



# HR in the East Midlands

May 2020

This month's edition includes news and information on workforce issues beyond COVID-19. Darren Newman's article gives an update on recent employment law changes to make sure that we haven't missed anything while our attention has been focused on the pressing challenges we have faced. National news includes updates on pay negotiations.

## Refocusing Key Work Themes

We have refocused our key areas of work for the coming year to reflect the new priorities the sector is facing and make sure our support to you is relevant and meets your needs and interests. Our themes for 2020 are:-

- **COVID-19 Response, Recovery & Planning**
- **Change and Transformation**
- **Wellbeing**
- **Attracting & Developing Talent**
- **Pay and Rewards**

## COVID-19 Updates

Thanks for your positive feedback on our support to you with the implications of COVID-19. We hope our weekly updates remain useful. You can access the updates issued this month [here](#). The results of the first national workforce COVID survey are also available here: [report](#). You can continue to email Sam Maher and Lisa Butterfill with any COVID-19 related issues or queries.

## Reminder Alert!

**Trade union facility time data: reporting deadline extended**



In light of the current challenges the public sector is facing due to COVID-19, the deadline for reporting [trade union facility time data](#) has been extended from **31 July to 30 September 2020**. The online reporting service will launch on GOV.UK on **3 June**.

## Projects with Local Authorities

During May we have continued to provide support to councils, adapting arrangements to fit with the current social distancing restrictions. Projects have included:-

- Disciplinary investigation
- Harassment and bullying investigation
- Mediation

**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

In this month's L&D section we've focused on sharing with you our plans for 2020 and what we have coming up.

## Coaching and Mentoring Virtual Support

For the rest of 2020 we are moving our Coaching support online and have an exciting programme on offer, starting with a bespoke session developed by Dr Suzanne Ross on 'How a crisis influences behaviour'

### How a crisis influences behaviour

When we are tired or under stress our behaviour can change. We can over-play strengths, demonstrate lowered emotional intelligence, and use 'back up' behaviours that are somewhat dysfunctional. During Covid-19 we've seen examples of these behaviours. They are amplified by 'social proof' as we collectively navigate our way through one of the greatest crisis we've faced in recent history.

In this session we explore how Covid-19 may impact coachee behaviour.

- Covid-19 as a 'crisis': how do we typically react and respond in crisis?
- Emotional hijack: how a crisis impacts our emotional intelligence
- Overplayed strengths: too much of a good thing
- Social proof: How during times of crisis we are so influenced by others, and why this matters
- Helping coachees build resilience
- Maintaining perspective: Helping coachees to retain a sense of realistic optimism and reframe.

The date will be confirmed in due course and we will share information with colleagues.

**Coaching Supervision** (virtual) will take place on 11 September at 12:30. For more information on our coaching support - [Kirsty.lowe@emcouncils.gov.uk](mailto:Kirsty.lowe@emcouncils.gov.uk)

## Our Summer Virtual Networks

In our April 2020 edition of the HR Bulletin we shared with you our virtual networks that have taken off. Feedback from the virtual network with democratic services colleagues was excellent, with participants finding the opportunity to share approaches particularly valuable within the context of working more remotely and facing new challenges.

Over the summer months we will host a variety of virtual networks, again providing a space to showcase innovation and share learning. We're expanding our offering too, introducing a virtual Learning and Development network.

### Learning and Development network – 25 June.

This online L&D network will provide colleagues with an opportunity to share what they have been working on and to learn from each other. In our recent conversations with L&D colleagues across the region we heard of some great examples of activities, including: team coaching and resilience sessions for key worker groups within councils, work with mental health first aiders to support them with recognising and signposting relating to COVID-19, and how teams are incorporating social connections to their team meetings.

Our other virtual networks coming up are:-

- **Democratic Service Colleagues** - 16 June
- **Scrutiny practitioners** - 26 June
- **Cyber Security Officers** - enabling IT and Cyber Security colleagues to share the technical challenges councils face when moving to remote working at speed - 8 July
- **Performance Management** - 3 July

Contact [Kirsty.Lowe@emcouncils.gov.uk](mailto:Kirsty.Lowe@emcouncils.gov.uk) for more.

