

Merry
Christmas
and Happy New Year!



HR in the East Midlands

December 2023

We are taking this opportunity pass on our best wishes for Christmas and 2024. This month's bulletin provides your one-stop shop of regional and national news and we are featuring the key learning and development event for 2024 – the Challenge, which is back following the success of the event this year. Darren Newman's article focuses on changes to legislation on holiday entitlement and pay calculations and provides advice to councils.

Regional Employers' Board and Joint Council Updates

The Regional Employers' Board and Regional Joint Council met this month. The Board's meeting included a presentation and discussion on **apprenticeships**. EMC is supporting and endorsing the LGA's lobbying of Government to improve the apprenticeship regime and help avoid the continuing underspend of levy.

The Regional Joint Council agreed to **uplift caretakers' letting fees** by 3.88% with effect from 1st April 2023 – information will be circulated to councils with the revised rates. The Employers' Side of the Joint Council urged the Union Side to co-ordinate its consultation activities in relation to **next year's pay negotiations** to avoid the prolonged timescales that were experienced this year. The Joint Council considered the issue of **work intensification**, following the TUC's report published in the summer. The meeting was joined by Cllr Mohammed of Nottingham City Council who gave an

excellent on work to support **community cohesion** and the impact that can be made at the workforce level.

Xperthr Regional Deal

Just a reminder that you can access Xpert HR's online information system with a significant discount through the regional deal negotiated by EMC. 33 authorities signed up to the deal last year and it is now time to renew or join for April 2024-March 2025. The costs are:

- **1st User Licence (including the Public Sector Access Fee): £999.00 + VAT (saving 50%)**
- **Subsequent Licences £837.00 + VAT per licence (saving 58%)**
- **Optional legal advice service: £704**

To continue to subscribe to the regional deal or to join in, please email Mila by **Friday 26th January 2024** advising how many licences you require.

mila.pereira@emcouncils.gov.uk

Projects with Local Authorities

During December, EMC has supported councils with:-

- Restructuring support
- Wellbeing survey and action plan
- Independent investigations

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

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Learning & Development

East Midlands Challenge is back on 23 April 2024!

Following the success of this year's East Midlands Challenge, with over 100 people participating, we have opened bookings for the Challenge in 2024. The event will take place once again at Leicester Racecourse.

Last year the Challenge Director, Richard Wills commended everyone involved saying:

“The East Midlands Challenge has had the highest calibre of teams and delegates taking part that we've ever seen in all of the Challenge series”.

The purpose of the East Midlands Challenge is to give aspiring senior leaders of the future an opportunity to test their ever-developing skills in a real life but safe environment. Taking on the role of senior management, teams of 6 people are required to prioritise a series of challenges, gaining exposure to issues outside of their normal work and expanding their skill set in the process.

Previous participants enthused about the value this event brought to their personal development, highlights of which are below. For all the feedback from the previous event please click [here](#)



Beth Goodman • 2nd
Leisure Officer
1w • 🌐

What a day! Ask me to sum it up in 3 words and you get: chaotic, eye-opening and a whirlwind. We had no idea until the end how we performed as a team. A team who have never worked together before, yet we can be so proud of our achievements.

- Winners - Communications
- Top 5 - Best Overall Team
- Top 3 - Best Behaviours

Thank you to [South Kesteven District Council](#) who put their faith in us to compete and develop as a team, and a huge thanks to [#trisectionchallenge](#) for the well organised event and day at [Leicester Racecourse!](#)

#teamwork #southkestevendistrictcouncil #trisectionchallenge #communications #event #thankyou #team



Sally Moseley from Oadby and Wigston BC wrote a fabulous article for their staff newsletter saying:

“We all thoroughly enjoyed the day and felt it really helped with our own personal development, networking, and decision-making skills along with lots of laughs throughout the day... “The Challenge is a great opportunity to gain exposure on what it’s like to be a member of SLT by taking over a ‘Council’ that has had its previous SLT “removed”.

Who can enter?

The Challenge has been developed so that teams of 6 people from the public, private and voluntary sectors can compete against each other on a level playing field so please feel free to share with other partner organisations, e.g., Health, Emergency Services and Housing in particular, who you think may enjoy and benefit from the challenge.

Key Information and How to Book

- **Date** – 23 April 2024
- **Time** – 9:00 – 20:00
- **Cost** – early bird rate of £1750 before 9th February 2024, then £1995 (subject to VAT) until the closing date on 22nd March 2024.

