



HR in the East Midlands

July 2019

We hope that you have been managing to keep cool during the heat of July. Pay negotiations have started to warm up, and our National News section provides you with the latest information including how you can take part in the consultation discussions. Darren Newman's "In Deep with Darren" article focuses on Equal Pay and a recent case involving pay progression. Our L&D section outlines two new upcoming events - Attracting and Developing Talent and an Employee Wellbeing Conference.

Addressing the skills shortage in Planning

As part of our work to support skills shortages, EMC organised a workshop for senior planners from across region to meet with academics from Loughborough University to discuss a new planning undergraduate course. The East Midlands is currently the only region without an RTPPI recognised planning school. The workshop discussed the emerging course content and opportunities for students to undertake work placements with councils. The first cohort of students are expected to start in 2020. The workshop also identified areas for broader skills development which will be used to inform future programmes and events.

EMC is also working on the opportunity for an RTPPI apprenticeship degree in Planning based within the region and we will keep you informed of developments.

Reminder Alert!

Public bodies with 250+ employees have a target number of new apprenticeship starts each year, representing 2.3% of the total workforce. They also have a duty to publish information annually on their progress towards meeting the target. The second round of reports covering April 2018 to March 2019 are due to be published on or **before 30 September 2019**. Government guidance can be found here: [guidance](#)



Sickness Absence Information

Thanks to everyone so far who have provided their sickness absence information for 2018-19. There's still time to contribute if you haven't done so yet – just email mila.pereira@emcouncils.gov.uk

Projects with Local Authorities

During July we have provided support to councils on the following projects:-

- Team Development day facilitation
- Training for Councillors on Employment & Appeals
- Assessment Centre for Recruitment & Selection for Chief Executive

To find out how EMC could support an area of work for you, then please contact Sam Maher at sam.maher@emcouncils.gov.uk or Lisa Butterfill at lisa.butterfill@emcouncils.gov.uk



Learning & Development

We have a range of exciting events taking place over the autumn. This month, we are featuring the following development opportunities on offer over the coming months:-



Attracting and Developing Talent – Wednesday 9th October 2019

People professionals have an important role to play in providing support and guidance in designing and developing approaches to attracting, engaging and retaining talent that fit the needs of the organisation.

This includes understanding the key challenges facing the organisation in attracting, recruiting, developing and retaining talented people to meet immediate and future strategic objectives and business needs. It's also important to develop and signpost career opportunities for all employees and creative strategies for unleashing employee potential.

EMC is providing an opportunity for our people professionals to hear from key speakers renowned in this important area from organisations that include:

- Chartered Institute of Personnel and Development (CIPD)
- SHL - a global leader in talent management, helping organisations improve business performance by making the best possible people decisions in recruitment, employee development and succession planning.
- Nottingham Trent University – (Guardian's University of the Year)
- Local Government Association (LGA)

Our speakers will provide research, information and practical case studies on themes relating to modernising recruitment, understanding the candidate experience and what they want, workforce planning including career pathways, talent management strategies and employee engagement.

There will also be opportunities for networking throughout the day. [For more information visit here](#)

ILM Coaching Programmes starting this autumn – Wednesday 13th November 2019

EMC believes in the power of coaching and mentoring and the benefits this brings for both the individual and the organisation. Done effectively, it can empower people to take the steps they need to effect positive and lasting change, unlocking potential and improving performance.

We have partnered with Coaching Focus to provide two opportunities to develop skills and knowledge in Coaching and Mentoring.

We have an ILM 5 Certificate in Effective Coaching and Mentoring details [here](#) and an ILM 7 certificate in Executive Coaching details [here](#) starting on 13 November.

Employee Wellbeing Conference – Wednesday 20th November 2019

Employee wellbeing is now firmly on the HR agenda reinforced by it being cited as an HR Priority in a range of different surveys. According to the latest Xperthr survey on HR Priorities in 2019 whilst more traditional activities around learning and development, reward and recruitment continue to be a focus for HR, it is the overall shift towards employee welfare to maximise business performance that is most striking in this year's research.

