



# HR in the East Midlands

April 2021

It was great to see so many of you joining us for our Employment Law Update with Darren Newman earlier this week and we hope you found it useful. Darren's article this month covers sleeping-in arrangements and the minimum wage entitlement implications following recent case law. This edition of the Bulletin also provides our round-up of developments in the world of HR and L&D which should be of interest. We hope you enjoy the bank holiday weekend.

## Councillor Development Charter

Congratulations to Charnwood Borough Council who have successfully achieved re-accreditation of the Councillor Development Charter. The award clearly demonstrates their on-going commitment towards and investment in councillors' growth and development, even in these challenging times.

Feedback from councillors interviewed as part of the process has been the value the Charter assessment provides as a framework to focus councillor development against and to understand more about what is working well and how councillor development is providing a positive outcome for councillors, the organisation, and the community.

For authorities interested in understanding more about how the Councillor Development Charter and Charter Plus can act as a guide and benchmark as part of your improvement journey then please visit our website [here](#) or have a discussion with Lisa as our lead officer at [lisa.butterfill@emcouncils.gov.uk](mailto:lisa.butterfill@emcouncils.gov.uk).

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

There has been great interest in our next Exchange which is 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

In April we have supported councils with: -

- Team development
- Disciplinary investigations
- 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](mailto:Sam.Maher@emcouncils.gov.uk)

[Lisa.Butterfill@emcouncils.gov.uk](mailto:Lisa.Butterfill@emcouncils.gov.uk)

# Learning & Development

## National Local Government Apprentice of the Year 2021

Over 100 apprentices took part in the first virtual Local Government Apprentice of The Year event on 22<sup>nd</sup> April. It was a fantastic day celebrating apprenticeships in Local Government, with outstanding feedback from the apprentices who took part.

East Midlands Councils supported the event which was developed by our regional employer colleagues in the South West and East of England. The National LGA sponsored the event and prizes. The Apprentice of the Year was awarded to Karla Overington from West Sussex Council. The Team Award was won by apprentices from Basildon BC, North Herts DC, Test Valley BC, Portsmouth City and Essex County Council,

We will keep you informed of future national and in-region options but if you have any particular current interests with regards to apprenticeship development then please contact Lisa Butterfill

[Lisa.butterfill@emcouncils.gov.uk](mailto:Lisa.butterfill@emcouncils.gov.uk)

## Report Writing Workshop, 30 June 2021

EMC is hosting a highly interactive 3-hour virtual workshop on report writing.

The session will look at how to build a logical structure of a report helping participants to communicate their ideas clearly and concisely. We will also look at how to write reports that audiences really want to read: what information to put in/leave out, retaining crucial information and leaving out unnecessary detail. Grammar, punctuation, appropriate tone and level of language will also be covered. For more information visit [here](#).

## EMC Leadership Development Programme

Our new Leadership Development Programme launches next month. We will run the programme again and if you would be interested in places please contact Kirsty to influence when the programme will start [Kirsty.lowe@emcouncils.gov.uk](mailto:Kirsty.lowe@emcouncils.gov.uk)

The cost per place to include all webinars, action learning sets and access to the resource library will be £850 plus VAT (group discounts also available), for bookings of 5 or more). Full information on the programme can be found [here](#).

## Our Coaching Support

### Coaching for Role Transitions

EMC will be hosting a virtual workshop on coaching for role transitions on Friday 18 June 2021 at 9:30 - 12:30.

Transitioning into a new role can be both exciting and daunting. Expectations of others can be high, especially if it is a promotion. A focus on being able to 'hit the ground running' can mean an over reliance on the strengths that have worked to date and not enough attention paid to identifying and developing the skills, knowledge and capabilities needed in the new role. Over time, this can become detrimental to performance.

Those transitioning into new roles during COVID and this ongoing period of uncertainty, can face additional challenges particularly in, building relationships, communication, collaboration and visibility in the new role.

In this session, we 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](#)

## Exploring the Learning from Coaching Supervision, 21 May 2021

EMC is hosting a virtual coaching supervision workshop on 21 May. Coaching supervision is an essential part of any coaching practice and helps to maintain the professional competence of individual coaches. It isn't just about when you're stuck or have a problem as, through reflective practice and sharing experiences, it helps the coach grow, develop and be the best they can be. It also assists them to identify areas for further learning and development. Places are limited for this workshop, for more information visit [here](#).

