



HR in the East Midlands

September 2021

Our monthly round-up of developments in the world of HR, Learning & OD includes an update on Kickstart and the funded opportunities available. Darren Newman's article covers flexible working in the context of case law and the government consultation on flexibility as a default, which is covered within the national news section.

Pay & Rewards Network

Tomorrow (1st October) will see the re-launch of a regional Pay and Rewards Network. This first meeting will shape how the network will operate, including how benchmarking could be conducted. Harry Honnor from the LGA will attend to discuss the National Living Wage implications for the national pay spine.

Results of Survey on HGV Driver Shortages

Thanks to everyone who responded to the survey we conducted on HGV driver shortages. A copy of the responses is being circulated, but key messages were:-

- Many respondents reported difficulties.
- A minority of councils are paying a recruitment/retention supplement, but others were considering doing so.
- Training other staff, growing our own, requiring training costs to be repaid if leaving within 2 years and promoting other benefits – hours etc were other approaches.

Regional Employers Board & Regional Joint Council

The Regional Employers Board met on 8th September. It comprises 15 councillors from across the region, representing the political make-up of the East Midlands. Cllr Kate Foale of Nottinghamshire County Council is the new Chair of the Board, with Cllr Mick Barker of Derby City Council and Cllr Gale Waller from Rutland County Council as the Vice-Chairs. The Board meets with union representatives to form the Regional Joint Council. At this meeting, the unions raised the following issues of concern:

- Pay
- Recruitment and retention difficulties and implications of market supplements
- Mandatory vaccinations for care home workers/visitors.

Projects with Local Authorities

In September we supported councils with assignments including: -

- Team development
- Investigation relating to dignity at work
- 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

Lisa.Butterfill@emcouncils.gov.uk

Learning & Development

Learning & Organisational Development Network

The L&OD regional network provides a way for people working on learning and development and organisation development to share approaches and tap into each other's experiences and insights. The network has become even more popular as we look at significant implications on learning and organisational culture from the response and recovery to the COVID pandemic. An example of feedback was: "[Just wanted to thank you for a really interesting and informative meeting yesterday afternoon](#)".

The network met on 28th September 2021 and included a case study and presentation from Nottingham City Council on leadership development: recovery and improvement in the context of hybrid and new working arrangements. Attendees benefitted from hearing how Nottingham had supported their leaders/managers during change and their longer-term ambitions and plans.

Talent Management was also a topic for discussion at the meeting, with expert input from Dr Suzanne Ross of 2Thrive Consultancy. The discussion included approaches and key considerations on mastering middle manager Talent, including developing managers to make the shift and developing the leadership pipeline to avoid bottle necks. If you would like to join the network, then please contact Kirsty at Kirsty.lowe@emcouncils.gov.uk

Leadership Development Programme

There are 2 spaces left on this programme which starts with an introductory session on 13th October. Contact Kirsty or see here for further details: [Leading-through-turbulent-times](#).

East Midlands Challenge

Don't forget the [East Midlands Challenge](#) returning in the virtual form on 10 November 2021. Up to 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

Kickstart Scheme – Update and Support Available

Now we are well underway as a gateway organisation for the Kickstart Scheme, we wanted to share progress, feedback and remind you of the fully funded support that is provided to enable Councils to participate.

Suzanne Boulton is co-ordinating the scheme, taking the strain out of the application and administration aspects of participating. Suzanne can advise on suitable roles for placements – we currently have people working in a wide range of roles: Climate Change, Marketing, Grounds Maintenance, Refuse and Recycling.

The calibre of people on the scheme has been high and feedback from their managers has been positive – with several councils increasing the number of placements being offered based on this experience. We have already started to see participants gaining longer term employment opportunities following their training.

EMC can also provide the employability training that is a feature of the scheme, and which is also fully funded. Development is structured throughout the placement, so that participants understand what employers look for in effective employees to maximise the time at work and develop key skills such as teamworking and communication. Tailored training and coaching can also be provided if required. Towards the end of a placement, development focuses on building skills and knowledge to gain employment, including CV-writing and interview skills. As part of the development, we provide opportunities for participants to network with each other. The development is provided through virtual or in-person sessions, depending on the preference of the councils.

