



# HR in the East Midlands

September 2023

This month's bulletin outlines several events and programmes that are being offered regionally, including conflict management, mediation and leadership/management. While we still await progress with national pay negotiations, our national news section includes useful updates on a range of issues, including a "heads up" that national surveys on workforce capacity will be taking place soon. Darren Newman's article looks at time limits to bring ET claims and for Darren's many fans, we are providing a reminder that you can attend his Employment Law Update next week.

## Workforce Data

There is an increasing demand for workforce data and pay benchmarking information.

In response, EMC is working with colleagues in other regions and nationally to explore options for improved workforce data reporting/benchmarking.

We will be arranging a workshop to demonstrate a system that has been operating successfully in a number of councils in other regions. The session will include an opportunity to hear from councils who use the system to understand how it works in practice and the benefits it provides.

If you would be interested in participating, then please contact Mark at [mark.pinchen@emcouncils.gov.uk](mailto:mark.pinchen@emcouncils.gov.uk)

## Employment Law Update with Darren Newman – 4<sup>th</sup> October 2023

It is not too late to join the Employment Law Update Seminar with Darren Newman. Updating you on the latest employment law developments in Parliament and the courts and also what we might expect in 2024. Darren will cover what the Retained EU Law Act means for the calculation of annual leave entitlement and whether the Governments proposals for changes to the WTR and TUPE will make a difference for employers in local government. Recent cases on unfair dismissal, redundancy and discrimination will also feature, as well as looking at the extent to which employees now have a right to express potentially offensive beliefs either within or outside the workplace. Places can be booked by contacting [mila.pereira@emcouncils.gov.uk](mailto:mila.pereira@emcouncils.gov.uk).

## Projects with Local Authorities

During September, EMC has supported councils with:-

- Chief Executive Recruitment
- Strategic Director Recruitment
- Wellbeing and Stress Risk Assessment Support

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

[Sam.Maher@emcouncils.gov.uk](mailto:Sam.Maher@emcouncils.gov.uk)

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

[Mark.pinchen@emcouncils.gov.uk](mailto:Mark.pinchen@emcouncils.gov.uk)

# Learning & Development

## ILM 5 Leadership Programme

We are pleased to support your leadership and management development needs with the launch of our regional ILM 5 Award in Leadership and Management programme, starting on 22<sup>nd</sup> November 2023.

This development opportunity would suit current and aspiring middle managers who wish to extend their knowledge and skills to get the best from the teams and resources within their organisation.

### Programme Dates and Structure:

It is a 5-day programme, consisting of 4 full-day face to face sessions (9.30am – 4.30pm) and 2 half-day online sessions (9.30am – 1.30pm) on the following dates:

**Day 1 - 22<sup>nd</sup> Nov 2023:** 21<sup>st</sup> Century Leadership (Full Day face to face)

**Day 2 - 13<sup>th</sup> Dec 2023:** Harnessing the Power of your Leadership Capability (Online half day)

**Day 3 - 23<sup>rd</sup> Jan 2024:** Understanding yourself and your Leadership (Full Day face to face)

**Day 4 - 7<sup>th</sup> Feb 2024:** Innovation and Improvement in the Organisation and Leading Others through Change (Full Day face to face)

**Day 5 - 27<sup>th</sup> Feb 2024:** Personal Reflection and Practical Presentations (Online half Day)

**Day 6 - 20<sup>th</sup> March 2024:** the Inspirational Leader and Managing Performance (Full Day face to face)

### Early Bird Offer:

If you book by 25<sup>th</sup> October 2023 the cost per delegate for EMC Members is £1200 + VAT. After this date, the cost per delegate will be £1299.00 + VAT. For bookings of 6 places or more we will also offer a further discount – please contact [lisa.butterfill@emcouncils.gov.uk](mailto:lisa.butterfill@emcouncils.gov.uk) to discuss further.

### Further Information and To Book:

For more detailed information regarding this programme including the assignment requirements and the full tutor support offered throughout the programme please visit our website [here](#), where you can also book a place.

**Currently we have 5 places left.**

## Programme of Training for Mediation and Conflict Resolution

Last month's bulletin featured the range of courses we are running on mediation.

Last week, we ran a webinar with the training provider to provide an opportunity to learn more about mediation and what's on offer as part of the programme. The aim of the webinar was to help people decide which course would suit them or their colleagues the best. If you would like to view a recording of this session, please click [here](#).

