



HR in the East Midlands

April 2020

We hope that you are keeping well. While we always make that comment with genuine sentiment, it has particular resonance in the current situation. Darren Newman's article on casual workers was circulated to you earlier this month to ensure you receive this as timely as possible. We've included it in the bulletin just in case you missed it.

Covid-19 Information

To support you with the workforce issues arising from the response to the COVID-19 crisis, we have been providing you with weekly updates. Feedback on these have been really positive, so we are pleased that you find this approach helpful.

We have also established a dedicated page on our website to hold information to links, guidance, circulars and resources related to the workforce implications of COVID-19. This includes latest and previous weekly updates. You can access it by using the following [link](#).

Please continue to email Sam Maher and Lisa Butterfill with your COVID-19 issues or queries. As well as answering your queries, it also enables us to identify common themes/issues that we can then reflect in our information requests and feed into the development of national advice and guidance.

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National Pay Negotiations 2020 – Update

Thank you for providing us with your views as part of the consultation on this year's pay negotiations. These were sent through to the National Employers to inform their meeting with the Joint Trade Unions which resulted in the Employers' making final pay offers to the unions representing the main NJC workforce, Craftworkers, Chief Executives and Chief Officers. The offer is for an across the board increase of 2.75% and an increase of 1 day's leave to the minimum national annual leave provision. Copies of the offer letters and the subsequent exchanges of correspondence between employers and unions can be found at this link [here](#).

Projects with Local Authorities

During April we have continued to provide support to councils, adapting the arrangements to fit with the current social distancing restrictions. Projects have included:-

- Harassment and bullying investigation
- Mediation
- Development of a competency framework

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



Learning & Development

We've focused this month's learning and development section to provide a compendium of the virtual learning resources available to support colleagues through the challenging Covid time.

The Rise of the Virtual Network

Throughout March and April EMC colleagues have supported a number of virtual network meetings, bringing local authorities from across the East Midlands together to provide opportunities to share, learn and to collectively problem-solve challenges that are being faced. These virtual networks have proven to be a great space to showcase innovation and we wanted to share with you where these are happening to help you ensure you're plugged-in to what is available. So far we have supported:-

- Democratic Service Colleagues - focusing on virtual meetings and governance and democracy
- Cyber Security Officers - enabling colleagues in IT and Cyber Security to share the technical challenges authorities face when moving to remote working at speed.
- Scrutiny Officers - focusing on virtual meetings and supporting Councillors

For more information about any of these virtual groups contact Kirsty.Lowe@emcouncils.gov.uk

Learning Resources

Lock Down Learning - A compilation of 33 free-to-use resources, articles, webinars and videos, specially curated to make the most of the Lockdown. Put together by Katy Walton - [here](#).

Resources on Resilience, Wellbeing and Dealing with Uncertainty

Coronavirus and your workforce webinar:

Supporting employees' mental health by Xperthr -

This webinar explores how HR can best support those who are currently working exclusively from home; still attending the workplace; and those who have been advised to take part in the shielding programme. Dr Mariposa also looks at the importance of prioritising self-care and how to do this - available [here](#).

- '9 Tips to ride the wave of uncertainty with grace' Blog by Noomi Natan - [here](#).
- **Developing Self-Compassion in the Workplace**, by Dr Amanda Super - [here](#).

- **Looking up and looking after yourself** - Sandra Whiles - [here](#).
- **Leading through uncertainty**, by Rachael Lewis - [here](#).
- **Webinars: Health & Wellbeing Series** - A series of free webinars from Coaching Company Notion, offer [bite-sized webinars](#) have been created to help you revitalise health and happiness at work and have been carefully re-engineered to help you get through the current crisis with your wellbeing intact - [here](#).

The Webinars cover the following 3 topics:

- Top 7 Resilience Tips for Managers
- Managing Stress & Overwhelm
- Coping with Change

On Virtual Coaching - Blogs and Resources

- East Midlands Coaching Network guide to virtual coaching - [here](#).
- Coaching in Times of Crisis by the Coach Federation - [here](#).
- The Virtues of Virtual Coaching, International Coach Federation - [here](#).
- Making the Shift to Virtual Coaching, International Coach Federation blog - [here](#).
- Safe guarding for coaches, Association for Coaching - [here](#).
- Supporting Clients through Coronavirus-related Stress, International Coach Federation - [here](#).