The employability training can also be provided to organisations that have not accessed Kickstart through EMC as the gateway.

For further information, contact Suzanne at Suzanne.boulton@emcouncils.gov.uk

Contact Details

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

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



In Deep with Darren

This month, Darren Newman looks at flexible working post pandemic

The recent case of an estate agent who won over £180,000 in compensation when her employer refused to let her leave the office early to pick up her child from a nursery caused a slight media storm a couple of weeks ago. In *Thompson v Scancrown Ltd t/a Manors* the employee won her indirect sex discrimination claim because the Tribunal did not accept that the employer had shown that its insistence on her working until 6pm was a 'proportionate means of achieving a legitimate aim'. To read some of the press coverage you would think this was some breakthrough case setting a dangerous new precedent. It is of course no such thing.

The idea that insisting on full-time working might amount to indirect sex discrimination is far from new. In fact the earliest case I can find – *Home Office v Holmes* – goes back to 1984. In that case a civil servant returning from maternity leave was refused a part-time working arrangement and succeeded in her claim. It is worth noting that this was decades before there was any specific right to request flexible working.

The Right to Request flexible working was introduced in 2003. Originally it was confined to requests that were made to allow the employee to provide care for a dependent. That requirement was removed in 2014 so that now the request can be made for any reason at all. It is, however, a limited right. It provides that an employee can request a variation in contract relating to their hours of work, or their ability to work at home – but it gives employers a wide discretion to refuse the request. A refusal must be based on one of a number of specific reasons set out in Regulations – but those reasons are so wide that it is literally impossible to think of any genuine business reason that does not fall within them.

This is where indirect discrimination comes in. An employer might be fully compliant with the right to request flexible working – to have followed a fair process and refused a request for a genuine business reason - but still lose a claim for indirect sex discrimination. This is because the Equality Act requires that any 'provision criterion or practice' which causes a particular disadvantage to women

(or any other group sharing a protected characteristic) must be a proportionate means of achieving as legitimate aim. It is not enough to have a good business reason for refusing – the refusal must also be proportionate. That involves the Tribunal weighing the importance of the business reason against the discriminatory impact of the practice being challenged.

One other key difference is compensation. A breach of the right to request flexible working can lead to compensation of up to eight week's pay. Compensation for indirect discrimination, however, is uncapped. In the *Thompson* case the employee was a senior estate agent enjoying a high salary plus bonus and commission. She had to leave that job because the working hours did not fit with her childcare arrangements leading to considerable loss of earnings. That together with injury to feelings calculated at £13,500 explains the unusually high award that she received.

As we emerge (hopefully) from the pandemic we are likely to see a surge in flexible working requests focussing not so much on hours of work but on its location. Employees who have benefitted from working at home during lockdown may want to continue the arrangement – or at least agree some hybrid approach that avoids the need to travel into work every day. But in most cases the employer will have the contractual right to require them to come into the workplace. I don't think there can be any serious argument that the arrangements adopted over the last 18 months - in response to strong government guidance to work at home when possible - have changed that fact.

One mechanism for persuading the employer to accept a change is a flexible working request. This is more accurately termed a right to request a 'contract variation' (S.80F Employment Rights Act 1996) and it expressly covers a request to work from home. The question, however, is whether requests of this sort can also be backed up with the threat of an indirect discrimination claim if the employer refuses.

There can be no argument that women are more likely than men to need to work part-time to accommodate their caring responsibilities. Indeed just recently the EAT held that this fact was so well established that



there was no need for a claimant to present evidence of it (Dobson v North Cumbria Integrated Care NHS Foundation Trust). Matters are not quite so straightforward when it comes to home working. It may be, of course, that for similar reasons women are more likely than men to need to work from home – but I doubt the disparity is quite so clear cut. Tribunals are likely to need to see detailed evidence of who is requesting a working from home arrangement before finding that indirect discrimination is in play.