### Contact Details

For further information about any of our work please contact the Team. Either call 01664 502 620 or email:-

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# In Deep with Darren

## Darren Newman this month focuses on recent employment law changes

### Shall we talk about something else?

There is of course much more to say about the employment law implications of coronavirus and lockdown. But what would we be talking about if the pandemic had just never happened?

In April a number of changes were made in employment law that got almost no attention because we were all thinking about something else. None of them are game-changing, but they are worth being aware of.

The right to parental bereavement leave, for example, is now in force. This modest right to two-weeks' leave paid at the lower rate of SMP (£151.20) – will, thankfully, be rarely used. I would also expect councils to treat those employees who do need to take it much more generously than the law requires.

There has also been a small change in the tax treatment of termination payments. Compensation for loss of office is generally tax free for the first £30,000. Beyond that the payment was subject only to income tax. From 6 April, however, that part of the balance above £30,000 will attract NI contributions of 13.8%. This is the employer's contribution that must be paid through PAYE so it doesn't affect how much the employee receives – but it does mean that higher settlements are now even more expensive.

Compensation limits increase every April. They do this in line with inflation, which is annoying because it makes the figures quite fiddly. I can remember when the maximum compensatory award for unfair dismissal was a round £10,000. Yes I do feel old. The new figure is the lower of one year's pay or £88,519 which is not a figure I will be able to remember. The limit on a week's pay for the purposes of a statutory redundancy payment or the basic award for unfair dismissal also went up in April from £525 to £538. As a side note, when the Redundancy Payments Act was introduced in 1965 the limit on a week's pay was £40. If that had kept pace with inflation the limit on a week's pay

would now be £780 and the maximum redundancy payment would be £23,400 rather than the current maximum of £16,140.

For Agency workers, the Swedish derogation has now been abolished! Don't worry if you've never heard of the Swedish derogation, I've yet to find a local authority that actually took advantage of it. Essentially it was a provision in the Agency Workers Regulations that denied agency workers a right to equal pay with directly employed staff if they were given a full contract of employment by the agency and guaranteed 50 per cent of their average earnings in any period when there was no assignment for them. It was initially expected that this measure – modelled on the way in which agencies generally operated in Sweden – would be rarely used. In fact it was adopted by many agencies who were providing workers for one big client who guaranteed a steady stream of work so that in reality the workers always had an assignment to go to, albeit a poorly paid one. Quite rightly this loophole has now been removed.

Probably the most substantive change made in April is an extension of the right to a written statement of terms and conditions. This is a change that emerged from the Good Work Plan that emerged from the Taylor Review commissioned when Theresa May was Prime Minister. Much of the focus of that Review was the precarious position of those who were not on standard contracts of employment and so it was recommended that those who were workers rather than employees should be entitled to a written statement of terms and conditions of employment. To protect those on short-term contracts, the one-month qualifying period for the right to a statement was also abolished and instead of employers being given eight weeks to provide one, they now have to be given on day one of a contract. Many casual workers who only work intermittently will therefore be entitled to a new written statement every time they come into work.

There were also some changes made to the details of the particulars that need to be given. Specifically the statement must set out any terms and conditions relating to the days on which the worker may be required to work and where this is variable, set out the way in which the variation will be determined. The statement must also set out any terms relating to a



probationary period and any training entitlement that the worker will have.

There is a sleight of hand here. On the face of it these changes give vulnerable workers more certainty and clarity over their hours of work, how secure that work is and what training is available. But the change does not require employers to improve the terms they offer workers – just describe them accurately. The employer must set out any terms related to these issues – but that does not mean that there must actually be any. So while a written statement must refer to applicable disciplinary procedures, that does not mean that they must now apply to workers. The statement must refer the individual to a person they can apply to if they have a grievance – but that does not mean that workers must be covered by the same grievance procedure that applies to employees.

