



The HR Edit

Series 1, Episode 2: Top of the query charts: Continuous Service and the Modification Order

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Helen:

Hello and welcome to the HR Edit. South East Employers brand new podcast taking a look at those common and often tricky HR questions.

The podcast is free to listen to, you can find it on Apple Podcast or wherever you get your podcast and on our website at www.seemp.co.uk/thr-edit, which is also where members will find any related resources mentioned in our episodes.

This podcast is not just at HR experts, but it can be a useful refresher. We have created it with managers in mind as well to help them navigate through some of the complexities of people management and reduce some of the potential pitfalls.

With me today we have our favourite HR expert, an employment and people insight manager at SE Michelle. Hi Michelle.

Michelle:

Hiya.

Helen:

And SEE's business development manager Sarah. Hiya Sarah.

Sarah:

Hi Helen, yes thank you. We are talking about the modification order and continuous service, which are two of our most queried things or topics. We get a lot of hits on our website for this, and we get a lot of people from all over the country actually, asking us how it affects them, what it means for their contracts. And we do send these directly to our HR guru, who is Michelle. Michelle, welcome to the podcast.

Michelle:

Thank you very much Sarah.

Helen:

Right, let's jump in with our first question. Michelle, what is a modification order?

Michelle:

So the modification order is actually derived from the redundancy payments, continuity of employment and local government etc, modification order of 1999. It essentially makes any employer listed in schedule one or schedule two of the order and associated employer. This directly affects continuous service for those employees who are being made redundant from one of the bodies on the order. But it also affects some contractual entitlements as well.



Sarah:

So who's covered by the modification order, then Michelle, and does it relate specifically to sort of local government/public sector?

Michelle:

So the fundamental principle is that if an employer carries out business that at one point would have been delivered by a local authority, it's probably a modification order employer. So all councils, and that includes parish and town councils that will go up to Unitaries and Counties, schools and academies, universities that were originally polytechnics, and police support staff are all included in that modification order.

People who are uniform to police officers, who work for central government, so to civil service, and water bottle authorities are not covered though. They have their own continuous service arrangements.

Helen:

Thanks Michelle. So that's modification order. What about continuous service? Can you explain what that is for us?

Michelle:

So continuous service is actually defined in the Employment Rights Act of 1996. And there it states that a week of service is a week, specifically Sunday to Saturday, in which a person is engaged to work, whether or not they are actually undertaking work during that week. So as long as they're engaged under a contract to employment, that is considered to be a working week. This is why quite often councils tend to record the last day of service as the Sunday, rather than the Friday, which would be their last working day. It simply means that because they are under contract on that Sunday, that week, Sunday to Saturday, they have been engaged to work, and therefore the employee can take some time off between ending one role and taking up the next without breaking their service.

So an example of this. Let's say Charlie resigns from Council A to take a job at Council B. Their last working days Friday, the 31st of March 2023, but Council A records Charlie's last day of service as Sunday, the 2nd of April. This means that Charlie will have been working for Council A during the week of Sunday, the 2nd to Saturday, the 8th of April, and provided Charlie's contract with Council B, starts no later than Saturday, the 15th of April. Charlie will not have a breaking continuous service, full redundancy and other contractual rights.

Sarah:

So does that mean, Michelle, that they can only have a week break?

Michelle:

Yeah, it's a week Sunday to Saturday. So in actual fact, the individual can take nearly two weeks off of work between ending employment at one in organisation and starting at the other, provided, let's say Council A, provided they record the last day of service as the Sunday, ultimately, the first day of service with Council B could actually be Friday, the 14th of April. So having nearly two weeks off.



Sarah:

Right. Okay. So anything sort of more than two weeks then will count as a break in continuous service, full redundancy reasons, for holiday reasons, for anything else?

Michelle:

Absolutely, yes.

Sarah:

So Michelle, then, on our website and on, lots of other things I've seen, modification order and continuous services are often bracketed together. It's often, it's almost like fish and chips, you say, at the same sentence. So what is the actual difference then between the modification order and continuous service?

Michelle:

It's a very good question.

The modification order is simply the piece of legislation that sets out that any organisation listed on the modification order is an associated employer. That then has the direct impact on continuous service and the continuous service is more about the contractual entitlements that the individual has when moving from one associated employer to another.

Helen:

So if an employee is made redundant, how does the modification order affect that?

Michelle:

Firstly, all continuous service with modification order bodies must be used to calculate whether a redundancy payment is due to an employee. The employee must have two years service before they are entitled to receive a redundancy payment. The amount of redundancy pay is also dependent on their length of continuous service and that also must be calculated based on their modification order service length.

