



HR in the East Midlands

August 2021

We hope you enjoyed the bank holiday weekend. Flexible and new working arrangements continues to be a focus for many of us. Darren Newman's article this month looks at the legal aspects of flexible working and re-assessments of how work can be carried out. EMC ran a further Exchange of this issue in July and our L&D/OD network meeting in September will look at the culture/leadership implications. Details of these, along with events and news on all the latest developments in HR and L&D are covered in this month's issue.

Exchange Update

Last month EMC delivered a further Exchange on the topic of future ways of working. The session allowed for more in-depth conversations and sharing of insights into how you are approaching this issue. Great discussions and positive feedback were generated from the event. A note of the key points and a copy of the slides from the excellent presentation from Kirsty and Lynn of Nottingham City Council is available by request from Mila: mila.pereira@emcouncils.gov.uk

During the meeting, there was much interest in the issue of **leadership and culture in relation to hybrid and new working arrangements**. This will be covered in the next L&D/OD network meeting on **Tuesday 28th September** at 2.30 – 4.30. All HR colleagues are invited to join this meeting. For further information and an invite, please contact Kirsty at Kirsty.lowe@emcouncils.gov.uk

New Pay & Rewards Network

Many councils are reviewing aspects of pay and rewards and so it is an ideal time for EMC to re-establish a regional network, which will mainly run as virtual meetings.

The first meeting will be held on **Friday 1st October** and will look at the **challenges at the lower end of the pay spine in the context of the National Living Wage policy** and we will be joined by Harry Honnor from the LGA to discuss this and hear your views.

The meeting will also be used to shape the network going forward so that you can influence what the network will focus on and how it will operate. To register your interest and book a place at the network meeting contact Sam by Monday 27th September at sam.maher@emcouncils.gov.uk.

Projects with Local Authorities

In August we have supported councils with: -

- Drafting HR policies
- Coaching
- Mediation

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

Sam.Maher@emcouncils.gov.uk

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Learning & Development

Inspire People Professionals - Inspire Academy

The Inspire Academy is part of a national workforce programme of support to councils across the regions, working in partnership with the LGA, CIPD and Regional Employers Organisations including EMC.

The Academy combines the essentials of HR and OD and is an evolution of two successful initiatives (Aspire HR Business Partners and Inspire OD).

The aim of this new programme is to help people professionals in councils be better prepared, building the skills and mindset required in a changing world, for the COVID recovery and reset work that lies ahead in 2021 and beyond and the need to build more inclusive work cultures.

To see a detailed overview of the Inspire Academy programme **click on the brochure [here](#)**.

The LGA is providing a subsidy to enable council HR and OD professionals to access this opportunity. Investment required for the programme is £1500 + VAT per participant, with places allocated on a first-come, first-served basis.

Participants will have access to 8 virtual learning modules (40 hours) and CIPD's digital learning (15 hours) for self-directed learning around core behaviours. All participants are encouraged to adopt self-reflective practice and apply learning to their own work environments through a sponsorship approach.

Academy Case Study

We are pleased to share with you [insights](#) from the first few cohorts of the Inspire People Professionals Academy. As local authorities set about post-Covid recovery, the Academy is helping local government HR and OD professionals to be at the heart of those changes. The first graduates have just completed the comprehensive programme of high-quality e-learning focused on eight modules delivered by leading experts and they have clearly been inspired by what they have learned... [Click here to access the Case Study](#)

Registering a place on the programme

We are now taking applications for further cohorts to run from September to November 2021, January to March 2022 and March to May 2022. To book a place on the programme visit [here](#) for the September course. Details of the future cohorts will be available shortly.

EMC Leadership Development Programme

Having launched the first EMC **Leadership Development Programme** in May 2021, we're delighted to be able to offer the opportunity to join our second cohort, starting in October.

We're hosting a Q&A session on 22 September, 14:00 – 15:00, which will be a great opportunity for potential delegates and L&D colleagues to ask any questions you may have about the programme.