And finally we come to holiday pay – an employment law topic that refuses to just lie still. When calculating holiday pay, we are used to looking at a 12 week average for those employees whose pay varies from week to week. The problem with that is that it might not be properly representative of the employee's overall wages. From April, however, the average must be calculated over a 52 week period - or from the employee's start-date if he or she has yet to work that long. One quirk of the calculation is that weeks in which no pay is due do not count towards the average. So for a term time only casual worker the employer will need to go back much more than a year (though the Regulations say no more than 104 weeks) before arriving at right figure. We are still waiting, incidentally, for the Supreme Court to decide whether or not it should hear the employer's appeal in the case of *Brazel v Harpur Trust* in which a term-time only casual music teacher was held to be entitled to holiday pay based on what was then the 12-week average rather than the often-used shorthand of 12.07% of pay. It is almost comforting to know that when the coronavirus crisis has passed, we will still have the same old issues with annual leave and holiday pay to return to.

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

## National Developments

### Pay Negotiations

We have set out below a recap and update on the latest developments with the pay negotiations for the main negotiating bodies

Following a further round of consultation with authorities in March, the National Employers made an improved, final offer of a 2.75% increase from 1 April 2020, plus an additional one day's leave which would increase the minimum entitlement from 21 to 22 days per year (plus public holidays). A copy of the circular setting out the offer is available [here](#)

Since then, trade unions and employers have exchanged correspondence on the negotiations. In summary, the unions expressed disappointment at the nature of the offer being final, and therefore curtailing any further negotiations, and also requesting a joint approach to Government for more funding to support pay for the sector in recognition of its contribution to the COVID-19 response.

The respective LGAs have been considering this last point, with the Employers urging the unions to accept this offer as it stands and as being separate to any joint approach to Government.

On 18<sup>th</sup> May 2020, the LGA's Chairman responded to the request for joint representations to Government, rejecting that approach in order to focus its lobbying of Government for additional funding for the sector to save services and jobs. Copies of the correspondence between unions and the Employers are available [here](#)

On 20<sup>th</sup> May the unions wrote to express their disappointment.

We are therefore waiting for the unions to formally respond to the offer as made, with the Employers urging agreement. We will keep you posted of any new developments as soon as they arise.



## Youth and Community Pay

The Youth and Community Trade Unions submitted a pay claim for a 10% increase on all pay points for 2020 and removal of the bottom two pay points on the pay spine. In addition, the [claim](#) includes elements around work-life balance. The National Employers will now undertake a consultation before responding to the claim. EMC will be contacting councils in the region to support the consultation process.

The National Youth Agency has undertaken a review of the career pathways for level 2 and level 3 diplomas and certificates. The JNC for Youth and Community Workers is working with the NYA to update the Qualifications Framework that applies to Youth and Community workers as well as the MoU between the Employers' Side and Trade Unions.

## Soulbury Pay Negotiations

The Soulbury Trade Unions have submitted a pay claim for a 7 per cent increase for 2020; a review of the Soulbury pay spines and wider consideration of their workload and terms and conditions. The National Employers will now undertake a consultation before responding. EMC will be contacting councils in the region to enable them to respond to the consultation.

## Coroners' Pay 2020 JNC Circular 63

A reminder that a 2% uplift on pay ranges and rates with effect from 1 April 2020 on coroners' pay was agreed in JNC circular 63 (20 November 2018) the details of which can be found on the circular here: [webpage](#).

## Apprenticeships

### LGA Apprenticeship Newsletter, May 2020

The latest LGA newsletter can be found [here](#). This month it includes:-

- COVID-19 Update
- Expiry of Levy Funds: No Progress on Suspension
- Apprenticeship Frameworks: Government confirms there will be no extension to withdrawal dates
- IfATE List of Standards with COVID-19 Flexibilities
- LGA COVID-19 Apprenticeship FAQs
- Offer of support to the Sector for 20/21
- Senior Leader Level 7 Apprenticeship Consultation
- Special Educational Needs Coordinator (SENCO) Level 7 update
- Town Planning Officer Level 4 update
- Public Health Practitioner Level 6: Implementation Guidance Published
- Apprenticeships in the News

