



HR in the East Midlands

June 2023

With Unison's ballot results to be announced next week, the national news section of this month's Bulletin summarises the timescales of all the ballots and the potential industrial action. Please inform us when you are notified of the ballot result of your council so we can all have a picture of the response and provide support and share information among councils that will be affected by industrial action. Darren Newman's article looks at the implications for employment law of the Retained EU Law Bill and the potential for a fresh round of cases relating to holiday entitlements – a scenario that most of us would want to avoid!

Workforce Capacity Intelligence

Workforce capacity is a priority for the Regional Joint Council, recognising the challenge being faced by most authorities. To understand the extent of the issue and help councils to benchmark, we want to identify and collect workforce data related to workforce capacity and recruitment and retention.

To enable data to be provided as easily and quickly as possible, we are focusing on the data that you already collect or that would be easy to provide. We will contact councils soon about this initiative.

EMC is also involved in a project with colleagues in other regions and nationally to identify how we can capture key HR metrics at a wider level. As an outcome, councils will have access to relevant workforce data to enable benchmarking and support

data-based decisions. There are two places available on the project steering group and if you'd like your council to be involved, please email Mark at mark.pinchen@emcouncils.gov.uk by **17th July 2023**.

Sickness Absence Survey Reminder!

Thank you to those councils who have completed the sickness absence survey for 2022/2023.

If you haven't responded to the survey yet, there is still time – the deadline is **17th July 2023**. The more responses we have, the more accurate a picture is provided for you to benchmark your council's absence against. So your responses will be much appreciated.

The questionnaire is quick and easy to complete and a link to the MS Form is here: [sickness absence survey](#)

Projects with Local Authorities

During June, EMC has supported councils with:-

- Mediation
- Disciplinary investigation
- Facilitating a chief executive's appraisal

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

Sam.Maher@emcouncils.gov.uk

Lisa.Butterfill@emcouncils.gov.uk

Mark.pinchen@emcouncils.gov.uk

Learning & Development

Coaching Masterclasses & Programmes

This edition offers a further opportunity to let you know about the regional programmes being offered to meet development needs for coaching and mentoring through:-

- Masterclasses to support the continuous development of coaches and mentors
- A programme to develop coaching and mentoring skills for managers
- A programme leading to an ILM Level 5 qualification in coaching and mentoring.

Masterclasses

These are all held virtually and future sessions will cover:

- **Coaching for Wellbeing**
- **How to be both supportive and challenging in a Coaching Relationship**
- **Coaching for Neurodiversity**

For full information on each masterclass including dates and costs please use the following link

[Coaching CPD - 1 \(pagetiger.com\)](https://www.pagetiger.com/Coaching%20CPD%20-%201)

Leader as Coach Programme

This practical coaching programme provides managers and leaders with the key knowledge and skills to have better conversations to ensure advice and guidance is well received and understood. This will help managers/leaders to make coaching a habit.

The programme comprises 6 x half-day sessions delivered virtually starting on Monday 4th September and running through to October 2023.

Delegates are fully supported with a range of online resources, e-workbook, self-development tools and opportunities for coaching skills practice. The cost is £795pp + VAT.

ILM 5 in Effective Coaching and Mentoring

This programme will help individuals gain a critical understanding of what is required to confidently undertake formal coaching within the workplace. For the organisation, this ensures leaders and managers are fully equipped with the skills, knowledge and understanding needed to effectively coach and provide effective support for the development of others.

The programme will predominantly comprise face-to-face sessions held in Melton Mowbray. A pre-programme virtual session will take place on Monday 5th September and there will be 5 days of development provided between September and November 2023.

The cost for the full programme is £1825.00 + ILM Registration of £175.00 + VAT. Individuals may undertake the 5-day programme without gaining the qualification if they wish.

To book or for further information about the coaching network, masterclasses or either of the programmes, please contact

lisa.butterfill@emcouncils.gov.uk

L&OD Network

The Learning & Organisation Development (L&OD) Network met on 14 June 2023 and focused on the theme of Coaching. Guest speakers from 'Coaching Focus' attended to provide insight on supporting coaching needs and the EMC coaching programmes.

A discussion around emerging themes highlighted the changes in leadership skills and behaviours and how coaching can support these changes, many of which are catered for in how we support your coaching needs.

At the network, attendees shared their L&OD successes and identified areas of L&OD interest for future network dates in 2023. These are:-

- Team Coaching
- Implementing 360 Feedback
- Supporting Apprentices
- Gathering and recording learning requests
- Recruitment and Retention



In Deep with Darren

This month, Darren Newman's article looks at the potential changes to employment law arising from the Retained EU Law (Revocation and Reform) Bill.

