



# HR in the East Midlands

January 2022

Welcome to the first Bulletin of 2022! It was great to see so many of you at our recent Employment Law Update with Darren Newman. Now that work from home rules are lifting, Darren's article advises on responding to employees who are reluctant to return to the workplace. For a decade, the regional coaching network has successfully enabled councils to share high quality coaching resources and the L&D section this month highlights the benefits of the network and how to find out more and join in.

## Covid's Impact on Capacity and Services in the Region

This month saw rising absence rates linked to COVID and/or self-isolation. Thank you for responding to our regional survey on the impact on your own organisations' workforce and service delivery. Common concerns related to service areas such as refuse and adult care, along with increased workload impacts in other services. You can access a copy of the anonymised information [here](#). This information was found particularly useful at a meeting with DLUHC earlier in the month.

Workforce pressures were also discussed last week at a meeting arranged by EMC with Chief Executives from across the region and public health colleagues. A particular aspect is the unavailability of staff who are not fully vaccinated and therefore self-isolating due to being a contact of someone with COVID.

It was raised at the latest meeting of regional employers and the LGA and the national employers are aware of the issue. Current advice on how to manage the situation is covered at Q4 in the LGA's workforce FAQs which you can access here: [FAQs](#). Please continue to raise your queries with us at EMC. Your issues are used to help inform and develop the LGA's guidance.

## Regional Pay Meeting

As the Regional Employers' Organisation, EMC provides an opportunity for councils to meet with the national leads on pay. We are in the process of arranging a virtual meeting for the region to further discuss national pay and the National Living Wage Challenge. The meeting will follow a format similar to the pay roadshow meetings, with Lead Members, senior HR and Resources lead officers invited to join us. We will provide further information once the arrangements are finalised.

## Projects with Local Authorities

During January, EMC the following support has been provided to individual councils on the following:-

- Mediation
- Investigations
- Facilitation of Chief Executive appraisals

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

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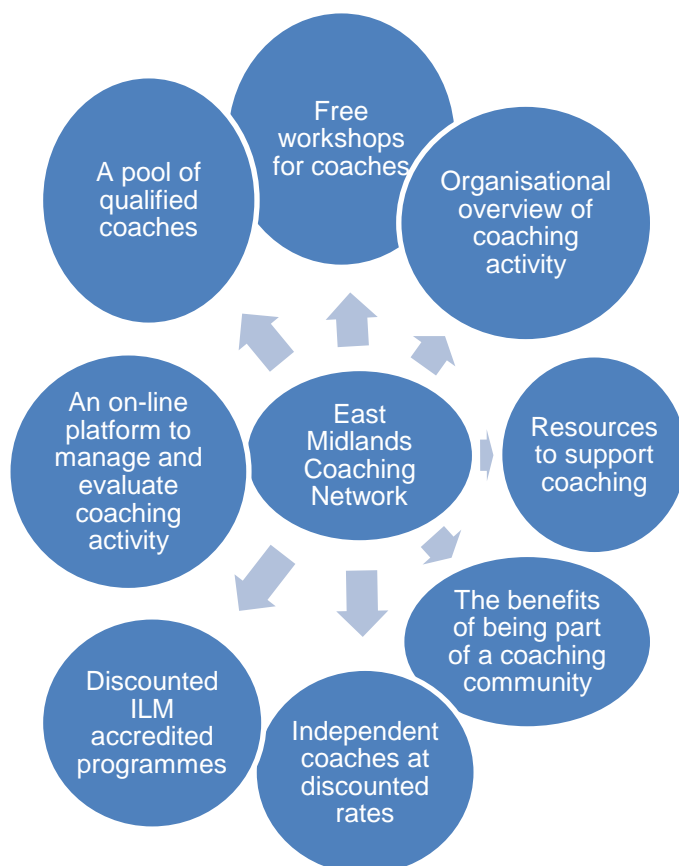
# Learning & Development

## EAST MIDLANDS COACHING NETWORK

In March 2023 the East Midlands Coaching Network will celebrate its 10-year anniversary. Over the next year East Midlands Councils plans to host a range of workshops and events to share the learning from this experience and ensure that organisations are aware of the benefits of the network and how these can be tapped into.

The East Midlands Coaching Network aims to help organisations build internal coaching capacity and access trained and experienced coaches from other organisations to support performance, improvement and personal development at very low cost.

Membership of the Coaching Network offers:



Find out more from network members.....

### Coaching Network Showcase, 16 March 2022

On 16 March 2022, we'll host the first showcase event to share more information about the network and the support it provides. We'll include an opportunity to hear directly from one of the coaching network member organisations, to find out how they use the network and the benefits they have seen.

This one-hour virtual session will: -

- provide an overview of the Coaching Network, and the principles that underpin it
- share details of the membership offer
- provide a demonstration of the on-line resources available through the dedicated platform Mye-Coach. As well as helping to match coachees and coaches, we will show how Mye-coach is used to manage, monitor and evaluate coaching activity across the network.
- share how the network support continuous development of coaches and provide details of our diverse programme of development
- share the organisational support available to members through membership of the network

For more information about this event and to book a place please find [here](#).