Further information about the programme can be found [here](#) To register to attend the virtual Q&A session on 22 September email Kirsty.lowe@emcouncils.gov.uk

Coaching Strategy Action Learning Set, starting 22 September

EMC is hosting a Coaching Strategy Action Learning Set this autumn/winter. Using Action Learning methodology, participants will be able to focus on developing their organisational Coaching Strategy. Taking place across three separate sessions from September to December, participants will be able to work on their unique challenge with the support of a wider group. For more information visit [here](#).

East Midlands Challenge

Don't forget the **East Midlands Challenge** returning in the virtual form on 10 November 2021. 12 teams can register for this management simulation event. Further information available from [here](#).

We're also looking for volunteers to support the event, if you are interested in being part of this exciting, energetic and stimulating event email – Kirsty.lowe@emcouncils.gov.uk

Contact Details

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

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In Deep with Darren

This month, Darren Newman looks at legal aspects of flexible working and the re-assessment of how work is done post-Covid

We are likely to hear a lot about flexible working in the next year or so. There may be reforms to the way in which the right to request flexible working operates – and as we reassess how work is done post-covid we can expect greater emphasis on hybrid working arrangements. After the crisis we have faced, work-life balance is even more important.

From a legal perspective I have always been rather impatient with the right to request flexible working. There just isn't much substance to the right as it is so easy for the employer to refuse the request. The refusal simply has to be for one of a specified list of business reasons and that list is so comprehensive that it is literally impossible to think of a rational reason for refusing the request that isn't on it!

We hardly ever see a Tribunal case that is relying purely on the right to request flexible working. But what we do see are claims for indirect sex discrimination. It is the fact that a refusal of a flexible working request may be discriminatory that gives the issue its real legal bite.

Indirect discrimination is a rather technical concept. It happens when an employer applies a 'provision criterion or practice' which places those who share a protected characteristic at a particular disadvantage and which the employer cannot show to be a 'proportionate means of achieving a legitimate aim'. So if an employer has a rule that disproportionately impacts on women, for example, then that will be discrimination unless the employer can show that the rule is justified.

Most flexible working requests are made because an employee needs to adjust their working hours to accommodate their caring responsibilities. That means that an employer who does not try to accommodate flexible working requests will be at risk of a sex discrimination claim – provided we accept that women are more likely than men to need to make that adjustment. Do we accept that?

That question was at the heart of the recent EAT decision in *Dobson v North Cumbria Integrated Care NHS Foundation Trust*. Here however, it was the employer who wanted more flexibility from the employee. She was a community nurse and the mother of three children – two of whom were disabled, with additional care needs. She was dismissed when she refused to agree to a new working pattern that would have required her to work more flexibly – including at least some work over weekends. She claimed unfair dismissal and indirect sex discrimination.

The Tribunal rejected these claims. They held that there was no evidence that the requirement to work at weekends placed women at a disadvantage. Indeed the team of community nurses in which the claimant worked consisted mostly of women. All of them, apart from the claimant, were able to accommodate the change.

On appeal, the EAT held that in only looking at the particular team in which the claimant worked the Tribunal had adopted a 'pool for comparison' that was too narrow. It appeared that the requirement to work at weekends was applied to a wider group of employees that that – possibly encompassing all of the community nurses employed by the Trust. It was the impact on that wider group that needed to be considered.

The second question was one of evidence. Did the claimant have to show evidence that within this wider group of nurses, women were more adversely affected by the requirement than men?

Generally a court or tribunal must base all of its findings of fact on the evidence in front of it. But there are circumstances where a tribunal can take 'judicial notice' of a fact that is either so well established and accepted that no evidence is needed, or where it has been possible to research the point by consulting some authoritative source.

In this case the EAT ruled that the Tribunal should have taken judicial notice of the fact that there is what it called a 'childcare disparity' – that women 'bear the greater burden of childcare responsibilities'.