For more information about the 2024 East Midlands Challenge and how to book visit [here](#).



In Deep with Darren

This month, Darren Newman's article looks at new annual leave regulations and how legislation that was intended to simplify how annual leave entitlement and pay is actually quite complicated.

From 1 January 2024 the Retained EU Law Act removes the 'interpretive effect' of EU law. This has a significant impact for employers because many of the rules that govern the right to annual leave and holiday pay rely on case law from the European Court of Justice. If we no longer interpret the Working Time Regulations to comply with those decisions, then issues such as the inclusion of overtime in holiday pay and the effect of long-term sickness absence on holiday entitlement are thrown into doubt. To avoid serious confusion the Government needed to issue its own Regulations effectively replacing the case law that will no longer be applicable.

Following a consultation over the summer the Government has now introduced The **Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023** (catchy name) that will come into force on 1 January 2024. The Government claims that the Regulations will 'Simplify annual leave and holiday pay calculations'.

That is not what they do. The Regulations are complex and some of the drafting leaves a lot to be desired. When they come into force there will be whole new areas of doubt and uncertainty to grapple with.

Contrary to what was originally proposed, a distinction will be retained between the entitlement to 4 weeks' annual leave and the entitlement to 1.6 weeks' additional leave. In calculating holiday pay for the four weeks' annual leave, employers should continue to include all payments – including overtime, commission, and other allowances – that are usually paid to the worker. This does not apply to the 1.6 weeks of additional leave. So different rates of holiday pay are due for ordinary annual leave and additional leave. Holiday pay for annual leave must include any payments 'intrinsically linked' to the performance of the employee's tasks with any such payments made

over a 52-week period reflected in an average weekly amount. I think this is a mistake in the drafting, but it will come as a shock to employers who currently award large one-off bonuses to employees who meet their targets. It will also affect local authorities whose employees do not 'normally' get paid overtime or other allowances but will do so at certain points in the holiday year.

A key difference between annual leave and additional leave is that whereas the principle with annual leave is 'use it or lose it', any part of additional leave may be carried over if that is agreed in writing or as part of a collective or workforce agreement. This distinction is preserved in the new Regulations.

However, there is a new provision for both annual leave and additional leave allowing untaken leave to be carried over into the next holiday year (and no further) where the worker is prevented from taking the leave because they are on 'statutory leave'. This covers maternity, adoption and shared parental leave. It also covers such things as parental leave, paternity leave, parental bereavement leave and carer's leave.

Then there are provisions for the carry-over of annual leave that do not apply to additional leave. In line with current case-law, a worker prevented from taking it because of sickness will be able to carry over their untaken leave to the next holiday year – although it must be taken within 18 months of the end of the holiday year in which it is earned. This does not apply to the 1.6 weeks' additional leave.

Annual leave (not additional leave) will also be carried over if the employer refuses to 'recognise' the worker's right to paid annual leave or fails to give the worker a reasonable opportunity to take that leave. The employer must also inform the worker that any leave not taken by the end of the leave year will be lost, and if it fails to do this in 'any leave year' then untaken leave will automatically carry over. So it seems that it will not be good enough for the need to take annual leave to be explained in an employee handbook - there needs to be a specific reminder of that each leave year.

The biggest innovation in the Regulation is the creation of two new categories of worker with a different holiday



entitlement, calculated in a completely different way - 'irregular hours workers' and 'part year workers'. The aim of these changes is to solve the problems created by the Harpur Trust case. I think the reforms do largely achieve that – but at the expense of creating some additional issues that employers will have to grapple with.

Irregular hours workers are workers whose hours of work in each pay period over the course of a year are 'wholly or mostly variable'. This clearly covers casual and those on zero hours contracts. But what about workers with normal working hours who also work a lot of overtime? Their hours of work certainly vary over the course of a pay period. Are their hours 'mostly variable'? It is astonishing that this vague phrase was considered an acceptable way of defining a new category of worker, but here we are.

Part-year workers are workers who are only required to work for part of a year and for at least one week in the course of each year they are employed they are not required to work and for which are not paid. This obviously covers term-time only workers – and it appears to cover them even if they are paid in 12 monthly instalments. Those workers may be paid the same amount every month – but there are certainly weeks in the year 'for which' they are not paid. Again the ambiguity here is infuriating.

