

South East Employers Human Resources Bulletin

Issue 11 March 2008

Pay

On 6 March the UK's Coastguard service went on strike over its pay, the PCS saying that pay levels were now "way behind" other emergency services. The French Navy took responsibility over the English Channel for the day.

Local government's problem will be reaching an agreement against the background of rising inflation. The all-items retail prices index rose by 4.1 per cent in the year to February 2008, unchanged from 4.1 per cent in January. But in the year to February 2008 the Consumer Price Index (CPI) rose by 2.5 per cent, up from 2.2 per cent in January. The retail prices index excluding mortgage interest payments (the underlying rate or RPIX) rose by 3.7 per cent in the year to February 2008, also up from 3.4 per cent in January. The whole economy average wage review figure is currently +3.4 to +3.5%, and in the private sector reportedly +4.1% (IDS).

Our Unions will focus on low pay; quoting the minimum NHS rate of £6.23 – local government's minimum national spinal column point gives £6 per hour.

The Local Government Unions in Scotland have been offered by the Employers 2.5% in each year of a three year agreement 2008 - 2010.

Pension

On 6 March, the Fire Brigade Union and DCLOG were in court as the former sought judicial review of the changes to ill-health retirement provisions in the services' pension scheme. These changes were not dissimilar to those made to the LGPS Scheme – though more frequently used because of the nature of the work (and allegedly more frequently abused).

Corporate Manslaughter

The Corporate Manslaughter and Corporate Homicide Act 2007 comes into force on **6 April** 2008. South East Employers have recently focused on the Act in our Health and Safety training programme. Our partners, Warner Goodman comment as follows in their Bulletin.

The Act "*is intended to make it easier for larger organisations to be successfully prosecuted, where a corporate management failing has led to death. It introduces a new test; that of a substantial senior management contribution to the company's breach of duty. The offence applies to all corporate bodies. An organisation will be guilty of the new offence if the way in which its activities are managed or organised (by its senior management) causes a death and amounts to a gross breach of a duty of care to the deceased. There is **no new individual liability**. The introduction of the new offence is an opportunity for employers to satisfy themselves that systems and processes for managing health and safety are adequate. Key steps to avoid the risk of liability under the new legislation may include reviewing employment policies and procedures*". There is also, of course, risk to our customers in some service delivery – for example leisure facilities, particularly swimming pools. Warner Goodman will always advise and represent a local authority – telephone 02380 717717 or e-mail to enquiries@warnergoodman.co.uk

Ms Mayr's pregnancy

Was Ms Mayr pregnant or not? She said she was when her employer dismissed her since she was at an advanced stage of IVF treatment. But the fertilized eggs had not yet been implanted. So, "not pregnant" said the ECJ. And not automatically unfair. However the ECJ still did give Ms Mayr the protection of Sex Discrimination, so that *Steeleslaw* comments "*what remains unclear is whether it is unlawful to treat a woman less favourably for a reason related to IVF treatment (e.g. the amount of time off) rather than the IVF treatment itself*". It is likely that it would be. So treat with caution employees undergoing IVF treatment. (*Mayr v Backerei und Konditorei Gerhard Flockner OHG*)

That EU directive! First Age, now sexual orientation

We are awaiting a ECJ decision as to whether HMG has correctly implemented in the UK the EU Equal Treatment Directive – that outlaws discrimination on the grounds of age, religion or belief, disability or sexual orientation. Age is being looked at through the *Heyday* challenge and in every ET in the land as a result all Age Discrimination cases are suspended. Now, we are unsure about sexual orientation. This is so even with the proposed change to *the Sex Discrimination Act 1975* which resulted from the case of *EOC v Sec. of State for Trade and Industry*. That change will widen the definition of sexual harassment to be “unwanted conduct related to the sex of a person”.

Now the case of *English v Thomas Sanderson Blinds Ltd* has been appealed after the EAT said “on the grounds of sexual orientation” in the Regs did not properly implement the Directive. Mr English had bought a claim alleging he was subject to homophobic abuse. The ET and the EAT said no, he was not, but found a gap between UK Regulations and the EU Directive. Can someone ask Parliament for good, well drafted law, please.

Equal Pay latest

Cumbria County Council was facing 3,000 Equal Pay claims. The EAT published its judgment. Cumbria had relied upon “market forces” to justify differences in pay. The claimants all worked in care, cleaning and catering. The comparators worked in direct services – road workers, grounds maintenance, street lighting and painters. The latter of course were paid “bonus”. The EAT pointed out that these bonuses required “proper evidential basis” and that was not established. There was no evidence that the bonus increased productivity. So the Council failed to establish the required “genuine material factor” justifying the differential. The LGE draws our attention to the point that the EAT seemed to envisage that market research might have justified *some* of the differential. Its AB 535 gives detail. (*Cumbria County Council v Dow*).

Interestingly the claimants (on “White Book” terms) were citing as comparators men doing “work of equal value” but who were on Red Book” terms (that is, Craftsmen.) Nowhere (in the report) are different T&Cs seen as the complete justification for different pay levels. This suggests Cumbria - the one employer of both groups – could not plead different national agreements in support of un-equal pay. Regular readers will know that we eagerly await a authoritative judgment upon that very point.

JNC ends

The National Employers have pulled out of the Joint Negotiating Committee for doctors assisting local authorities with effect from **31 March 2008**. Thereafter, changes to fees that were previously negotiated within this body will be a matter for local determination.

SMP up

Statutory Maternity, Adoption and Paternity pay is £117-18 (up from £12-75) from **6 April 2008**. From the **same date** Statutory Sick Pay is £75-40 (from £72-55).

