



HR in the East Midlands

June 2022

Pay is a hot topic and this bulletin provides a follow up from the regional briefing and EMC's work to raise awareness of the impact of the National Living Wage policy on pay structures and funding. Darren's article looks at sickness absence in relation to disability discrimination – covering issues such as triggers. On the topic of absence, it's time for the annual sickness survey – we get many requests for this benchmarking information, so please provide us with your absence figures for 2021/22, it will be much appreciated!

National Pay

We had high attendance levels for the Pay Briefing we hosted on 21st June. Contact Mila if you would like a copy of the questions for councils to answer or the presentations delivered at the briefing. Please send your responses to Mila at mila.pereira@emcouncils.gov.uk by 11th July. Anonymised results for the region will be used to inform the national negotiations.

The Employers' Side will be meeting on 25th July to consider the results and a response to the claims from unions and staff representatives. Sam attends these meetings and you can contact her with any additional feedback to put forward at sam.maher@emcouncils.gov.uk

Sickness Absence Survey - 2021-22

A common request is for sickness absence benchmarking information and therefore we would be grateful if you could complete this year's survey. It's quick and easy to respond through an on-line form which you can access [here](#) with just a small number of questions. **Please respond by 25th July** so that results can be shared in next month's HR Bulletin. With thanks in advance for your help!

National Living Wage Policy

The Regional Employers' Board of EMC has written to all East Midlands MPs to draw their attention to the funding concerns arising from the forecasts of increases in the National Living Wage (NLW) in 2023 and 2024. While initiatives to address low pay are supported, EMC wants to raise awareness of the implications of the NLW policy. A copy of the letter can be found [here](#).

Projects with Local Authorities

During June EMC has supported councils with:-

- Top team development
- Assessment centre design and delivery
- Coaching

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 Kickstart Update & Outcomes

EMC successfully applied to become a “gateway” organisation in 2021. Over the period of the scheme 10 councils participated, offering a total of 44 placements in a wide range of roles: Climate Change, Marketing, Digital Information, Grounds Maintenance, and Refuse and Recycling, HR Administration, Revenue & Benefits.

EMC also designed and delivered employability training which was taken up by most of the participating councils. The development is structured so that the young people can maximise the benefits of their placement and develop awareness of key skills such as communication and teamworking. The training also covers knowledge to gain employment, including CV-writing and interview skills.

To date, 26 of the placements have been completed and 16 participants have gained employment at their host councils. Two other young people are going on to university for further study. A 62% conversion rate into employment so far is a positive outcome, given those on the scheme had been identified as being at risk of long-term unemployment.

The scheme has been successful, with great feedback from participating councils:-

“We have been really pleased with all the kickstart people who have joined us and the many of them have applied for positions or are still with us... We think this has been brilliant and provided excellent opportunities for many people.”

“It really has been a success and it is rewarding to know that we have been able to support young workers in this way. Thanks for all your valued support.”

The Scheme has been a great success and is a prime example of the benefits of collaborating through EMC to make a positive difference.

Equality, Diversity and Inclusion

The next virtual meeting of the EMC Equality, Diversity and Inclusion network will be on **12th July 2022 – 10:00 – 11:30**, where the approach for the network and its future work programme will be agreed.

If you are interested in joining the EDI Network contact kirsty.lowe@emcouncils.gov.uk

Learning and Organisational Development Network

The EMC Learning and Organisational Development network met on 29 June. The focus for this meeting was induction, a priority area identified by the group earlier in the year. The meeting included an opportunity to hear from a number of local authorities on changes they have made to their induction programmes, including;

- The launch of a new online induction programme for employees and for managers.
- Where an authority has created a face to face corporate induction meeting, providing an opportunity to meet senior managers and other recent starters within the authority.

The network meeting also considered the theme of how to bridge the digital divide, making connections to induction but also wider learning and development initiatives. The network provided an opportunity for sharing of approaches and learning from others.

The group will meet next in the autumn, but in the meantime a new MS Teams channel has been created to enabling sharing and connections between meetings.

For further information on the network contact Kirsty.lowe@emcouncils.gov.uk

Contracting in Coaching and Mentoring

EMC will be hosting a virtual workshop on coaching contracts, taking place on Tuesday 13 September 2022, 14:00. In this session, we will focus on how, as coaches, we can support our coachees and the role of contracting in focusing the coaching and achieving the coaching goals. For more information visit [here](#).

Contact Details

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

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In Deep with Darren

Sickness Absence & Disability Discrimination

The central idea behind the Equality Act 2010 was that it would bring together all the different grounds for unlawful discrimination under one umbrella creating a coherent and consistent framework. To a large extent it has done that. Claims for sex discrimination work in much the same way as claims for race discrimination or discrimination based on sexual orientation or religious belief. Each has their own issues, but in broad terms the law works in the same way using the same provisions.

But disability discrimination is not like that. It has its own concepts of discrimination that are not found in relation to the other protected characteristics. In many ways disability discrimination sits alone in the Equality Act. The reason is straightforward. When it comes to the workplace, disability can have a direct effect on how or indeed whether an employee can do a job. Disability discrimination law must take account of that. Mere equal treatment will not create a level playing field because the organisation of the workplace creates barriers and disadvantages for disabled people which require positive steps to eliminate. As a result, we have the duty to make reasonable adjustments – a form of positive action that is not imposed in relation to any of the other protected characteristics. We also have Section 15 of the Equality Act which encompasses unfavourable treatment because of something arising in consequence of a disability.

