



HR in the East Midlands

July 2022

We've had record-breaking temperatures this month and pay has also been a hot topic: with national pay offers and a final ruling on calculating holiday pay for atypical workers (the Harpur Trust v Brazel case). This is featured in Darren Newman's article. The annual sickness absence survey results are on the following page – thanks for your data. Coaching and mentoring rightly have a key place in leadership development; we provide a summary of how you can access high quality coaching and mentoring support.

National Pay

This week a pay offer was made for Green Book staff, Chief Officers and Chief Executives. See the National News section for details, **along with a clarification on the annual leave aspect of the Green Book offer**, following a number of queries we've had about this.

Reminder Alert!

Public sector bodies employing over 49 FTEs are statutorily required to annually report to Government on trade union facility time associated costs. The deadline to submit the data relating to 1st April 2021-31st March 2022 is **31 July 2022**. See below links to the portal to input the data and associated guidance:-



[link to the portal to submit data](#)

[link to calculation and submission guidance](#)

EDI Special Interest Groups Launched

This month the Equality, Diversity and Inclusion network launched its special interest groups. These are groups of authorities working together on an area of particular interest to those involved.

The special interest groups are

- Leadership and personal accountability group
- Disability confident accreditation
- LGA Framework
- Effective Employee Groups and Champions
- Equality Impact Assessments and Policy Development
- Recruitment and selection

It's not too late to register your interest in being part of any or all of these groups. If you would like to participate in any of these groups please email Kirsty.lowe@Emcouncils.gov.uk

Projects with Local Authorities

During July EMC has supported councils with:-

- Assessment centre design and delivery
- Interim HR management support
- Coaching

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

Regional Sickness Absence Survey 2021-22 Results

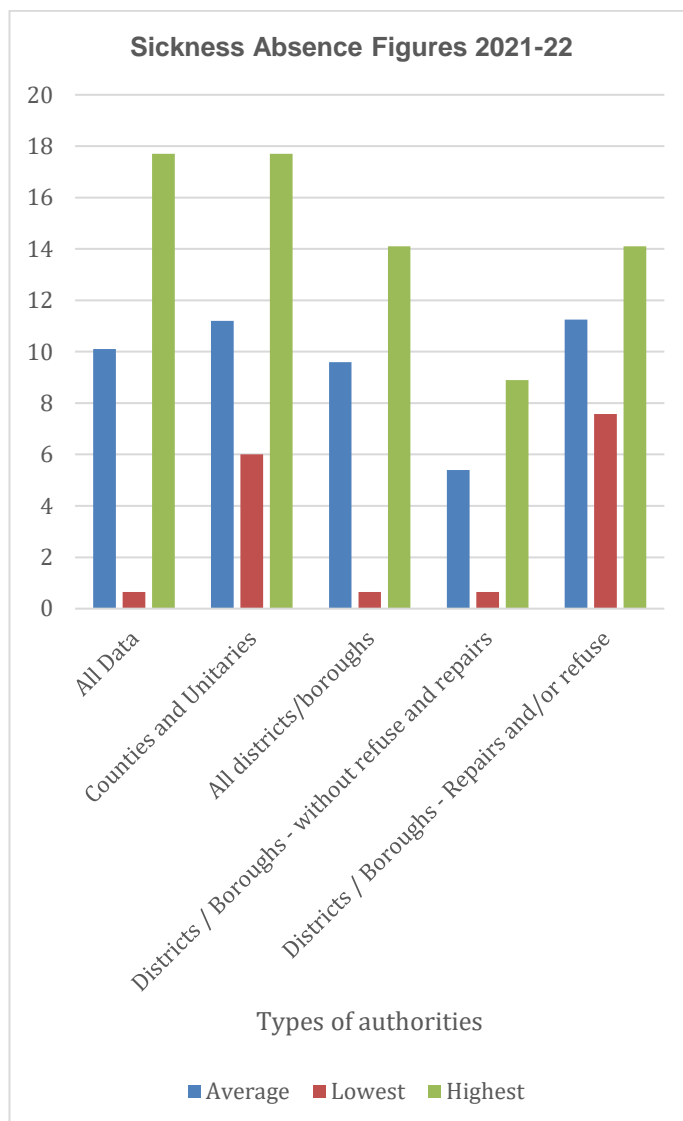
Thank you for your responses to the absence survey. The results based on responses from 80% of Councils in the East Midlands. A summary of the information collated is included below.

Key data from the survey

The average number of days lost to sickness absence was 10.1. The average for 2020-21 was 6.6 days.

The overall picture for 2021-22

- 91% reported overall absence increased
- 91% saw an increase in short-term increase
- 63% found an increase in long-term absence
- 28% found long-term absence decreased



Counties and Unitaries

- The average number of days lost to sickness absence was 11.2.