### 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 into considerations for Councils in situations where employees are reluctant to return to the workplace, following the Government's lifting of rules requiring homeworking where possible.

Of all the turmoil over the past two years, perhaps the most dramatic lifestyle change for most people is the switch to working from home.

For much of that time the switch was essentially required by Government guidance. Employees should work from home, the guidance said, if it was "possible to do so". And we discovered that for many of us it was possible - even if it was not always ideal. That guidance has now been withdrawn (In England at least) and in its place is the statement "people should now talk to their employers to agree arrangements to return to the office". But is it a matter for agreement? Does an employee who has worked largely from since March 2020 now have the right to continue doing so? Or can the employer simply instruct employees to return to their offices?

To answer that question, we have to start with the contract. An employee's written statement of terms and conditions must specify the place of work – essentially defining where the contract is to be performed. Most employees in local government will have a contract which tells them that they work in a specific location, usually with some flexibility to ask them to relocate within the same broad area. The fact that for period of time they have been working at home will not, in my view, alter that basic underlying term. Working from home during the pandemic does not indicate that the parties have agreed to vary the contract, but merely that Government guidance is being followed for the duration of the crisis. When the crisis ends, the position reverts to that set out in the written statement.

It may not be quite that simple. An employee is only obliged to obey reasonable instructions. It may not

be reasonable to simply instruct an employee to return to office working on a full-time basis after almost two years of working from home. Employees may have organised their lives around working from home and have made child care and other arrangements that cannot be changed without some notice and period of adjustment.

Subject to a reasonable transition period, however, the contractual position is likely to be that employees can be told that they must now return to the workplace if that is what the employer wants to do. But there are other rights that need to be considered apart from the contract itself.

Some employees may be anxious about returning to an office environment. If that is based on their clinical vulnerability to covid – or if their anxiety is so severe and long-lasting that it amounts to a disability in its own right - then the employer may be obliged to allow them to continue working from home as a reasonable adjustment. These cases are likely to be rare and do not cover those who are simply reluctant to return or sceptical that there is a need for it.

Employees who want to continue to work at home may make a request to their employer that they be allowed to do so. That could be a request under the right to request flexible working which specifically covers working from home arrangements. The reason for the request is immaterial and the question is simply whether the employer has a valid business reason for any refusal. That sets the bar quite low for an employer who is not prepared to agree to the request – although the refusal must not be based on 'incorrect facts'. A claim with more legal bite to it would be indirect discrimination. This would be based on the assertion that women are more likely than men to need to work at home and so an insistence on coming into the office puts women at a particular disadvantage. If that assertion was supported by the evidence, then the employer would have to show that its refusal was a 'proportionate means of achieving a legitimate aim'. This would put the employer's reasons for not allowing the employee to work at home under much more rigorous scrutiny than in a claim made under the right to request flexible working.



## Darren's Advice to Employers

All of this suggests at the very least that an employer should engage with reluctant returners and discuss their concerns. Where these are health related or concern family arrangements that might have a greater impact on women than men, the employer would be wise to think carefully before proceeding and consider whether some arrangement can be reached that suits both sides.

Apart from those circumstances, however - and allowing for a reasonable period of transition - the employer is entitled to insist that employees return to the office in accordance with their contracts. An employee who refuses to comply with this instruction will be in the difficult position of refusing to obey a reasonable instruction. The fact that they might be able to show that they are just as effective when working at home will not matter. Employees can seek to have their contract changed, but if they fail to do so then they will be obliged to comply with the one they have.

The logic of that position, of course, is that a refusal to return to the office will be treated as a disciplinary matter. Given that it is an ongoing refusal there would seem to be little alternative to the employer either accepting the employee's insistence on working at home or deciding to dismiss. Assuming that a fair disciplinary procedure is followed – and that the consequences of the employees continued refusal are made clear - I would expect a dismissal in such circumstances to be fair.

But that does not mean that employers should now go full speed for a return to the office with the threat of dismissal hanging over any employee who objects. There are wider and more important considerations than what an employer is legally entitled to do. The last two years have seen a transformation in the way we work and many of the changes have been positive. The end of Covid restrictions should give employers an opportunity to think long term about what arrangements work best not only from a managerial point of view, but also in ensuring an engaged and motivated workforce.

## National Developments

### Pay Negotiations

On 14<sup>th</sup> January, we circulated information on the outcome of Unison's ballot and you can access this information [here](#). We await the outcome of Unite's ballots which are expected to be completed on 17<sup>th</sup> February.

Last week ALACE, which represents Chief Executives, submitted a proposal to National Employers in order to reach an agreement on the 2021 pay award. ALACE repeated its disappointment at the lower offer being made to its members and Chief Officers than the offer made to staff within the main negotiating body. However, it stated it would be "reluctantly prepared to accept the 1.5% offer for chief executives for April 2021 but only on the basis that the Employers agree to implement a direct and immutable link for increases for April 2022 onwards, to ensure that chief executives would receive the same increase as the generality of NJC staff. We suggest that the link should be with the increase for spinal column points 25 to 43 of the NJC, recognising that increases for lower pay points may continue to run higher because of the impact of the national living wage."