A reminder of the courses on offer:

- Conflict Resolution Skills for Managers – 1 day on 30 November 2023.
- Workplace Mediation Skills – 2 days on 9 & 10 January 2024.
- The Interpersonal Mediation Practitioner's Certificate (IMPC) – 5 days on 15 – 19 January 2024
- Mediation Development Day (Refresher) – 1 day on 30 January 2024.

**For further detailed information on the courses and to book, please click on the following link:**

[Mediation & Conflict Resolution Training Brochure](#)



## In Deep with Darren

### This month, Darren Newman's article looks at time limits for bringing a claim to an Employment Tribunal

One of the features of UK employment law is the limited time that an employee has to bring a claim against an employer – whether that be for unfair dismissal, discrimination or a failure to pay holiday pay. While there is some variation, the majority of claims must be brought within three months of the incident that is being complained of (with some extension to allow for Acas early conciliation). In contrast, someone pursuing a breach of contract claim in the civil courts has six years to initiate proceedings and someone claiming personal injury has three years.

The reason for this very short limitation period has its roots in the original intention that Tribunals should be a quick, cheap and informal way of resolving employment disputes. When unfair dismissal rights were introduced in 1971 it was envisaged that a Tribunal would adjudicate the matter within weeks of the claim being made and that the most common remedy for an unfair dismissal would be reinstatement. In that context it makes sense that claims would need to be brought quickly.

Nowadays however, it can take as much as a year or more for a complex case of unfair dismissal or discrimination to be listed for a full hearing, which rather draws into question why it is necessary for employees to bring their claims within such a short period.

The problem is made worse by the length of time that internal procedures can take to run their course – particularly in the public sector. If an employee is dismissed, they may choose to appeal. If they believe that they have been harassed or discriminated against they may complain under their employer's grievance procedure. It is obviously desirable that the employee should wait until those internal procedures have run their course before resorting to litigation. Indeed, a common response to approaches from Acas when an employee has engaged the early conciliation process is for employers to say that there is no point in discussing a settlement while the matter is still under review.

It comes as a surprise to many employees that the time for bringing a claim continues to run while these internal procedures are ongoing. If an appeal against dismissal takes three months to decide that the dismissal should stand, then the employee may already have run out of time to bring an unfair dismissal claim. The fact that an appeal was being considered will not be an adequate excuse for submitting a late claim.

The position is rather more flexible in a discrimination claim. While the time limit for claiming unfair dismissal can only be extended when it was 'not reasonably practicable' for the employee to claim on time – a very high hurdle to clear – a Tribunal can extend time to claim discrimination where it considers it to be 'just and equitable to do so'. That at least allows for an extension that results from the employee pursuing internal procedures before bringing a claim.

Such an extension cannot be relied upon, however. In the recent EAT case of *Owen v Network Rail Infrastructure Ltd* an employee was complaining of serious incidents of sexual harassment. She raised a grievance about her treatment in November 2017. After an investigation that the Tribunal later described as a 'shambles', the grievance was rejected and she appealed. The appeal was eventually rejected in February 2020. The employee contacted Acas in March and the conciliation process ended without agreement in May. She submitted her Tribunal claim four weeks later in June 2020.

The Tribunal held that her claim was out of time. The employee had argued that the failings in the handling of her grievance amounted to discrimination in themselves and that she could therefore treat the employer's whole course of conduct from the initial harassment to the rejection of her grievance as one 'continuing act', but the Tribunal rejected this. The grievance was handled badly through incompetence rather than because of any discriminatory treatment and so the last act of actual discrimination that was being complained about had taken place back in 2017.

At this point the case gets quite technical. The Tribunal held that the employee had presented no evidence about why her claim was submitted late (she had argued that it wasn't) and that they were therefore required to reject



her application to extend the time limit. The EAT held that while it was true that no evidence for the reason for the delay had been presented, that did not mean that the Tribunal was obliged to reject the claim. They could still consider whether it was just and equitable to allow the case to proceed. The case was sent back to the same Tribunal judge to reconsider the matter. While the employee does therefore get another chance to have her claim heard it is far from clear that the Tribunal will change its position. Given the Tribunal's criticism of the internal procedures followed by the employer, this seems harsh.

With a general election due next year, it is worth noting that the Labour Party's policy – set out in its "New Deal for Working People" policy paper – is to extend the time limits for bringing a Tribunal claim. This idea does not come out of the blue. Back in 2018, Parliament's Women and Equalities Committee produced a report into sexual harassment that recommended that for those claims, the time limit should be extended to six months – and paused while internal procedures were completed. They recommended that this should be done as part of a wider review into the time limit for discrimination cases. Following a consultation in 2021 the Government pledged that it would look further at the issue, but no action has so far been taken.