EMC is providing an opportunity to hear from key speakers from organisations such as CIPD, ACAS, Public Health England (PHE), in the areas of:

- Demonstrating the benefits of a Wellbeing Strategy to include an evidence based approach to aid HR's influence across the organisation
- Resilience, Culture and Wellbeing
- Managing Sickness Absence
- Mental health in the workplace including EAP and OH provision

As always our conferences provide the latest research, practical case studies and opportunities for learning and networking. [For more information visit here](#)



A reminder of what else is coming up



- **19 September 2019**
Developing a Mentoring and Coaching Strategy Workshop – details [here](#)
- **4 October 2019**
East Midlands Scrutiny Conference 2019 – details [here](#)
- **14 November 2019**
GDPR for HR - Refresher and update – details [here](#)
- **5 December 2019**
The Power of Constellations Coaching - details [here](#)

We're committed to supporting our local authority member organisations with your learning and development needs, so if there are any areas you are interested in please let us know.

Contact Details

For further information about any of our work please contact the Local Government Services Team. Either call 01664 502 620 or email:-

Sam.Maher@emcouncils.gov.uk
Lisa.Butterfill@emcouncils.gov.uk
Kirsty.Lowe@emcouncils.gov.uk
Mila.Pereira@emcouncils.gov.uk



In Deep with Darren

Darren Newman's in-depth analysis of a topical HR issue and its implications for local authorities.

One of the odd features of the Equality Act is that when it comes to sex – but not the other protected characteristics – there is a particular kind of claim that needs to be brought when complaining about discrimination in contractual terms and conditions. An employee denied promotion because of sex can simply bring a direct discrimination claim and the issue will be why they were denied promotion. If the same employee was complaining about their contractual pay, however, then they would have to bring an equal pay claim. The process of bringing an equal pay claim can seem complex. I have often found it helpful to think of it like a tennis match.

It is for the employee to serve by showing that they are employed on equal work with a valid comparator but that their pay (or other contractual term) is not equal. If the employer cannot explain the difference in pay then the claim succeeds - there is no need for the employee to show any intention to discriminate. The employer can return serve, however, by demonstrating that there is a reason for the difference in pay – a 'material factor' – which does not involve treating employees less favourably because of sex. The ball then returns to the employee's court, and they can counter that although there is no direct discrimination, there is indirect discrimination. To do this, they have to show that the factor relied on by the employer puts women (or men – thought this kind of claim is usually brought by women) at a significant disadvantage compared to men doing equal work. If that argument clears the net, however, then the employer can still win the point by showing that the reason for the difference in pay is a proportionate means of achieving a legitimate aim.

Each of these steps can carry its own complications, but ultimately the process is designed to answer the same question as a normal discrimination claim. Once the technicalities of the process have been stripped away the question is why one employee is being paid more than another. The reason does not have to be a fair one, it just has to be the genuine reason for the difference and not tainted by sex discrimination. It all

boils down to whether or not the employer's pay system discriminates – either directly or indirectly – on the grounds of sex.

The Court of Appeal examined this issue in the case of [McNeil v HMRC](#). The claimants (who were women) were employed on the same grade as the men they claimed as comparators. The men, however, were near the top of the grade whereas the claimants were near the bottom. The reason for the difference in pay was essentially length of service – the comparators had simply been in the job longer.

The issue was whether using length of service as a factor in determining pay was discriminatory. Now there is a general view that relying on length of service to determine pay will tend to disadvantage women because on average they are likely to have shorter service than men. They may have taken career breaks for family reasons or it may simply be that they are now entering professions that have been traditionally done by men and have shorter service simply because they are relatively new. But just because length of service carries this general risk of discrimination is not enough to get the ball over the net in an equal pay claim. The employees had to show that *in this particular case* the use of length of service placed woman at a particular disadvantage. Their problem was that the statistics were not straightforward.