Coaching Videos kindly shared with us by colleagues at the Derbyshire Community Health Services NHS Foundation Trust:-

- Coaching in a virtual space - [here](#).
- Coaching in a crisis - [here](#).
- Developing leadership capability through coaching - [here](#).
- Coaching for strategic challenges - [here](#).
- Coaching for an uncertain world - [here](#).

Contact Details

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

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Proceeding with HR Issues

We received a number of queries about proceeding with employment cases during the current social distancing and homeworking situation.

We discussed this with our colleagues in the other regions and nationally and concluded that it is best to look at each case individually and, where it is fair and reasonable to do so, then to continue with an HR process.

This view was echoed in a webinar and article by Darren Newman for Xperthr, in which he looks at how HR are supposed to deal with disciplinary, grievance and performance issues. An extract of the article is provided below:-

"HR will need to think carefully about how to proceed.

It is probably best to adopt a triage system. For someone at the early stage of the performance management process, it is difficult to see how that can progress within the current restrictions. The essence of dealing with poor performance in a fair way is giving the employee the opportunity to improve. Working from home in less than ideal circumstances may well not give the employee a fair opportunity to do that. Even if work is still being done on the premises, the circumstances are likely to be difficult. How can the employer provide the support and supervision needed to help a struggling employee and still maintain the rules of social distancing? The reality may be that some issues will need to be put on hold until the situation improves.

Similarly, less serious disciplinary issues can probably be left for the moment. If an employee is facing no more than a written warning, there may be little to be gained from pursuing the matter now, when there are other more important things to focus on. Grievances must, of course, continue to be addressed. However, it may be difficult to implement solutions until some semblance of normality returns to the workplace.

On the other hand, an organisation may face a situation in which gross misconduct is alleged. Delaying action until work returns to normal could therefore mean placing the organisation at risk as well as continued payment of someone who should (depending on the outcome) rightly be dismissed. The thing to remember here is that the overriding obligation on the employer is to behave reasonably in the circumstances.

Very few employers will have procedures that explicitly contemplate holding disciplinary hearings

online. But does that mean that this can't happen? Whenever circumstances arise that mean that a procedure cannot be followed in the normal way, it is important to look behind the words of the procedure itself and consider what it is really for.

A fair disciplinary hearing is basically intended to ensure three things: that the employee understands the accusation they face; that they have a reasonable opportunity of responding to that accusation; and that their response is considered with an open and impartial mind. So when the procedure says that the employee will be given the results of the investigation that is aimed at fulfilling the first of these requirements. The right to be accompanied by a fellow worker or trade union official is aimed at helping the employee put their side of the case. And the requirement that the manager conducting the hearing should not have been responsible for carrying out the investigation is aimed at ensuring an impartial hearing.

If a hearing is to be conducted online, the employer needs to make sure that these requirements are met as far as possible. The lack of an "in-person" meeting may mean that the employee feels disadvantaged by not being able to confront witnesses directly. But there is no general right for employees to cross-examine witnesses in a disciplinary hearing. Even where procedures specifically allow for this, it is not necessarily unfair to depart from the practice when it is simply impracticable.

If it can be made to work, a meeting conducted online using both audio and video provides a reasonable approximation to an in-person meeting. Of course, there will be some employees for whom conducting proceedings online will come more naturally than others. If you are used to doing most of your work through a screen and keyboard, taking part in an online meeting may seem routine. If, however, you work on a production line, you may not have the same access to and familiarity with the technology that facilitates online meetings.

The employee attending the online hearing needs to be able to concentrate on the meeting itself rather than struggling with the mechanics of taking part. Therefore, it would be a good idea to organise a technical rehearsal first, talking the employee through the features of the online platform and making sure that they can hear and see what is going on and participate fully. The rehearsal should be conducted by a



sympathetic colleague or manager who is not in any way involved in the issue that will be discussed at the hearing. It should include the employee's chosen companion, who will also need to be familiar with the set-up in order to participate effectively.

Some may question whether a companion logging in remotely can really be said to be "accompanying" the employee. But they will be attending the meeting in exactly the same way as everyone else who is participating. What surely matters is that they are able to perform their function in supporting the employee and making representations on their behalf. The employer should also take extra care to ensure that the employee and companion are given an opportunity to confer both before the hearing and during it.