It is now seven years since the UK voted to leave the EU and for an employment lawyer the most surprising thing is how little things have changed.

The legislation that took us out of the EU - the European Union (Withdrawal) Act 2018 - provided for a 'standstill transition'. All of the EU laws that applied before we left were deemed to continue unless amended by Parliament. Even the interpretation of our laws continued to follow the rule that EU law was given supremacy and UK law needed to be interpreted in a way that conformed to it.

This meant that areas of employment law that were based on EU directives – working time and holidays, transfer of undertakings, discrimination etc – were unaffected. They remained in force and were interpreted by the courts in exactly the same way as they would have been if we had never left the EU. The only difference was that UK courts could no longer refer a case to the European Court of Justice – but that was something that only happened rarely in any event. It was all quite an anti-climax.

Then Liz Truss became Prime Minister and the Retained EU Law (Revocation and Reform) Bill was introduced by her new Secretary of State for Business – and renowned Brexiteer – Jacob Rees-Mogg. It proposed that all EU law that was implemented by Regulations (as opposed to Acts of Parliament) would be repealed at the end of 2023 unless a Minister specifically acted to retain it. This would have meant that TUPE, the Working Time Regulations and the Agency Workers Regulations along with a number of other measures would all disappear from the statute books on the same day. It was a dramatic prospect.

The day the Bill was first debated in Parliament however was also the day that Rishi Sunak became Prime Minister and Jacob Rees-Mogg returned to the back benches. The Government pushed ahead

with the Bill, but it always seemed likely that most if not all of the employment law affected by it would ultimately be retained. But while the Government gave assurances about its commitment to workers' rights, the theoretical possibility remained that there would be a mass repeal of key parts of UK employment law at the end of this year. Chaos loomed.

The Bill passed the House of Commons with a secure majority, but when it reached the House of Lords the Government announced a major U-turn. Instead of repealing all EU laws unless they were specifically retained by a Minister, the emphasis was switched. The Bill was amended so that only specified pieces of legislation would be repealed, with Ministers given the power to make further repeals in the future if they so wished. TUPE was saved!

The Bill now includes a list of literally hundreds of EU measures that will be scrapped when it comes into force, but none of them deal with employment law. After a rather fractious 'ping pong' stage where the Lords repeatedly pressed for more restrictions on a minister's power to repeal EU-based regulations in the future, the Bill has finally been passed and is ready for Royal Assent.

The Government's change in approach does not mean that the end of 2023 will see no changes, however. While the mass repeal of EU laws will no longer take place, the Bill still makes a change that may prove to be both important and dispiriting. The Government has stuck to its promise that from the end of 2023 the principle of the supremacy of EU law will no longer apply. This means that if there is a conflict between UK law and EU law, it will be UK law that prevails.

That sounds sensible given that we have now been out of the EU for more than three years. And for most employment law it will make little difference. By and large when UK law has been found to fall short of what an EU directive requires then domestic law has been amended to take account of this. The Transfer Regulations are a good example. The version we have today – amended in 2014 – is strikingly different from the original Regulations introduced in 1981.



But there is one area of UK employment law where the Regulations themselves were not amended to keep up to date with rulings from the European Court of Justice. That is the provisions of the Working Time Regulations dealing with annual leave and holiday pay. When the European Court ruled that those on long-term sickness absence could carry over their holiday entitlement into the following holiday year, or that holiday pay had to include all the allowances and payments that a worker would 'normally' receive, the UK courts just took that on board and interpreted the Regulations accordingly. Sometimes there was no need for a ruling from the European Court at all. It was the EAT that decided that regular overtime had to be included in the calculation of holiday pay – but it based that decision on its understanding of the requirements of the Directive, which it accepted had to override the ordinary meaning of the Regulations.

When the principle of the supremacy of EU law ends on December 31st, what will happen to the established rules on the calculation of holidays pay? Potentially the whole area will be shrouded in uncertainty until those issues can be decided by the courts all over again – a process that would take years. Nobody should relish that prospect.

There is something, however, that the Government can do to avoid that uncertainty. It can re-draft the provisions on annual leave in order to provide clarity. If the Regulations are amended then there will no longer be any need to consider the impact of EU law, the new Regulations can stand on their own. If it is done properly then the treatment of sickness absence, overtime and other allowances can all be clarified and there will be no need to re-run the cases that led to the current position.