Two councils did not have comparable data from 2020-21. Of those who did have comparable data;

- 100% reported overall absence increased
- 100% saw an increase in short-term increase
- 57% found an increase in long-term absence
- 43% found long-term absence decreased or stayed the same

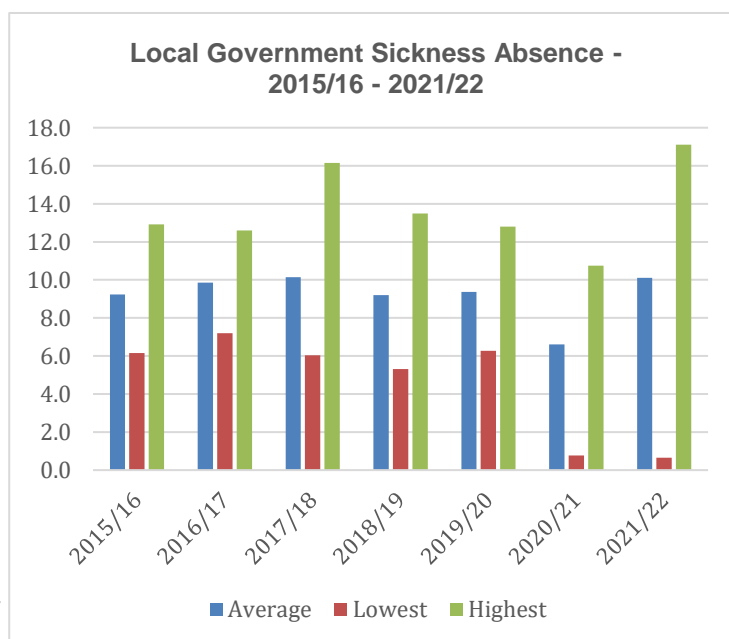
All Districts and boroughs

- The average number of days lost to sickness absence was 9.6.
- 83% reported overall absence increased
- 92% saw an increase in short-term increase
- 7% saw a decrease in short-term absence
- 63% found an increase in long-term absence
- 33% found long-term absence decreased or stayed the same

Districts and boroughs with Refuse and or Refuse

- The average number of days lost to sickness absence was 11.2.
- 90% reported overall absence increased
- 100% saw an increase in short-term increase
- 78% found an increase in long-term absence
- 22% found long-term absence had decreased or stayed the same

Figures compared over time



Learning & Development

Executive Leadership Coaching & Mentoring

East Midlands Councils has been championing coaching and mentoring for over a decade. As a membership body, we provide direct support to local government in the East Midlands in relation to coaching, whether as part of our East Midlands Coaching Network, or responding to specific coaching requests.

Executive Coaching...

We recognise the complex and challenging role of public sector leaders, expected to navigate through political environments, work across organisational boundaries, continually delivering better for less whilst also horizon scanning and thinking strategically for teams and communities. We understand the value across all levels of leadership of having a 'safe' place – a sounding board and critical friend, the space that coaching can offer.

'Unlocking a person's potential to maximise their own performance. It is helping them to learn rather than teaching them' (Whitmore, 2009)

How it can help those in leadership roles

We have extensive experience of supporting those in leadership roles with coaching and mentoring, covering coaching themes, such as:-

- Transitions to new roles
- Mentoring
- Wellbeing and resilience coaching
- Organisational change and adaptation

We also recognise the value that the coaching space offers those on leadership development programmes, providing a space to contextualise learning and to enable senior leaders to understand their own role and their leadership.

Our executive coaches and their experience and expertise

We have a range of qualified executive coaches, who have a wealth of experience in coaching practice. Our diverse team of executive coaches, each bring a particular skill set and background, varying from those with experience as chief executives in local

government, to the third and private sector organisations.

Our range of qualified executive coaches provide a variety of choice, quality assured with experience of coaching with us.

How does it work

We provide coaching in a variety of formats, this includes one-to-one coaching to team coaching, working both face-to-face and virtually and on many occasions in a blended way.

Once we understand what you're looking for we will be able to share with you a select number of profiles of coaches for review, then arrange an initial conversation with you and the preferred coach. Our coaches will be able to work with you to understand the outcomes you are looking for from coaching and using this create a programme that best supports your needs.

What next

For more information on our executive coaching offer and the associated costs of working with our independent executive coaches contact Kirsty.Lowe@emcouncils.gov.uk

Our Coaching and Mentoring offer this autumn

As well as supporting the provision of coaching and mentoring, we are passionate about the development of coaches. This autumn we have a range of development opportunities on offer, at whatever part of the coaching journey you are at.