This was a well-established fact and the EAT pointed out that judicial notice had been taken of it in earlier cases going as far back as the case of London Underground v Edwards (No. 2) in 1999. While society had moved on somewhat in following decades, the position was still far from equal.

Taking judicial notice of the childcare disparity did not necessarily mean that the employer's policy on flexible working placed women at a particular disadvantage. That was always going to be a fact sensitive question depending on the specifics of what the employer had done. Here however the employer was requiring employees to be available for work as and when required by the Trust. The employees themselves did not have any flexibility to choose specific working hours or days. This meant that the employer's approach was 'inherently more likely to produce a detrimental effect, which disproportionately affected women'.

The Tribunal had found that even if there was a disproportionate impact on women there was no discrimination because the employer's requirement to work flexibly was a proportionate means of achieving a legitimate aim. But it had reached this conclusion based only on the impact of the measure on the claimant's small team. Justification involved a balancing exercise and the Tribunal needed to consider the impact of the employer's policy on community nurses as a whole.

Finally, since the Tribunal had based its finding that the dismissal was fair on the assumption that it did not involve discrimination, that meant that this issue also needed to be reconsidered.

So the case will now need to be heard again, but this time the Tribunal will have as its starting point the fact that women are more likely to have childcare responsibilities than men and that a working pattern that does not allow for this will cause women a particular disadvantage.

The employer may still win the case if it can show that its requirement is a proportionate means of achieving a legitimate aim. Health services must of course be provided throughout the week and so it would seem legitimate for the employer to want to ensure that it has adequate resources in place over the weekend.

It may be that the only way to do that was to insist that all community nurses were available on that basis and that it was not possible to make provision for those with childcare needs. When you put it like that, however, it does seem that the employer faces an uphill task.

More information can be found on Twitter:
[@daznewman](https://twitter.com/daznewman)

National Developments

Green Book Pay Negotiations

The three local government unions (UNISON, GMB and Unite) have confirmed that their respective consultation ballots on the National Employers' [final pay offer](#) (including the [Craft final offer](#)) will run through to late Sep / early Oct. All three unions will be recommending that the pay offer[s] be rejected.

We will provide a further update once the consultation process has run its course and the unions have notified the Employers of the outcome, which is likely to be early to mid Oct.

Coroners – Pay award 2021/22

A Circular was issued this month from the JNC for Coroners to confirm that agreement has been reached on a 1.5% pay award for 2021/22, effective from 1st April 2021. A copy of the circular can be accessed here: [circular](#)

COVID Update – Operational Guidance on Vaccination Requirements for Care Homes

DHSC has now published operational guidance to support the regulations that come into force on 11 November regarding mandatory vaccinations for workers and visitors to care homes.

As we flagged in last month's HR Bulletin, the 16-week grace period for all care home workers began on 22



July. To meet the date the regulations come into force, workers have to have their first vaccinations no later than **16 September**. The guidance is lengthy but has separate sections for local authorities, registered persons, staff, residents and their families and visiting professionals. It can be accessed here: [DHSC guidance](#)

A letter was sent to local authority chief executives, directors of adult social services, care home providers and care home managers from DHSC Director, Claire Armstrong, to accompany the guidance and this is available here: [covering letter](#)

The letter highlights that the full vaccination requirement will not apply to:

- Anyone who provides evidence that shows for clinical reasons they should not be vaccinated.
- Family and friends visiting a care home resident
- Any person providing emergency assistance
- Any member of the emergency services in execution of their duties
- Anyone undertaking urgent maintenance work
- Any person who whom it is reasonable to provide comfort or support to a care home resident in relation to their bereavement following the death of a relative or friend
- Any person visiting a dying care home resident.

You can find additional resources, including social media assets and a Q&A, in DHSC's [stakeholder google drive](#), as well as on the Skills for Care vaccination as a condition of deployment [resource centre](#) once it has been updated. Dr Pete Calveley, CEO of Barchester Healthcare, has also written [a blog on their experiences of implementing a similar policy this year](#), which may be of interest.