Employers I work with tend to take a positive approach to making reasonable adjustments to accommodate an employee's disability where that involves the provision of special equipment or an adjustment in job content or work pattern. Where they struggle however is when the main manifestation of the employee's disability is absence from work. To what extent does an employer have to tolerate an increased level of absence from a disabled employee?

Those advocating for disability rights have always been at pains to emphasise that disability should not in any way be equated with ill-health. Nevertheless the definition of disability discrimination in the Equality

Act means that almost any long term health condition, from heart disease to anxiety and depression will amount to a disability.

When it comes to absence management employers are used to intervening when an employee's absence hits certain triggers in terms of the number or duration of absences. If attendance does not improve, then a series of warnings will eventually culminate in a decision to dismiss. It was established in the case of *Griffiths v Secretary of State for Work and Pensions* (2017, Court of Appeal) that the duty to make reasonable adjustments did apply to the triggers used in absence management procedures. The Court also emphasised however that S.15 discrimination was likely to be the most relevant consideration. Dismissal for long-term absence where that absence arises from a disability will be discrimination unless the employer can show that it is a 'proportionate means of achieving a legitimate aim'.

Quite how much of an adjustment is needed – and when dismissal will be regarded as proportionate is a difficult question. In a recent Tribunal decision – *McKenzie v University Hospitals of Leicester NHS Trust* – a nurse was dismissed for unacceptable absence over an extended period caused by a variety of illnesses including migraine and depression. She succeeded in her claim of unfair dismissal, disability discrimination and a failure to make reasonable adjustments.

Every case turns on its own facts, but the way in which the Tribunal approached the key questions in deciding this case provide some useful pointers for employers hoping to avoid a similar finding.

The employee had been absent for a total of 85 days in the 12 months leading up to her dismissal including a period of long-term absence due to mental health issues. Any employer might struggle to accommodate that level of absence, but in this case the employee was dismissed after her return to work. The occupational health assessment carried out on her return was optimistic and it was expected that that future absences were likely to be reduced. The long-term absence was related to her coming off her medication and was unlikely to be repeated in the future.



While it was accepted that the employer had the legitimate aim of maintaining an appropriate level of service for patients, its actions were not proportionate given the circumstances. The OH assessment had recommended a three-month period of return during which her absence could be monitored with the possibility of redeployment to a more junior role if that was unsuccessful. There was no medical basis for assuming that her absence would continue to be a serious problem in the future.

This is an important point about absence management. A dismissal is not a punishment for past absences - it must be based on what is likely to happen in the future rather than what has happened in the past. The fact that an employee has been off for an extended period does not justify dismissal if he or she will be capable of returning in the near future.

The Tribunal also made some findings about reasonable adjustments and absence management triggers. The employer had made allowances for likely absences due to migraine but the way in which it had set the adjusted targets meant that there was no room for any non-disability related absence. The Tribunal held that the purpose of reasonable adjustments was to ensure a level playing field but that could not be achieved if disability-related illness took the employee up to the limit of the absence that the employer was prepared to tolerate.

Darren's advice to employers

In truth the use of automatic trigger points in relation to an employee whose absence may be affected by disability is always going to lead to difficulties. While it is generally accepted that an employer is not obliged to disregard disability related absence completely, the Tribunal was surely right to point out that it is unfair to expect such an employee to avoid the colds and infections that lead to occasional absences from all employees. Where the expected disability-related absences are modest – in this case they related to relatively infrequent migraines – it may well be necessary to discount them completely for the purposes of automatically triggering warnings.

The better approach is to monitor the attendance of an employee and make a sensible judgment - based on the frequency of the absences that are occurring and the nature of the employee's duties - as to whether

the employee's absences are preventing them from performing in their role to an acceptable standard. Trigger points may be useful in highlighting the need for a discussion or supportive intervention but should not be a substitute for the employer making a careful judgment as to whether the employee's absence is a cost that can be borne in the interests of allowing a disabled employee to remain in work.

National Developments

Budget Pressures Arising from Inflation & National Living Wage Policy

On the front page of this month's bulletin we have provided information on EMC's work to raise awareness of the National Living Wage policy and its implications for Councils' budgets and pay structures.

On 29th June the LGA also issued a media statement about cost pressures. You can access it from the following link: [LGA press release](#)

Pay Claims for Green Book employees, Chief Executives and Chief Officers

Earlier in the month we circulated information on the pay claims put forward by the unions and staff sides representing local government services ('Green Book') employees, local authority chief executives and local authority chief officers. You can access copies of the claims here: [2022 pay claims](#)

Apprenticeship Newsletter – June 2022

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

- 2022 Local Government Apprentice of the Year Announced
- NEW: LGA National Online Apprenticeships Workshop – 14 July 2022
- More New Tools Available on the KHUB
- UPDATE: SENCO Apprenticeship Standard
- Surgeries
- Launch of Top 100 Apprentice Employers 2022
- Webinars: Change of Date for Schools Session