NMW up

Also up from October 2008 is the National Minimum Wage. It is to be £5-73 (up from £5-52). For 18-21 age group it is to be £4-77 (up from £4-60).

New IDeA publication

“Good leadership of people lies at the heart of successful councils” says the IDEA which has published something called (yes, really) **It’s people, stupid**. “In this publication, the IDeA speaks to seven elected leaders, from a variety of councils, on the ingredients of workforce success in their councils. The interviews highlight the importance of elected leaders playing a proactive but carefully judged role in workforce issues. They show that there is room for a range of styles and approaches, but all have in common the importance of engagement with workforce issues”. See www.idea.gov.uk
No, it’s not a word I would ever use either – well, not in connection with the Leader!

That new NJC for the Childrens' workforce

At the Brighton Conference of the Association of School and College leaders (ASCL), Ed Balls the Secretary of State said HMG will publish a Children's Workforce Action Plan for everyone who works with children and young people, "which will address issues such as quality and integration across the workforce". It's the "integration" bit that worries us The Chair of the LGA, Sir Simon Milton has written to the Schools Minister again expressing the LGA's continuing concern at HMG's proposal to set up a separate NJC for the Schools workforce, and saying that while the LGE staff is working to create it, there are going to be problems – like Equal Pay issues re-emerging. Nonetheless there is no indication that HMG is backing off. So, a separated national negotiating body for our schools' support staff by "the autumn of 2008". Sir Simon says a later date would be wise, given the questions. (Letter dated 10/03/08)

Stick to your proper hours

TUC named 22 February as another "Work your proper hours day" saying that 40% of women in their 30s are working additional hours for which no one is paying them. Take your lunch break, says the TUC, and leave at the time that you should. In short, get a life!

Blue sky thinking

British Airways is locked in a dispute with its pilots. Part of the reason that BA is launching subsidiary company *OpenSkies* is to break out of the restrictive practices the pilots have built up. Chief amongst these is the "seniority list". Each BA pilot's place on this gives him/her more (or less) control of his duties, roster choices, and therefore earnings (not to mention whether that tedious overnight stay is in the Caribbean or Outer Mongolia). Even though *Openskies* has as yet only two planes (as against BA's fleet of 300) the pilots feel sufficiently aroused as to be threatening to strike. BA would lose £25M per day of non-operation, just as it was looking forward to an operating margin of 10% and, of course, the new Terminal 5.

Day off follows IIP success

Our congratulations to Elmbridge Borough Council for its recent IIP assessment. The new IIP criteria calls for 196 points of evidence and having 140 in place is regarded by the Assessors as exemplary. Elmbridge had 172 in place. The result was an IIP assessment that was outstanding. The Council was so pleased that all the staff are to have an extra day of Annual Leave in 2008-09. Sounds like a good place to be!

Summary of Local Pay Settlements in South East 2008/09

Council	Date	% Increase	Council	Date	% Increase
Tandridge	1-Jan	2.72	South Oxfordshire	1-Apr	4.10
Waverley	1-Jan		Spelthorne	1-Apr	2.75
Aylesbury Vale	1-Apr	2.70	Surrey	1-Apr	
Buckinghamshire	1-Apr		Surrey Heath	1-Apr	
Canterbury	1-Apr		Swale	1-Apr	
Dartford	1-Apr		Test Valley	1-Apr	
East Hampshire	1-Apr		Thanet	1-Apr	
Epsom & Ewell	1-Apr	3.00	Tonbridge & Mall.	1-Apr	
Kent	1-Apr		Wealden	1-Apr	
Maidstone	1-Apr		Woking	1-Apr	
Mole Valley	1-Apr	3.00	Ashford	1-July	
New Forest	1-Apr		Dover	1-July	
Reigate & Banstead	1-Apr	2.40	Guildford	1-July	3.00
Shepway	1-Apr		Runnymede	1-July	
South Bucks	1-Apr		Rother	1-Sept	
AVERAGE = 2.93 %					

Dates for your diary

Employment Law Workshop, Redundancy & TUPE

This Workshop is aimed at HR specialists, and managers dealing with HR responsibilities.

Date: 30th April 2008
Venue: Newfrith House, Winchester
Time: 09:00am start

Cost: Members £95.00 + VAT (per delegate)
£80.00 + VAT (one colleague with delegate)
Non Members £110.00+ VAT (per delegate)
£95.00 + VAT (one colleague with delegate)

[Click here to view programme and book your place](#)

Exciting news about the Brief Bites of Health and safety!

A totally new flexible concept in Health and Safety training - Two popular and related topics presented in a one day course

“DOUBLE BITES OF HEALTH AND SAFETY”

OR

Should you prefer, pick the one topic that you believe is most relevant for you and just attend for that half day and pay the reduced cost accordingly!

[Click here to view programme and book your place](#)

The New Health and Safety Housing Group first meeting!

This meeting is open to anyone who has an interest in health and safety in social housing with the aim of providing a useful forum for discussion of relevant health and safety issues, exchange of ideas and to avoid individual housing providers 're-inventing the wheel'. If this is not for you but you know someone who may benefit from this meeting, please could you pass this on.

The programme and agenda is now on our website

[click here to view programme and book your place](#)

Contact details:

South East Employers, Newfrith House, 21 Hyde Street, Winchester, Hampshire, SO23 7DR
t: 01962 840664 e: oliver@seemp.co.uk

© South East Employers 2007, No part of this publication may be reproduced, stored or transmitted by electronic or other means except with the prior permission of South East Employers.