[CQC have also published a statement](#) on their role in relation to mandatory vaccination of people working/deployed in care homes. CQC say the requirement for vaccination will become part of the fundamental standards and enforced in appropriate cases. They will not begin monitoring until it becomes a duty in November. They will continue to use their existing assessment and enforcement policies and take a proportionate approach. The statement outlines CQC's approach to registration, monitoring and inspection and enforcement.

Changes to Self-Isolation Guidance from 16th August 2021

We circulated information earlier this month to reflect the updated government guidance on self-isolation that came into effect on 16th August 2021.

In summary: From 16 August 2021 those in England who are fully vaccinated [do not have to self-isolate](#) if they have been in close contact with a positive COVID-19 case. However, they should get a PCR test as soon as is possible albeit they do not have to self-isolate while waiting for the results of that test. If they test negative then it remains the case that they do not have to self-isolate, but if the result is positive then they will have to self-isolate.

The [guidance for health and social care staff](#) is different. In such cases the following conditions apply before the fully vaccinated individual can return to work:

- the staff member should not have any COVID-19 symptoms
- the staff member should immediately arrange for a PCR test, either through their workplace arrangements or via the NHS Test and Trace service, and the result of this PCR test should be negative prior to returning to work
- following the negative PCR result, the staff member should undertake an LFD antigen test every day for the 10 days following their last contact with the case (even on days they are not at work)
- if a staff member has had a SARS-CoV-2 infection in the past 90 days, they should not have a PCR test and should only undertake daily LFD antigen tests
- on days the staff member is working, the LFD antigen test should be taken before starting their shift, and the result should be negative
- the staff member should comply with all relevant infection control precautions and PPE should be worn properly throughout the day
- if the staff member works with patients or residents who are highly vulnerable to COVID-19 (as determined by the organisation), a risk assessment should be undertaken, and consideration given to redeployment during their 10 day self-isolation period.



National/Regional COVID Workforce Update

We continue to work with our colleagues at national level and in other regions to provide you with regular updates.

The latest update (Issue 33) was circulated in early August and covers:-

- Vaccine take-up among young people
- Vaccination Access
- COVID-19 post 19 July workforce FAQs
- Municipal waste operatives and self-isolation
- Mandatory care home worker vaccinations
- Clinically Extremely Vulnerable Employees
- NHS COVID pass
- Adult social care: new workforce vision and priorities
- Pupil testing and isolation
- Local government pay offer
- Teachers Pay
- NHS Pay
- Hybrid Working the employment law implications
- Public sector exit payments update
- Model Councilor Code of Conduct guidance

You can access copies of the updates on our website here: [COVID workforce info](#)

Workforce Data Requirements

As mentioned in the last HR Bulletin, the LGA is seeking clarity on your views on workforce data that is being collected.

The data can help to better understand what support councils need, provide helpful national, regional and local benchmarks, avoid duplication of effort, maximise economies of scale and provide evidence to central government to inform policy and funding decisions.

EMC will circulate a spreadsheet with the information that is currently collected this week and we would be grateful if you could provide your responses to us by 7th September.

Apprenticeships

The latest August LGA apprenticeship newsletter can be found [here](#). It covers developments in the world of apprenticeships, including:-

- Private Beta Testing for Updates to Levy
- REMINDER: Public Sector Target Reporting Process – Deadline to Complete 30.09.21
- Webinars
- LGA Apprenticeship Surgeries
- Flexi-job Apprenticeship Consultation: Government Response
- Degree Apprenticeship consultation



Reminder: Deadline to Report & Publish Progress with Apprenticeship Target – 30th September 2021

Just a quick reminder that all public sector bodies employing 250+ staff need to report their progress in meeting the apprenticeships target for the 1 April 2020–31 March 2021 period by 30 September 2021.

The information needs to be entered on the government website (accessible through your DAS account) and also needs to be published somewhere easily publicly accessible, such as the organisation's website.

For more detailed information regarding what data is required, please see the published guidance through the following link: [apprenticeship target info](#).