### Contact Details

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

[Sam.Maher@emcouncils.gov.uk](mailto:Sam.Maher@emcouncils.gov.uk)  
[Lisa.Butterfill@emcouncils.gov.uk](mailto:Lisa.Butterfill@emcouncils.gov.uk)  
[Kirsty.Lowe@emcouncils.gov.uk](mailto:Kirsty.Lowe@emcouncils.gov.uk)  
[Mila.Pereira@emcouncils.gov.uk](mailto:Mila.Pereira@emcouncils.gov.uk)



# In Deep with Darren

## This month, Darren Newman looks at sleepover shifts

After the year that care workers have had, the decision of the Supreme Court in the combined cases of Royal Mencap Society v Tomlinson Blake and Shannon v Rampersad must come as a blow. In a very clear ruling, giving no room for further argument on the issue, the Court ruled that a sleepover shift does not count as working time for the purposes of calculating a worker's entitlement under the National Minimum Wage.

To be clear what we are talking about, a sleepover shift involves a worker being required to remain on the premises, but not being given any specific duties. Instead, he or she is permitted to sleep and will be given appropriate facilities to do so. If an emergency occurs the worker will be woken up and will have to deal with whatever has happened – but will then be able to return to sleep.

It is fair to say that the various Regulations made under the National Minimum Wage Act 1998 have not always been completely clear about how such arrangements are to be treated. The latest version – from 2015 – says that having to be available for work at or near the employer's premises counts as working time but only if the worker is 'awake for the purposes of working' (Reg 32(2)). The traditional view of this has been that a worker who is allowed to sleep on the premises is available for work but will only be treated as working when actually woken up because they are needed.

Over the years, however, the argument was made that such a worker is not merely 'available' for work – they are actually working. Even when they are asleep, they are still serving the employer's needs. If sleeping on the premises is actually one of their duties – perhaps enabling the employer to meet regulatory requirements about the number of staff members on the premises at any one time – then Reg 32(2) might not apply. That idea gained such traction in case law that it essentially became the new orthodoxy and HMRC started enforcing the minimum wage in care homes on that basis.

Whatever the merits of the argument – and I always found it rather elegant and attractive – the Supreme Court has roundly rejected it. It didn't do so after a lengthy examination of the Regulations themselves, however. Instead, it looked back to 1998 and the intention behind the original law.

When the New Labour Government was introducing the minimum wage, it faced widespread scepticism and opposition from the business community, and it was keen to assuage their concerns. It therefore appointed the Low Pay Commission - made up of academics and representatives of both sides of industry - to make recommendations on how the minimum wage should work.

In its first report it looked specifically at the issue of sleepover shifts and said this:

*'Certain workers, such as those who are required to be on-call and sleep on their employer's premises (e.g., in residential homes or youth hostels), need special treatment. For hours when workers are paid to sleep on the premises, we recommend that workers and employers should agree their allowance, as they do now. But workers should be entitled to the National Minimum Wage for all times when they are awake and required to be available for work'*

The Parliamentary record made it clear that the Government accepted that recommendation – apart from anything else, the National Minimum Wage Act required it to highlight any recommendations that it rejected, and it certainly didn't reject this one. So, the Supreme Court decided that the Regulations had to be interpreted in line with the intention of Parliament at the time the Minimum Wage was introduced – and there was nothing to indicate that Parliament's intention was any different when various other versions of the Regulations were drafted over the years.

This is what lawyers call the 'purposive' approach to statutory interpretation. It looks at the purpose behind the legislation and avoids getting bogged down in technical arguments about the drafting.



Whether you think the Court is right or wrong does not matter much – it is called the ‘Supreme Court’ for a reason. The law is whatever the Court says it is. In this case that means that sleepover shifts do not count as working time except when a worker is woken up to perform a particular task. The Supreme Court is not saying that care workers are not working when they do a sleepover shift – just that the work they are doing does not qualify for the minimum wage. As a side note we should remember that it is well established that such shifts do count as working time for the purposes of the Working Time Regulations – but that is a separate issue concerned with rest breaks and the 48-hour week. It has nothing to do with payment.

