running the programme regionally, enabling managers to network across local authorities, it can also be delivered in-house. Please feel free to drop Kirsty a line if you would like additional information.

The programme provides senior and middle managers with the skills, knowledge and capability to lead their people through turbulent times. It is delivered through short webinars which address key issues and provide practical tools to support managers on key themes such as **Self-leadership**, **Leading the organisation**, **Leading people** and **Leading teams**, all in the context of the unique challenges posed by Covid-19 including change, complexity, ambiguity and uncertainty.

Further information

The full brochure is available from [here](#). The cost for a place on the programme is £850 plus VAT. **For more information email Kirsty**.

Contact Details

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

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Kirsty.Lowe@emcouncils.gov.uk
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In Deep with Darren

This month, Darren Newman advises on vaccination and testing

The Covid-19 pandemic presents challenges to employers unlike any that they have faced in modern times. No area of work has been left unaffected by the precautions that must be taken to prevent the spread of the virus. In local authorities some of the challenges have been particularly acute because much of the work cannot be done at home. Key services must still be provided to the community and that means employees coming in to work to deliver them.

As vaccination is rolled out, we can expect the risk of Covid-19 to fade as we slowly return to something like normal. Meanwhile the availability of testing is an important tool in making sure that employees can come to work safely without either contracting or spreading the virus. But there will inevitably be problems. Some employees may object to vaccination and refuse to undergo the rather uncomfortable process of being tested. When that happens, what can the employer do?

From an employment law perspective, many of the issues boil down to a single question: what is a reasonable instruction?

A contract of employment is a contract of service. The employee is in the service of the employer and central to that is a duty to obey reasonable instructions. Failure to do so can amount to gross misconduct and result in dismissal. Obviously, there are some instructions – ‘do your work’ that are clearly reasonable and which the employee must obey or face disciplinary action. The question is whether instructions such as ‘have a covid test’ or ‘tell us whether or not you have been vaccinated’ or even ‘have a vaccination’ fall into this category. After all, the employer has not given these instructions in the past and the requirement to take a covid test or inform the employer about vaccination status are not likely to be set out in the contract of employment.

When you are asking whether or not an instruction falls within the scope of the contract of employment the key point to establish is the link between the instruction and the employer’s legitimate interests. Why is the employer asking the employee to do this? If it is a whim or a matter of personal preference - and

nothing to do with the effective performance of the job - then that is unlikely to be a reasonable instruction. But where the employer can show that the instruction relates directly to the safety of other employees or members of the public then that is a different matter entirely.

My expectation is that in general a public sector employer will be entitled to ask employees to undergo a test before interacting with colleagues or members of the public – even if social distancing is practised. It also makes sense as the vaccination programme is rolled out to key workers that an employer delivering public services should know who among their workforce has been vaccinated or even insist that employees agree to the vaccination when it is offered to them. The argument against this is that testing and vaccination should make no difference since the employer will still take precautions to prevent the spread of the virus. On balance however I don’t think this stands up. This is a risk management process and the covid-secure measures that employers have been taking so far do not eliminate the risk altogether. Information about testing and vaccination status can make an important contribution to the employer delivering services in a safer way.

But just because an employer is entitled to ask, that doesn’t mean that any employee who does not cooperate can be dismissed for gross misconduct. A blanket approach will not do. The first step on encountering an objection is to ask why the employee objects. There may be a valid reason or at least a legitimate concern that the employer can address. All cases must be approached on an individual basis and a genuine attempt made to address concerns before the policy is enforced.

An employment lawyer’s natural instinct when facing novel issues like this is to ask whether there is a discrimination angle. Is there some reason for refusal that might apply more to employees with a particular protected characteristic? It is frankly hard to think of one.

Perhaps there is evidence that some communities are more resistant to public health messaging than others, but it seems unlikely that this will amount to enough of a ‘particular disadvantage’ to support an indirect discrimination claim.



Besides, if the employer's policy is based on a proper assessment of the health risk to employees and members of the public, its requirements in relation to testing and vaccination should amount to a proportionate means of achieving a legitimate aim and any indirect discrimination claim would fail.