So the current position remains that while an employee can argue that waiting for internal procedures to run their course justifies an extension in the time limit, there is no guarantee that a Tribunal will accept that argument. No-one advising an employee on the issue would tell them that they should wait and see what the outcome of a grievance or appeal will be if there is a looming Tribunal deadline. The only sound advice is to bring the claim within the time limit even if internal procedures are ongoing. Obviously when that happens, the chances of the two sides resolving the matter internally are reduced.

This is not a healthy position. Even if the time limit for bringing a claim is kept short, it strikes me that the case for stopping the clock while internal procedures are completed is simply unanswerable. It must be right to encourage employees to exhaust internal procedures before going to the Tribunal. The current rules do the exact opposite of that and either this Government or the next should change them.

## National Developments

### National Pay Negotiations – Joint Union Meeting

The full NJC Trade Union Side met on 19<sup>th</sup> Sept to discuss the National Employers' full and final pay offer, which they received on 23 Feb.

UNISON announced recently that it would not be taking any strike action and wished instead to, "...resolve this year's pay dispute and get that pay increase in [its members] pockets as soon as possible." You can access the announcement here: [UNISON announcement](#)

You will be aware that Unite is currently engaged in industrial action in a small number of councils, and GMB is conducting industrial action ballots, targeted at some councils and schools, which close on 24 Oct.

No decision on the pay offer was reached at the joint union's meeting of the 19<sup>th</sup> September. However, the unions did agree to reconvene within a few days of GMB's strike ballots closing.

EMC issued an update on this development when the meeting had concluded. The update included continued advice against imposing any pay offer before the collective bargaining process has concluded.

To do so would not only fragment the unity of the employers' position but would also leave councils vulnerable to questions being asked by auditors about why, in the absence of a national collective agreement, expenditure has been unnecessarily incurred.

Perhaps more importantly, councils would need to consider very carefully the wider legal issues, including those arising out of the cases of *Kostal UK Limited v Dunkley* and *INEOS Infrastructure Grangemouth Limited v Jones & others*.



## LGA Workforce Capacity Surveys

The LGA will shortly be launching a series of seven workforce capacity surveys to collect details about the capacity issues in the following service areas:

- Adult social care services
- Finance services
- Building control
- Environmental health
- Children's social care
- IT
- Legal

The information collated will be useful in supporting regional and national improvement work, as well as providing DLUHC with information they can use in funding discussions with HM Treasury. Some surveys will be sent directly to HR colleagues and others may be sent to the HOS/relevant officer (in partnership with their professional body, e.g., CIPFA and SOCITM).

## Pension News

### Regulations re McCloud

DLUHC has laid Regulations to remove the age discrimination identified in the McCloud court case from the LGPS. The Local Government Pension Scheme (Amendment) (No. 3) Regulations 2023 will be in force from 1 October 2023, and their effect is backdated to 1 April 2014 which is when the career average scheme was introduced. You can access the Regulations through this link: [The Local Government Pension Scheme \(Amendment\) \(No. 3\) Regulations 2023 \(legislation.gov.uk\)](https://legislation.gov.uk)

### Government Consultation on Review of LGPS Investments

The LGPS Scheme Advisory Board (SAB) is in the process of drafting its response to the government's consultation on a review of LGPS investments. A link to the consultation is provided here: [government consultation lgps investments](#)

Recently, the Board has shared the top lines of its response on the SAB website, having undertaken a number of discussions with Board members through the last couple of months. You can access them here: [SAB news page](#)

## Consultation on Acas draft Code of Practice on handling flexible working requests

Acas is consulting on an updated statutory Code of Practice on handling requests for flexible working. This is being done in anticipation of the changes to the statutory flexible working request regime being introduced under the Employment Relations (Flexible Working) Act 2023 and associated legislation.

You can access information on the consultation and how to contribute as outlined by the LGA via the following link: [details of the consultation and how to contribute](#)

## ICO Updated Guidance on Information on Workers' Health

The Information Commissioner's Office (ICO) has published updated guidance on the data protection issues related to information on workers' health.

The guidance is split into two main parts. The first part, 'Data protection and workers' health information' addresses the various legal issues associated with processing information on workers' health, with links to further information. The second part consists of a number of sections which look at the most common scenarios where information on workers' health is used, including sickness records, occupational health, drug and alcohol testing, etc. There are useful checklists at the end of each section.

You can access the updated guidance through the following link: [Information about workers' health | ICO](#)

## T Levels Newsletter – Sept 2023

Click [here](#) to view the latest newsletter on T Levels.