There are signs that the Government will do this. It is already consulting on allowing employers to pay 'rolled up holiday pay' and on replacing the current annual leave entitlement of 4 weeks and the additional leave entitlement of 1.6 weeks with a single entitlement to 5.6 weeks' leave. When it brings these measures in (the consultation closes on 7 July) it is really important that it takes the opportunity to clarify how annual leave and holiday pay will be calculated once the Retained EU Law Bill comes into force. If that isn't done by the end of the year, then the whole question will be left in limbo.

National Developments

National Pay & Conditions

GMB's Plans for Balloting on Green Book Pay National Pay Offer

Earlier this month GMB informed the National Employers that it intends to conduct "a series of targeted disaggregated strike ballots for GMB members who are LGS 'Green Book' employees. We are proposing to open the ballot in September. Discussions are ongoing regarding Craft 'Red Book' employees; we will confirm as soon as possible."

The timescale indicated by GMB is clearly disappointing, making it clear that the negotiations this year will be protracted. We will ensure that we keep you all up to date with any developments.

Notices of Ballots from Unite

Unite's ballot of its members in councils and schools is taking place between 13th June and 28th July. The ballot for industrial action relates to Craftworkers and Local Government Services (Green Book) staff. The ballot is being carried out on a disaggregated basis, which means strike action could be taken at each individual council/school where a turn-out of over 50 per cent is secured and if members vote in favour of strike action.

Summary of the Timetable on Ballots and Industrial Action

We provided information to you on Unison's ballot in regular updates and previous editions of the HR Bulletin. It may therefore be helpful to provide a summary of the timelines for all the ballots and this is set out below:-

Unison's ballot closes on 4th July and is a disaggregated ballot, so if the threshold is reached in that particular council and the vote is in favour of industrial action, this could take place in August in councils and September in schools.



Unite are balloting their members that fall within Green Book as well as Craft and this closes on 28th July.

GMB is planning targeting ballots but won't start these until September for Green Book staff. They haven't confirmed so far what they will do regarding Craftworkers.

From this, you can see that the potential time that industrial action may take place would be in August for Unison members.

Please let us know when you are notified with the outcome of the ballot for your organisation so that we can understand the impact for the region overall and feed into our national colleagues, as well as enabling us to provide support and enable councils affected by industrial action to share approaches.

Soulbury Officers – AEP Ballot

The National Employers remains in dispute with the Soulbury Officers' Side on pay for 2022.

The National Employers made an offer of £1925 last November and we have been unable to reach an agreement to date. We now understand that the Association of Educational Psychologists (AEP) has decided to progress to a formal ballot for industrial action. Notices will be sent to employers as required by the legislation in due course. Other unions (NEU and Prospect) on the Officers' Side will continue to consider their next steps in furtherance of this dispute. The National Employers' will be meeting shortly to consider next steps.

Youth and Community Workers

The National Employers have yet to receive a pay and conditions claim from the Staff Side Trade Unions for 2023.

Pay Award for Coroners

At the beginning of the month, we were notified that agreement has been reached on a pay award for Coroners with effect from 1st April 2023. We sent a copy of the Joint Circular from the Joint Negotiating Committee for Coroners' that outlines the agreement to relevant local authorities.

Fire Service Brigade Managers

The National Joint Council for Brigade Managers, which covers senior managers in fire and rescue services, has reached agreement to apply a four per cent increase on basic pay with effect from 1 January 2022 and a 3.5 per cent increase on basic pay with effect from 1 January 2023.

Burgundy Book Updated to Reflect Legislation and to Clarify Terminology

The Burgundy Book sets out the conditions of service for school teachers in England and Wales and has recently been updated. The Book is a national agreement between the five teacher unions and the national employers (NEOST). The main provisions relate to notice periods, sick leave and pay, and maternity leave and pay. The 2023 edition updates legislation and clarifies terminology without amending the application of any of the terms and conditions of employment contained in the Burgundy Book.

Employment Law Developments

Three Private Members' Bills that have been going through Parliament have now received Royal Assent.

The Protection from Redundancy (Pregnancy & Family Leave) Act 2023 will come into force on 24 July 2023.

The Carer's Leave Act, providing the right to a week's unpaid leave, is reported to be implemented during 2024.

The right to neonatal care leave and pay under the Neonatal Care (Leave and Pay) Act 2023 is not likely to be introduced until April 2025, to allow time for DWP system changes and the introduction of secondary legislation.

Apprentice of the Year 2024 – Save the Date!

The 2024 Local Government Apprentice of the Year event will be held on 21st and 22nd May 2024.