The National Employers' Side of the negotiating committees are meeting today. EMC will ensure councils are updated on any developments with pay as they arise. We are expecting to see a circular after 17<sup>th</sup> February which would either be a joint circular or an employers' circular asking councils to increase the pay of staff on the bottom two pay points from 1<sup>st</sup> April 2022 to be compliant with the increased National Living Wage.

### Consultation On Disability Workforce Reporting

The Government is consulting on disability workforce reporting and further information is available through the link below. EMC will provide a regional response and feed into the LGA's response. Please provide your comments to Sam by 28<sup>th</sup> February 2022. We look forward to receiving your comments. [Consultation](#).





## COVID-RELATED NEWS

### COVID-19: Self-isolation period reduced to five days

From 17th January, the Government changed the rules regarding the self-isolation period for those with COVID-19, so that it can now end after five full days following two negative lateral flow device tests on day five and six. The changes are designed to help essential public services and supply chains keep running over the winter.

### Restrictions Eased in Care Settings

Last week we circulated news on the easing of restrictions for care settings. From today (31 January), there will be no limit on the number of visitors allowed into care homes, self-isolation periods will be cut and care homes only have to follow outbreak management rules for 14 rather than 28 days.

By Wednesday 16 February, care workers will be asked to use LFD tests before their shifts replacing the current system which includes the use of weekly asymptomatic PCR tests.

### Amendments to Mandatory Vaccination Regulations

At the time of writing, it is understood the rules regarding mandatory vaccination may be reviewed by Government. We have set out below the changes that have been put in place and will let you know as soon as there are any further changes.

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 have been amended to allow new starters who can have the vaccine to start work provided it has been 21 days since their first dose. They then have 10 weeks from their first dose to have the second and provide satisfactory evidence of this to the Registered Person. People who are participating in a clinical trial of the vaccine are also exempt from the requirement to have had a full course of a COVID vaccine.

These changes will apply initially to those deployed in care homes where the requirement to be vaccinated is already in place. They will also apply to the group of workers covered by the changes to be implemented from 1 April 2022, which sees the requirement to

have the vaccine extended to those providing direct, face-to-face care in other regulated activity, including wider social care.

Links to the Government's updated guidance are provided below:-

<https://www.gov.uk/coronavirus>

[Guidance on vaccination as a condition of deployment in wider adult social care settings](#)

[Care home guidance](#)

### Reclaiming SSP for isolating employees for employers with <250 employees

The Government has reintroduced the ability for employers with fewer than 250 employees (on 30 November 2021) to reclaim up to two weeks' of SSP paid to an employee who is off work due to isolating for a COVID-related reason. An employer will be able to claim for payments made from 21 December 2021. Claims must be made by 24 March 2022.

### Updated HSE Advice on Ventilation

HSE has updated its guidance on reducing COVID risk through ensuring adequate ventilation, by providing advice on balancing ventilation with keeping people warm. Guidance can be accessed here: [here](#)

### PPE requirement extended to workers

The Government is amending the Personal Protective Equipment at Work Regulations 1992, following a case which ruled that the relevant EU Directive had not been correctly implemented in UK law.

From 6 April 2022 employers will be required to provide personal protective equipment (PPE) to workers, as well as employees, at no cost to themselves. Regulations currently restrict the requirement to employees, rather than the wider definition of workers.



## T Levels

EMC hosted a free workshop from the LGA on 20<sup>th</sup> January 2022 to provide information on T levels, how these link with other qualifications, including apprenticeships. T levels include an industry placement which provides an opportunity for councils to engage with and attract our future workforce to local government.

A copy of the presentation slides are available [here](#) and there is a case study from Oldham Council via this link: [case study](#)

Our session was supported with speakers from Derby College and Leicester College who are providers of T Level courses. Providers delivering T Levels can be found using this link: [here](#).

T Level industry placements: delivery guidance – [here](#).

The LGA is offering a support package for Councils to help with the provision of placements. For further details of the support package, you can use the following link [LGA support](#)

## [Book your place here](#)

For any enquiries about this event, please email [sp-phskf@phe.gov.uk](mailto:sp-phskf@phe.gov.uk)

More information on the public health apprenticeship standards is available through the following link:

[Apprenticeships that support public health careers](#)

## APPRENTICESHIPS

### Public Health Apprenticeships – National Webinar, 9<sup>th</sup> February 2022 10.00-12.00

This webinar will provide an overview of the family of apprenticeships available in public health and how they work in practice, including 3 key standards:

- [Community Health & Wellbeing Worker at level 3](#)
- [Public Health Practitioner at level 6](#)
- [Health & Care Intelligence Specialist at level 7](#)

The session will provide an opportunity for employers to learn about and deepen their understanding of how apprenticeships can develop current and future workforces to have the confidence and skills to contribute to public health activities.

There will be time to ask plenty of questions to the panel, which includes representatives from Health Education England (HEE), the Office for Health Improvement and Disparities (OHID), employers delivering the apprenticeships, and current apprentices.