However, the bigger impact is potentially at the point of dismissal. The order provides that where an employee is under notice of redundancy receives a job offer from another modification order employer before their last day of service and takes up that job within four weeks and that's again that Sunday to Saturday period, the dismissal effectively disappears. The employee has effectively been redeployed to an associated employer. Continuous service is preserved and no redundancy payment is due. However, if the offer isn't made until after the last day of service or the new role does not start until after four weeks and again that's the Sunday to Saturday then the redundancy dismissal remains in place. The redundancy payment remains due but continuous service is broken and the clock starts counting from zero again.

Let's look back at Charlie.

Instead of resigning, they're being made redundant on 31 March 2023 by Council A and 31 March will be their last day of service as well. If Charlie receives a job offer from Council B on



or before 31 March and the contract starts on or before 29 April, the redundancy will disappear. If Charlie waits until the first of May to start working for Council B the redundancy dismissal will still stand. Charlie can keep the redundancy but will no longer have any continuous service. If Charlie doesn't receive the job offer from Council B until after 31 March 2023 then it doesn't matter when Charlie starts with the Council. The redundancy dismissal stands and the receipt of the redundancy payment means continuity is broken.

Sarah:

That's really interesting. Thank you, Michelle. Definitely we need to consider here then when we're talking about continuous service is all those kind of dates, isn't it? It's all that detail really and when people are finishing and when they're starting a new contract.

Michelle:

Absolutely and it's one of those things when ever you're talking about continuous service you have to have your calendar out in front of you and you have to know which is a Sunday which is a Saturday so that you can start moving through and work out exactly when you are starting and you know losing that continuity.

Sarah:

There's certainly a lot of nuance there as well. I'm not surprised now that one of our most popular queries is about continuous service especially from people all over the country that we get, don't we? I mean just this week we've had a couple from all over the country where they put it in Google, we've popped up as the first result and they're literally asking it, "I finished on this date, I'm starting on this date, what does that mean for my continuous service?"

Michelle:

It's not an easy topic at all.

Sarah:

No but this is fantastic. This is fantastic that you're breaking it down for us and explaining it sort of bit by bit. I think this is going to be really useful.

Helen:

Yeah, absolutely Sarah. I think this is going to be really helpful as a reminder or a fresh or just get a basic overview. So following on from that, what other contractual rights does the modification order effect?

Michelle:

Okay, so Councils are either National Joint Committee for Local Government Services or Green Book Terms and Conditions or there are local Terms and Conditions that closely align to the Green Book and in the Green Book it states that previous modification order service will be taken into account when determining entitlements to annual leave, occupational sick pay provisions and occupational maternity provisions. So you may have someone who is not entitled to statutory maternity pay because they don't have enough service with you but will be entitled to occupational maternity pay because of them modification order continued



service. Notice that I didn't mention the other family-friendly leave and pay schemes. That's because the Green Book hasn't been updated since those other family-friendly leave entitlements were introduced. Many councils have local contractual arrangements or collective agreements in place that recognize modification order services for these schemes too but they're not part of that national agreement so it is very much a local decision as to whether that's something that you and your council want to do.

Sarah:

So when you're talking about other family-friendly leave, Michelle, are you talking about the sort of split maternity, paternity or..

Michelle:

Yeah so paternity leave, parental leave, adoption leave and shared parental leave are the other family-friendly policies that would normally be associated or linked to that maternity provision and those aren't contained within the Green Book. Although there is mention to the fact that their should that the councils should create a local adoption policy that closely aligns to the maternity provisions in one of the circulars but that never actually made it into the Green Book itself.

Sarah:

If somebody's organisation that is not listed under the modification order is there a way they can get listed?

Michelle:

Absolutely, it's not a guarantee but the process the modification order is actually owned by the Ministry for Levelling Up Housing and Communities. So there is an email address which we will put on our website where you can email in and request that your employer be added to the modification order. As I say it is not an easy process, it's not straightforward but you know it is there should an employer wish to go down that route.

Helen:

Thank you Michelle that's brilliant and if you are looking for that email address, have your employer added to the modification order, it will be available on our website on the page for the podcast which is www.seemp.co.uk/thehireedit and Michelle if people would like more information about modification orders where should they go?

Michelle:

So if you go to our website and along the top click on the services menu, go down to resources and on the resources page there will be a box specifically labelled to modification order and that will have all the information that we've talked about here today plus some extra bits and pieces and some more explanations.

Helen:

Thank you Michelle for that brief but very insightful look at continuous service and modification orders.



If you are a member of SEE and would like some advice regarding modification orders and continuous service, please email us at advice@seemp.co.uk and we have a whole host of information, resources and various details about the services SEE offers available on our website at www.seemp.co.uk.

Thank you for joining us. As I said the HR edit will be available on the SEE website at www.seemp.co.uk/thehireedit on Apple Podcast or wherever you get your podcast and we hope to have you back for our next episode. Thank you very much and we'll see you then.

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