Irregular and part-year workers do not get 5.6 weeks' holiday per year – at least not as such.

From the first holiday year that starts on or after 1 April 2024, these workers will accrue leave as the leave year progresses at the rate of 12.07% of the number of hours worked - to a maximum of 28 days of leave. Let's not worry at this stage about the fact that there is no explanation of how many hours of holiday amounts to 28 days! Their leave accrues at the end of each pay period. Which means that some of their leave will only accrue to them on the last day of the holiday year. When this happens, they will have no right to carry it over. Another drafting error I think, but one we are currently stuck with.

Given that their holiday entitlement is expressed in hours rather than weeks or days, it is not obvious how the practical arrangements for annual leave for these workers should be made. If the worker takes a week

off – how many hours will that amount to? The answer may be clear for a part-year worker, but less so for a worker with 'mostly variable' hours. It also appears that their holiday pay has to be calculated on the basis of an hourly rate derived from an average hourly rate over the previous 52 weeks. Where a pay rise has been awarded during the year that means that the hourly rate they receive in holiday pay will be lower than the rate they currently get when at work.

One change that genuinely does make things easier is the legalisation of rolled-up holiday pay. Irregular hours or part-year workers can simply be paid 12.07% on top of their earnings in each pay period and as long as that is clearly shown on the payslip as an additional amount, then that is sufficient. Bearing in mind the additional complexities that the Regulations create, that will seem an attractive option for many. But employers need to be careful. Rolled up holiday might be lawful from 1 January but may not be consistent with the contractual entitlement of employees. Care should be taken before simply switching to this approach.

In my view, these Regulations are so badly drafted and have so many issues that I don't think they can last. At some stage they will need to be revoked and replaced with something drafted with more care. But those are matters for next year – it is clear that they will come into force as currently drafted. For now, however, I would caution against employers changing anything in their current arrangements to reflect the new rules.

National Developments

National Pay Negotiations

Agreement has been reached by the **Soulbury Committee**, which is the bargaining group that covers employees such as educational psychologists. The circular will be shared when it has been published.

The agreements relate to pay negotiations for a pay award in 2022 and 2023. The agreements are in line with the pay awards for the Green Book employees in those years in terms of a flat rate increase of £1925 to pay in both years and an increase in allowances of 4.04% in 2022 and 3.88% in 2023.



The JNC for Youth and Community Workers has reached an agreement earlier this month on a pay award for 2023. The agreement is for:-

- an increase of £1925 on all spinal column points on the Youth and Community Support Worker Range and the Professional Range from 1 September 2023.
- An increase of 3.88% on the London Area Allowances and Sleeping-In-Duty Allowance from 1 September 2023.

A copy of the circular with the revised pay points can be found here: [Other Negotiating Groups \(emcouncils.gov.uk\)](https://emcouncils.gov.uk)

Changes to Check Off Arrangements

The Government will be introducing restrictions on “check off” arrangements in the public sector, which includes councils, fire and rescue authorities, and schools. “Check off” is the phrase used to describe the facility for employees to pay their union subscriptions via payroll.

These powers were contained in the Trade Union Act 2016, but had not been implemented. The new provisions will come into effect from 9th May 2024, following their progression through Parliament.

The new provision means that public sector employers will only be able to deduct trade union subscriptions from workers’ wages via a check-off arrangement where:

- The workers have the option to pay their subscription by other means; and
- The union makes reasonable payments to the employer which are “substantially equivalent to the total cost to public funds of making the deductions.”

If an employer can’t reach agreement with the union on what the reasonable payment would be, then the employer will have to stop making the deductions.

We are waiting for the publication of guidance from the Cabinet Office.

National Apprenticeship Survey

We are encouraging you to respond to the national apprenticeship survey that is being currently conducted by the LGA.

For the second year running, the LGA will be providing individual reports for every council that takes part. The reports will cover key benchmarking data and a Maturity Model assessment to help you track your progress on apprenticeships and help with identifying future focuses and areas for improvement.

Last year 172 councils took part – a new record turnout – and we are hoping that councils will once again take part in big numbers, which helps us ensure that the survey data is robust and gives us a great baseline to work from in discussions with government about improvements we want to see to the system.

The survey will close at 5pm on **Wednesday 10 January 2024**.

There will be a webinar in early March covering the national results, and individual reports will be issued to all participating councils by 31 March 2024.