That may mean that employees only have the bare right to request flexible working to rely upon. It was reported recently that the Government is planning to announce that the current 26-week qualifying period for making such a request is to be abolished. That in itself will not make much more than a cosmetic difference. But a change promised in the 2019 Conservative party manifesto could be much more significant. The manifesto said that the Government would encourage flexible working and “consult on making it the default unless employers have good reasons not to”. Let’s leave aside the fact that grammatically that doesn’t make much sense. What the Government seems to be saying is that there should be a test of reasonableness not just in the way in which an employer deals with a request but also in assessing the employer’s reasons for refusing it. That would be a significant change and would give considerably more weight to any working from home request.

Whether the Government will act on that commitment remains to be seen.* Meanwhile employers facing requests under the current regime would still be well advised to take them seriously. There may be valid reasons why increased home working is not viable for particular roles or for particular individuals. But employers should not assume that they can simply refuse requests without giving them serious consideration. My tip is to try to say yes to a request. If working from home causes particular difficulties, then engage with the employee to try to resolve them. Then if you can’t make the request work and have to turn it down, your reasons for doing so will be clear to both the employee and any Tribunal that may have to assess them. Whatever the legal position ends up being, if the Tribunal sees that you have engaged in the process in good faith and genuinely tried your best to accommodate the request, that is likely to stand you in good stead.

** Since Darren wrote his article, the Government has launched its consultation on changes to the right to request flexible working - see details in the National Developments section below.*

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

National Developments

Flexible Working Consultation

The Government has launched consultation on changes to the right to request flexible working. The consultation proposes to make the statutory right to request flexible working a ‘day one’ right, rather than one subject to a 26 week qualifying service condition. The other parts of the consultation ask:

- do the current eight business reasons for refusing a flexible request all remain valid;
- should employers be required to suggest alternatives, where a flexible working request is turned down;
- whether the administrative process underpinning the right to request should be amended;
- what would encourage employees to request a temporary flexible working arrangement, which is an existing right under the current legislation.

Further details of the consultation can be accessed through this link: [consultation](#) The deadline for responses is 1 December 2021.

Pay Negotiations

We await the outcome of the unions balloting of their members on the employers’ pay offer for Green Book staff. The unions are recommending rejection. We will keep you posted when we receive the outcome – expected on or around 4th October.

Outlined below are updates on this year’s pay rounds for both Youth and Community workers and Soulbury officers.



Youth and Community Workers

The JNC YCW Staff Side submitted a 10% pay claim and a claim around work life balance improvements for 2021.

Following consultation, the Employers' Side rejected this and made a pay offer to the Staff Side of 1.75% on all pay points and allowances: [response](#). The Staff Side is consulting on this, and we await their response.

Soulbury Officers

The Soulbury Committee Officers' Side submitted a 7% pay claim for 2021. A consultation has taken place with local authorities during August and the Employers' Side will formally respond to the Officers' Side next month.

National/Regional COVID Workforce Update

We continue to work with our colleagues at national level and in other regions to provide you with updates which are now on a monthly basis.

Here is a link to issue 34, the latest edition of the COVID NARE/LGA Workforce Update which was circulated earlier this month. This issue includes:

- COVID-19 General Update
- Latest COVID-19 vaccine surveillance report
- COVID-19 vaccine protection
- Changes to self-isolation from 16th August
- Long Covid prevalence
- Encouraging vaccine uptake in young people
- Managed Quarantine - exemptions
- Antibody surveillance programme
- Local COVID-19 impact analysis reports
- Latest data on furloughed employments
- Schools' COVID operational guidance updates
- DHSC Guidance on vaccination of people working/deployed in care homes
- Pay updates
- New 'flexible' apprenticeships announced
- LGA Strategic Workforce Planning Support Extended 2021-22
- LGA Workforce Webinars Sept to Dec 2021
- Embedding a wellbeing culture in the ASC workforce

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

Apprenticeships

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

- REMINDER: The deadline for claiming the government's apprenticeship incentive payments is almost approaching
- Levy Transfers: Pledge Function and 'Matchmaking' Service Launch
- Pooled PAYE: Roundtable Update
- Opportunity: Become an LGA Peer to support an independent review apprenticeships and adult learning review for a council
- Latest Webinars