The claimants argued that women were under-represented at the bottom of the pay scale and men were overrepresented at the top. The trouble was that if you looked at the average pay of men and women across the grade as a whole, there was no statistically significant difference. The claimants argued that looking at an overall average merely smoothed out the differences in distribution. The right approach was to consider how many women were disadvantaged by the grading system compared to men – which could best be seen by seeing how they were 'clustered' around the lower parts of the grade.

The Court of Appeal did not agree. In an equal pay claim it was the actual amounts paid to employees that counted – not the distribution of employees across a pay grade. The only sensible way of seeing whether women were disadvantaged in the amount they were



paid was to look at their average pay across the grade and compare it that of the men. On this analysis it was accepted that there was no significant difference and so it followed that the equal pay claims failed.

For me the writing was surely on the wall for the claimants when experts disagreed about how to analyse the allegedly discriminatory impact of the grading system. It was for the employees to show that they were at a particular disadvantage and the courts expect statistics that demonstrate that disadvantage convincingly. If you have to argue about methodology to demonstrate the difference, then you are already on the back foot.

But even if the claimants had shown that there was a difference in impact that would not have been the end of the matter. It would still have been open to the employer to argue that allowing employees to progress up a grade over time was a proportionate means of achieving a legitimate aim. This is a balancing exercise – the more discriminatory the system is, the harder it is to justify. On the other hand, if the discriminatory impact is so marginal that rival experts can disagree over whether it even exists, then justification should not present too much of an obstacle.

Darren's Advice for Employers

Rewarding loyalty and experience is a legitimate aim and a Tribunal is unlikely to have a problem with longer serving employees being made more than their newer colleagues. The problem comes when a pay spine is disproportionately long. Pay progression over, say, five years is unlikely to result in any significant discriminatory impact and would be easy to justify in any event. Progression over longer periods is more problematic. Not only is there more likely to be a discriminatory impact (and in very long pay scales age discrimination might also be a factor) but there are few jobs where an employee with 10 years' experience is likely to be more effective than someone who has been in the post for six or seven years. If, however, an employer can show that its pay system is genuinely aimed at rewarding employees for the work they are actually doing then there is little prospect of it being successfully challenged.

More information can be found on Twitter:

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

National Developments

Pay Negotiations – Green Book Employees

Sam Maher attended the National Joint Negotiating Committee for Local Services (Green Book) on 24th July. At this meeting, the NJC Trade Unions lodged their 2020 pay claim with the National Employers. The claim is for:-

- a 10% pay increase
- a one-day increase in annual leave
- a two-hour reduction in the working week
- a review of workplace stress and mental health

We have circulated the full claim to all councils, and a copy is available [here](#)

The claim and any employer response will be the subject of consultation at regional events, and for councils in the East Midlands, EMC is hosting the following:-

Pay Roadshow Event – Thursday 12th September 2019

EMC will host a regional pay roadshow event chaired by Cllr Tom Beattie, Leader of Corby BC and Chair of the Regional Employers Board on 12th September 2019. The meeting will start at 1.00pm.

The event will provide an opportunity for you to hear from members of the Employers' Side of the negotiating body and to provide your views on the pay claim and any offer in response. Places are limited so for more information or to book a place click [here](#)

Public Health Advice and Support arrangements into Integrated Care Systems in England

The LGA has been working with PHE and others through the Standing Group on PHE teams to produce advice on the role of Public Health in fast-changing integrated care systems and we have been asked to circulate the document that has now been published click [here](#)



Apprenticeships

The LGA Newsletter for **July** can be accessed through this link: [apprenticeships](#). This month's edition covers:-

- LGA Launches 'Apprenticeships MOT' Offer to Councils
- CCS launches apprenticeship training marketplace
- East of England Apprenticeship Challenge 2019
- Level 2 Business Admin Standard Rejected But Further Discussions Promised
- Workshop – 'Preparing for Industry Placements & T levels'
- Proposal for Public Service Commissioning Occupational Standard
- Highways Engineer Apprenticeship Trailblazer update
- Public Consultation: Level 3 Cyber Security Apprenticeship Standard