It is noticeable that the Low Pay Commission in 1998 spoke of workers agreeing their ‘allowance’. It was assumed that sleepover shifts attracted a fixed payment that may not correspond with the full minimum wage, but which was better than nothing. The Commission also assumed that there would be a mechanism by which care workers could negotiate an allowance that was fair and reasonable. This was the heady era of early New Labour and the assumption was that it would mark a resurgence of trade union power and a massive extension of collective bargaining. Of course, things did not turn out quite that way.

The fact is that while it may be hoped that care workers will be paid an allowance for sleepover shifts – the claimant was certainly given such an allowance in the Mencap case – there is no legal right to one. If the shift does not count for minimum wage purposes, then there is no obligation to pay anything for it at all unless the contract says otherwise. Employers can if they wish include a requirement to work sleepovers as part of their standard contracts and pay nothing for them at all – except for those times when the worker is ‘awake for the purposes of working’.

I would like to think that this is an issue the Government would look at. As it reviews the provision of social care in the UK it could surely give some thought to providing for a fair overnight allowance – even if less than full minimum wage entitlement – for those in the sector being asked to work sleepover shifts. Given all that our care workers have had to put up with over the last year or so, that seems like the least we could do.

## National Developments

### COVID Workforce Issues – NJC Circular 14th April

Thank you for contacting us with your queries and issues relating to the HR implications of COVID. As well as aiming to answer your queries, we feed this information to the National Employers to help inform national guidance and where possible, joint agreements.

On 14<sup>th</sup> April we distributed the latest National Joint Circular relating to general workforce issues arising from COVID. This circular covered a number of queries we had received at EMC which we flagged with our national colleagues regarding sickness absence arising from vaccine side-effects and long COVID. A copy of the circular can be accessed [here](#).

### Ensuring Your Committee Structures are established for Employment Issues and the Additional Protections offered to Heads of Paid Service.

As we are coming into the new municipal year, a circular is being issued to remind councils of the need to establish structures/committees to deal with employment issues relating to statutory officers. We would be grateful if you could bring it to the attention of your Monitoring Officer.

A similar circular was last issued in 2019, however there have since been instances of the structures/committees not being in place when a disciplinary issue has arisen. This has caused delays and complications in getting processes and investigations underway.

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

### Pay Negotiations

The Employers’ Side of the National Joint Council met at the end of March and will meet on 14<sup>th</sup> May 2021. We will keep you informed of developments as soon as they arise.



## Regional/National COVID Workforce Update

Earlier this week we circulated the latest COVID workforce update from EMC and its regional and national counterparts. Highlights from the update included:-

- One dose of vaccination effective against spreading virus
- Moderna Vaccine rolls out
- Care home staff: vaccinations as a condition of deployment
- Universal testing offer
- Teacher vacancies – free national job listing site from DfE
- Level 3 Adult skills Courses free to the over 24-year olds
- Flexi-Job Apprenticeship Consultation
- Have your say on Care and Health Improvement priorities (includes workforce)
- Workforce NJC Joint Statement: COVID-19 Update 14th April
- Teachers' Pay 2021 (England)
- Teaching National Professional Qualifications (NPQs)

## Employing Armed Forced Veterans – NI Contribution Relief

The Government has introduced a new policy of providing NI Contribution relief for organisations that employ armed forces veterans. The policy allows employers to claim National Insurance contributions relief for veterans they have hired during their first year of civilian employment after leaving the armed forces. The move is part of the government's commitment to help further incentivise employers to take advantage of the wide range of skills and experience that ex-military personnel offer. Employers - including councils - will be able to claim National Insurance contributions relief on the earnings of qualifying veterans.

Details and guidance is available here: [guidance](#)

## Apprenticeships

### LGA Apprenticeship Newsletter, April 2021

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

## Vacancy in our Neighbouring Region

### Could you be the next Head of Regional Employers for EELGA?

#### Head of Regional Employers East of England Local Government Association (EELGA)

**Salary Grade:** £65,000 - £70,000

EELGA is seeking a new Head of Regional Employers. An exciting and rare opportunity to become the “go-to” person for employers across the East of England region’s local government family. This is a combination of corporate role, member of the senior management team and HR lead for the Regional Employers Organisation supporting the 50 councils in the East of England.

Details are available [here](#)