If an online hearing is not possible, there may be no alternative but to conduct the meeting via telephone (using three-way calling where necessary). This is not ideal but may be the best the employer can do in the circumstances. Extra care should be taken by the manager conducting the hearing that the employee is following what has been said and has had the opportunity to respond.

The result of a hearing may be that the employee is to be dismissed. Dismissal is always likely to be a blow to the employee, but in the current situation it may be even harder for them to find new work. So the question arises - should the organisation consider placing the employee on furlough for a period before the dismissal takes effect? There is nothing in the Government's Coronavirus Job Retention Scheme that prevents an employee who is on notice of dismissal from being placed on furlough. But the Treasury Direction setting up the scheme specifies that the employer's instruction to the employee not to work for a minimum of three weeks must come about "by reason of circumstances arising as a result of coronavirus or coronavirus disease". If there is some other reason why the employer does not want the employee to work, it seems that the scheme would not apply. A finding of gross misconduct would usually lead to a dismissal without notice. If, to ease the blow, the employer dismissed with notice, but on the condition that the employee agreed to being furloughed, it is not at all clear that this would come within the scheme.

These are difficult times for both employers and employees. Forbearance and flexibility on both sides would certainly seem to be called for. However, employers still need to function and some decisions cannot reasonably be deferred until the crisis has

passed. As long as every effort is made to be fair to employees, tribunals are likely to accept some deviation from normal practices as being a reasonable response to the current circumstances.

To access a recording of the Xperthr webinar, follow this link: [managing processes remotely webinar](#)

EMC's associate colleague, Suzanne Boulby, has shared with us her experience of conducting an investigation remotely. Suzanne covers the key practicalities below:-

- Prepare to spend more time making introductory calls beforehand to help establish a level of rapport. These pre-meeting calls will ensure people are clear about the purpose, enables them to raise any queries or concerns and give you time to explain your approach and how people can be supported, eg with a colleague or union representative joining through conference calling/virtual meeting facilities etc.
- Check with the individuals themselves (and their union rep) first to understand their circumstances and the equipment, time, space available to them at home.
- Given that some may also have childcare issues to balance, be prepared to be flexible, eg hold interviews in two shorter sessions rather than as longer interview, or rearrange to fit with a time when another member of the household is available to focus on childcare.
- Being involved in an investigation as a witness, complainant or when the subject of a grievance or disciplinary is stressful. These usual levels of anxiety can often be compounded by the uncertainties and stresses of the current COVID-19 pandemic and situation – ensure that everyone knows how they can access support, eg through EAP services.

Contact Details

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In Deep with Darren

Darren Newman's submission for this month's issue focuses on casuals. Given the need to have information and guidance quickly on COVID-related matters, we circulated it via email on 21st April 2020. In case you missed it, we've also included it below.

CORONA VIRUS & CASUAL WORKERS

These are unprecedented times for employers in every sector. The coronavirus outbreak – and the lockdown that has been imposed in response to it has been a huge shock to the economy and affected the working lives of almost everyone. The sheer scale of the crisis is illustrated by the Coronavirus Job Retention Scheme. This will allow employers who cannot provide work to employees to place them on 'furlough' for periods of three weeks or more and claim 80 per cent of their wages (to a maximum of £2,500 per month) from public funds on their behalf. It is the most radical intervention in the labour market ever made by a British government.

In local government, of course, many employees are working harder than ever – either remotely or in the frontline delivery of essential services. For others however it is simply not possible for them to do their jobs given the current restrictions. While there may be some scope for reallocating employees to other areas of work some will simply have to be sent home.

Technically the furlough scheme is available to public sector employers – including local authorities. However the Government has made it clear that it does not 'expect' such employers to make widespread use of the scheme. The reason for this is straightforward. The scheme is designed for employers who have suffered a sudden and catastrophic fall in income. The public sector, however, will continue to have its staff costs funded in the normal way. Furlough should only be used therefore when it can be demonstrated that the lockdown has led to a loss in the revenue that is specifically relied upon to pay for those employees.