There is a separate issue with pregnancy and maternity. The current Government guidance is that pregnant people should not be vaccinated unless they are at high risk, although this advice may change as more information becomes available. But that certainly means that an employer would be on very thin ice if it subjected a pregnant woman to any disadvantage because she refused the vaccine. If the employer really does think that it is too risky to allow such an employee to come into work, then it should either make arrangements for her to work at home or under more covid-secure conditions. Alternatively the employer might have to just accept that she should be placed on special paid leave until her maternity leave begins.

Finally there is a human rights issue. Obviously issues around health and vaccination concern aspects of an employee's private life and the right of an individual to have their private life respected is enshrined in Article 8 of the European Convention on Human Rights. But as with indirect discrimination there is a proportionality test. Interference with the right may be justified if it is necessary to protect public safety or the 'rights and freedoms of others'.

Essentially then it comes down to this. Provided the employer has carefully assessed the need to impose requirements in relation to testing and vaccination and can explain why that approach is a proportionate one given the need to protect other employees and members of the public, then it should be in a position to enforce its policy. If that means sending employees home without pay or even – faced with persistent refusal – taking disciplinary action up to an including dismissal, then a Tribunal should accept that as a fair and proportionate response. But if the policy is explained carefully and employers engage sympathetically with employees who have concerns, there should rarely be a need for matters to get that far.

More information can be found on Twitter:

[@daznewman](https://twitter.com/daznewman)

National Developments

COVID: Guidance on Vaccinations for Employees

We have received a number of queries about vaccinating employees and how to deal with employees who refuse to be vaccinated. Hopefully, you will have found Darren's article this month useful in flagging some of the employment law issues to take into account in connection with the testing and vaccination of employees. Our colleagues at the LGA have informed us that national guidance is in the process of being developed. We will send it to you as soon as the guidance is issued.

COVID: Testing in Schools

Last week there was a change in government position on testing in schools. Please see the following link to the latest guidance published on 20th January: [contact testing](#) The key headlines from this are: 'In light of this changing situation, we now recommend that the rollout of daily contact testing within schools is paused, other than for schools involved in further evaluation. This will enable the further detailed evaluation of changing circumstances including, potentially, lower infection rates and modelling work required to understand the benefits of daily contact testing in this new phase of the pandemic.'

'Schools should continue to test their staff regularly (twice-weekly where possible, in line with recommendations for other workforces that need to leave the home to work) and test pupils twice upon return to school, as has been the case since the start of January.'

Verification of Shielding Advice

In case you've not come across this yet, there is an official service to verify whether a person is genuinely in receipt of advice to shield because they are Clinically Extremely Vulnerable. To access it, the employer needs a shielding reference number from the employee's shielding note. The link is provided below:- [Check a shielding note - NHS \(www.nhs.uk\)](https://www.nhs.uk)



LGPS bulletin 204 – December 2020

The latest bulletin from the Pension Scheme is available here: [Bulletin 204](#) and contains updates on the exit payment cap and wider exit payment reform.

Apprenticeships

LGA Apprenticeship Newsletter, January 2021

The latest LGA newsletter can be found [here](#). This month it includes:-

- LGA Apprenticeship Support Offer
- Webinars: Jan – April 2021
- Action Learning Programme 2021 (see below*)
- LGA Apprenticeship Surgeries
- Support Available to Develop Levy Transfer Policies
- REMINDER: Roundtable with South West Councils – Find out How to Become an EPA Assessor
- T Levels: Appeal to Councils to offer Industry Placements to Young People
- New Funding Band for Senior Leader L7 Standard Announced
- Latest Coronavirus Guidance on Apprenticeships
- Apprenticeships in the News

*The deadline to secure a place in the LGA's [apprenticeship action learning programme](#) is **5pm Wednesday 3 February**. Places are open to any council officers who want to take part, currently restricted to one place per council. If there are any spare places after the deadline, they will be offered out on a first-come-first-served basis, including to any council that wants to take up a second spot.

You can hear first-hand from a participant about their experience of last year's programme; listen back to [this segment](#) from one of the LGA's webinars where Raj Grewal, then apprenticeship lead at Coventry City Council, explains how it helped her to take her apprenticeship programme forward.

You can register for your place by clicking this link and filling out the [short application form on Survey Monkey](#).