We'll be offering a variety of programmes, including: Manager as Coach programmes, as well as accredited in depth options such as;

- ILM Level 5 in Coaching and Mentoring
- ILM Level 7 in Executive Coaching and Mentoring

Contact Details

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

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In Deep with Darren

Last week EMC circulated the summary judgement from the Supreme Court on the Harpur Trust v Brazel case, which confirmed the correct way of calculating holiday pay for atypical workers. You can access the summary again [here](#).

Darren Newman provides below his insights on this long-awaited outcome.

The saga has now ended – the Supreme Court has given its decision in the case of Harpur Trust v Brazel. Ms Brazel first won her claim for unlawful deductions from wages in January 2017. More than five years later the Supreme Court has upheld that decision.

Calculating holiday pay dues under the Working Time Regulations (WTR) is a notoriously complicated exercise but I have always regarded this case as being rather straightforward. Ms Brazel is term-time only music teacher who is paid by the hour and whose hours of work vary throughout each term. There was no dispute that she is a ‘worker’ within the meaning of the WTR and so she is entitled to paid annual leave. The question is – how much leave, and how much was she entitled to be paid for it?

The question of the amount of leave could not be simpler – though some of the employer’s arguments in the Supreme Court did seem to try to cloud the issue. The WTR state that all workers are entitled to 5.6 weeks’ leave per year (that is made up of 4 weeks annual leave and 1.16 weeks additional leave but we can just lump the two together for the purposes of this case). There is no provision allowing workers who are employed for the whole year to get anything less than that. A part-time employee who works two days a week is still entitled 5.6 weeks leave – it is just that each of those weeks consists of two days off work.

So there was never really any doubt that Ms Brazel was entitled to 5.6 weeks’ leave – even though she was only paid to work during term time. Her contract was in place for the whole year and so she was always going to be entitled to a whole years’ worth of annual leave.

The question was a little more difficult when it came to calculating her holiday pay. When she took a

week’s leave – in practice she was told by the employer that 1.87 weeks of each school holiday would be treated as annual leave – she was at first paid according to the statutory formula. The WTR incorporate the same rules for calculating a week’s pay as is used in other areas of employment law such as the calculation of a redundancy payment. For Ms Brazel That involved taking an average of her previous 12 weeks of paid work. It is worth noting that since April 2020 the averaging period has been increased to 52 weeks, but that did not affect Ms Brazel as her claim pre-dated that change.

At some stage however, the employer took on board Acas guidance that – at the time – said that for casual workers the easiest way to calculate holiday was to pay the workers 12.07% on top of each hour they worked. So when Ms Brazel took her holiday in the summer term, she would be paid 12.07% of the total amount she had earned since the Easter break.

That percentage figure is derived from the fact that there are 52 weeks in the year and someone who has a holiday entitlement of 5.6 weeks leave is therefore at work for 46.4 weeks. 5.6 is 12.07% of 46.4 so someone who is paid an extra 12.07% of their annual earnings has in effect been paid for an extra 5.6 weeks.

That strikes me as rather a complex way of going about things – but it does have the advantage of being an easy way for payroll software to calculate the holiday pay of casual workers.

Unfortunately however, this method left Ms Brazel worse off. This is because the calculation of week’s pay using an average of the previous 12 (now 52) weeks, any weeks where no pay is due are ignored and replaced by earlier weeks. In Ms Brazel’s case, since a term might only be 10 weeks long that would involve bringing in her pay from the last two weeks of the previous term. That gave her a more favourable rate for a week’s pay than the percentage approach. It also meant that her holiday pay was higher than it would have been if she had worked at the same rate throughout the year rather than on a term-time only basis.



The employer argued that the percentage approach was fairer because it respected the pro rata principle. Taking a 12-week average would mean that Ms Brazel's holiday pay was a higher proportion of her annual earnings than the 12.07% that those employed across the whole year would achieve. They argued that the pro rata principle was enshrined in EU law and so it was necessary to interpret the Working Time Regulations so as to comply with that principle.

The employer's arguments might seem to have basic fairness on their side – and the way in which the averaging approach operates could certainly have some surprising results for workers who are only needed for a small part of the year. The example was given of an exam invigilator who remains under a contract for the whole year but is only called upon to work for a total of four weeks in the year. Such a worker would also be entitled to 5.6 weeks' leave – because all workers are – but the holiday pay for that worker would not be 12.07% of their earnings, but 5.6 times the amount they earned in the average week when they were actually working. Essentially holiday pay would more than double their annual earnings. Could that be right?

The Supreme Court made the sensible point that such an individual would be unlikely to be employed for the whole of the year. A much more common arrangement would be a short-term contract covering the period for which they were actually needed. At the end of the contract they would be entitled to a payment for holiday accrued but not taken and their entitlement would not be the full entitlement of 5.6 weeks, but proportionate to the amount of time they were employed – the 12.07% calculation would then be the right one for them.