Leaving aside those limited exceptions, local authorities will be expected to continue paying employees as normal without recourse to the furlough scheme – irrespective of whether it is possible for the employees to perform work. This is a legal obligation as well as a moral one. Unless they are ill or self-isolating, employees are ready, willing and able to work - and the fact that the employer has no work to give them is no fault of theirs.

For employees with a salary or guaranteed working hours this is a straightforward calculation. The difficulty comes in the approach to casual workers or those whose pay varies significantly - whether week by week or month by month.

For a genuinely casual worker it would be possible to make a legal argument that since they are not guaranteed to be given any work at all, they are not entitled to be paid when no work is offered to them. There are a number of reasons, however, why this would be the wrong approach for local authorities to take.

To start with a legal argument; casual workers are often not as casual as they first appear. The original contract may well have specified that work was not guaranteed and that the worker would be engaged only as and when needed. Over time however it is common for a more predictable working pattern to emerge. If the worker has reliably been working 20 hours a week for several years, then it is really open to question whether the contract still allows the employer to offer no work at all. If the issue was contested there would have to be a careful examination of how work was allocated and whether a separate decision about the availability of work really was being made each week or whether both sides in practice accepted that the worker would have a more regular and predictable work pattern.

More important than the legal argument however is the question of public policy. The Government wants employers – as far as possible – to continue to employ and pay their workforce. In the private sector, casual workers who are on the employer's PAYE system can be placed on furlough and be paid based on their average earnings. Since local authorities will continue to be funded for their use of casual workers as before,



then the right thing to do is clearly to continue paying them even if there is no work for them to do.

When it comes to calculating how much they should be paid during the lockdown period there are no fixed rules. This is not like the calculation of holiday pay where employers have to navigate a complicated legal definition of a week's pay as modified by rulings from the European Court of Justice. The best approach is probably to make a reasonable estimate of how much work the casual worker would have done over the relevant period if the coronavirus lockdown had not intervened. Where that approach does not give a clear answer then you could either look at the equivalent period for last year or apply an average of the workers earnings over the previous three months. It is really just a question of coming up with some way of calculating pay that seems fair and reasonable and which does not cause too much disruption to the workers' income.

Agency workers are in a rather more complicated position. They are actually 'employed' (in the widest sense) by the agency rather than by the end user. If no work is being offered to them then the agency has the ability to place them on furlough under the Government scheme and receive funding of 80 per cent of their pay to a maximum of £2,500 per month – all of which must be passed on to the individual agency worker. It is one of the quirks of the scheme that the pay that is due will not be based on the current assignment but on the average pay over the previous tax year – or the pay in the corresponding month of the previous tax year if that is higher.

It would obviously not be right to continue paying an agency in respect of an agency worker who is being placed on furlough – that would simply mean extra profit for the agency at public expense. On the other hand an agency worker on furlough will not – unless the agency agrees otherwise – be fully compensated for the work they are losing. Indeed, depending on their earnings in the last tax year, they could be considerably worse off. If the budget of a local authority or school included a sum for the engagement of agency workers – and that budget is continuing – then it would make sense for the agency worker to be paid in full from that budget and not be placed on furlough at all. That, however, is an arrangement that must be made with the agency concerned.

This is a crisis that calls for flexibility on all sides. Many employees are having extraordinary demands placed upon them and many employers are facing challenges on a scale they have never encountered before. This is not a time for relying on technical legal distinctions and local authorities will want to act in a way that protects employees while we get through this current crisis. Employers who manage to retain a skilled and motivated workforce will reap the benefits of their approach when things return to some semblance of normality.

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

National Developments

Launch of Social Work Together campaign

In partnership with Social Work England, the Department for Education and the Department of Health and Social Care, the Local Government Association is delighted to announce the launch of the Social Work Together campaign. Further information on the initiative can be accessed [here](#).

Apprenticeships

On Wednesday 8 April 2020, the LGA held a webinar on Apprenticeships and COVID-19. The webinar and slide pack which contains a lot of useful links can be found [here](#). The Q&A arising from the webinar is also available within the LGA's Apprenticeship Newsletter – see below for further details and the link.

The LGA released a Covid-19 and Apprenticeships Update on 27 April 2020 based on the latest government guidance and other developments related to COVID-19 and apprenticeships [here](#).

LGA Apprenticeship Newsletter, April 2020

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