If an employer were to give such workers contracts that remained in place throughout the year, then they would just have to live with the consequences in terms of holiday pay - because Ms Brazel's arguments had one overwhelming advantage over those of the employer. The approach to holiday pay she was arguing for was the one actually set out in the Regulations. The employer was arguing that those Regulations should be ignored and some other system put in place because it was more in line with EU law.

We are of course used – particularly when it comes to holiday pay – to ignoring the wording of legislation to

comply with EU law and it is worth emphasising that so far Brexit has made no difference to the approach the courts take. The WTR are part of what is called 'retained EU law' and must be interpreted with the same respect for EU law as they were before Brexit. But EU law only requires a minimum standard to be applied. The pro-rata principle protects part-time workers from less favourable treatment but nothing in EU law prevents them from being given more favourable treatment. The Working Time Directive might *allow* a different calculation of holiday pay in Ms Brazel's case but does not *require* it. It sets the minimum amount that Ms Brazel is entitled to, but if the Working Time Regulations provide for a more generous calculation then that is not a breach of the Directive. On that basis her claim was upheld.

The consequence is that all workers – whatever their working pattern – are entitled to 5.6 weeks' paid leave in each holiday year. Where their weekly pay varies with the amount of work they do, then an average week's pay needs to be worked out based not on some percentage of their annual earnings – though that will be a useful formula to use in many cases – but on the average amount that they earn in the weeks when they are actually earning. Now that the Supreme Court has made the final decision, there can no longer be any doubt about that.

National Developments

Local Government Pay 2022 Pay Offers

Green Book Pay Offer

On 25th July 2022, the National Employers for local government services made a final pay offer to the unions representing NJC 'Green Book' employees. The circular [here](#) sets out the details.

Clarification on Annual Leave

We have received a few queries re the annual leave element of the offer and hope the following information is helpful.

The annual leave element of the offer is for a permanent (ie, not just for 2023) extra day for all



employees on Green Book conditions, regardless of their current leave entitlement, length of service or seniority. The National Employers agreed unanimously that was their intention in making this element of the offer.

The National Employers anticipated there might be some employers who would reason that the increase won't apply to their local (more generous than Green Book minimum) leave entitlement.

If a deal is reached on the employers' final offer as set out and such local issues arise, the National Employers are very clear that if in some places a local agreement has to be reached in order for the extra day to be applied, so be it. But the offer has been made in full expectation that the additional day's leave (pro rata for part-timers) will be applied for all NJC staff, regardless of existing local arrangements.

Response from the Unions

Unite has rejected the pay offer [Unite rejects local government pay offer \(unitetheunion.org\)](#) Unite acting national officer for local authorities Clare Keogh said:

“This is a substandard offer and in the first instance, local government employers need to get round the table and make an improved offer. If they are unable or unwilling to do so then Unite will consider all options in how to escalate this dispute.”

UNISON is currently seeking informal initial feedback from its local and regional reps ahead of an emergency meeting of its National NJC Committee today (Friday 29th July).

GMB is doing the same, ahead of its National Committee meeting next Wed 3 Aug.

Offers to Chief Executives and Chief Officers

The National Employers have also made final offers to the Staff Sides representing local authority [Chief Executives](#) and [Chief Officers](#).

Craftworkers

On 12 July 2022 the National Employers received a pay claim in respect of local authority Craftworkers. EMC circulated information about the claim at the time, but to re-cap, the claim seeks:

- An increase of RPI + 2 per cent on all pay elements
- An annual retention payment
- Reduction in working hours to a 35-hour week, with no loss of earnings
- Minimum standby payment across all councils
- One additional annual leave day for all operatives, plus one further day on all other holiday rates that depend on service
- 100 per cent increase on Tool Allowance
- Increase in Tool Insurance
- Compulsory CSCS Training for all Red Book Operatives
- Maintain and improve Red Book Terms and Conditions
- Payment for charging Phones, Laptops, Power Tools, Cars

The National Employers informed the unions representing local authority Craftworker ('Red Book') employees that they are not prepared to respond to their 2022 pay claim until the employers' final offer for 2021 (covering the period 1 April 2021 to 31 March 2022), which they made to the unions on 27 July last year, has been accepted. The 2021 offer was for a 1.75% increase on all pay rates and allowances and was rejected by the unions.

Youth & Community Workers

Last week, the JNC Youth and Community Workers finally reached a [pay agreement for](#) the 2021 pay round which was for a 1.75 per cent pay increase.

The Staff Side (of the JNC Youth and Community Workers) has now submitted its [pay and conditions claim](#) for 2022. The headline element is for a 10 per cent or RPI plus 2 per cent pay increase (whichever is greater). The National Employers will shortly undertake a consultation on the claim.

