

news and articles of special interest for
headteachers and senior managers

Welcome...

to 'HRfocus', our termly publication providing a topical update on developments within the field of Education HR.

educateHR limited is based in Kirklees with ready access to schools throughout West Yorkshire and was established in 2010 by Gill Meeson, an experienced Schools HR Advisor. Gill and her associates, using their range of technical knowledge and relevant expertise, deliver reliable, pragmatic and timely advice (with particular emphasis on a proactive approach) to support and train all levels of school management in Education HR issues.

Yet again there are proposed changes to the inspection regime and school managers must constantly keep abreast of developments with the goalposts seemingly perpetually in motion. educateHR Ltd will endeavour to keep you informed and provide practical support with regard to these changes. ■

Performance Management and Capability Training

Following the publication of the revised Model Policy on appraisal and capability proceedings, we outlined in our last 'HR Focus' Issue 002 that we would be running workshops covering appraisal meetings and writing objectives.

We have recently communicated to schools dates and venues for these 2 workshops: 13 June – 'Training managers in conducting appraisals' and 20 June – 'Objective setting using teacher professional standards'. These are stand alone workshops delivered from 8.30 - 10.30 am for those involved in running appraisals in their school. If you have not already booked places, please email gill@educatehr.co.uk for a booking form.

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Disclosure of Information – Recruitment

Employers face a potentially difficult situation when an unsuccessful job applicant seeks to know why they were not selected for the role when their qualifications were suitable. The case of 'Meister v Speech Design Carrier Systems GmbH' provides some comfort to employers in confirming that disclosure of the successful applicant's details does not have to be provided as of right. It also signals that the employer will need to be able to justify a refusal to disclose such information because that may be held against them in subsequent proceedings as evidence of discrimination.

Therefore, when a request is made, the employer will need to consider carefully (taking into account data protection obligations) whether or not to

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Points of Interest

Hill v The Governing Body of Great Tey Primary School

Mrs Hill, a school worker, told a child's parents that she had been bullied, and was suspended by the school. She was dismissed for contacting the press about the incident, and claimed unfair dismissal. The employment tribunal found that the dismissal was procedurally unfair, but rejected Mrs Hill's argument that the dismissal had breached her right to freedom of expression under art.10 of the European Convention on Human Rights. Her compensation was reduced on the basis that, had the school followed a fair procedure, she would have been fairly dismissed.

An employer can defend an employee's personal injury claim for a stress-induced illness where it can show that the employee's condition was not caused by his or her employment and that the employer could not have reasonably foreseen that the employee would suffer the condition as a result of the work.

Employers should, however, take active steps to mitigate the risk of stress claims, for example by training line managers to communicate openly with staff about stress.

disclose the details. This in turn will require the employer to be able to justify why they did not select the applicant. Having an equal opportunities policy stating that applicants will be selected purely on merit and adhering to that policy is essential: if an employer can demonstrate a workforce that is diverse in all respects of age, race, gender and so on it will make it more likely to be able to defeat this type of claim if one arises.

When an employer is faced with a substantial number of job applications it can be very difficult to scrutinise each one carefully. Employers need to have proper procedures in place for receiving and reviewing applications. ■

Dismissal on Grounds of Long Term Ill Health

An example of a potential claim under the Equality Act 2010 is the dismissal of an employee as a result of a high level of absence caused by a disability (recent case of McGraw and London Ambulance Service).

An employer in this situation will have a defence if it can demonstrate that the dismissal was a proportionate means of achieving a legitimate aim.

To rely on this justification defence, the employer would have to show that it had a legitimate aim in mind at the time and should produce evidence (for example, up-to-date medical reports) to show that it did not rely on assumptions or generalisations about a health condition.

Generally, a dismissal will be justified only if there is no other less discriminatory option open to the employer, for example redeployment or a reduction in working hours. ■

Length of Service and Unfair Dismissal

An employee who started after 6 April 2012 must have at least two year's continuous employment to be able to bring an unfair dismissal claim, although if the dismissal is for one of the specific reasons listed below there is no qualifying period. These are known as automatically unfair reasons and they include:

- Health and Safety dismissal
- Pregnancy related dismissal (only if the employer was aware the employee was pregnant) and family friendly related reasons (paternity and adoption leave etc)
- Dismissal related to asserting a statutory right
- Dismissal relating to Trade union membership or non membership

- Dismissal connected with refusing to exceed the 48-hour working week
- Dismissal for whistleblowing

Employers and employees need to be aware that just because someone does not have two year's service they are not automatically barred from bringing one of the above claims.

If the dismissal is related to discrimination on grounds of a protected characteristic eg age, disability, race, religion or belief etc, there is similarly no time limit (and no limit on the amount of damages the Tribunal can award for unfair dismissal). ■

OFSTED Framework – Evaluation Schedule from 2012

Quality of leadership in and management of the school – in assessing this element of the criteria, OFSTED inspectors will focus, amongst other things, on the effectiveness of leadership and management at all levels in how they are “**managing performance, including tackling areas of underperformance, particularly any weaknesses in the quality of teaching and the curriculum**”. Current proposals include that ‘teaching’ for an outstanding school should be judged as ‘outstanding’.

In seeking to achieve or maintain an ‘outstanding’ grade under ‘Leadership and Management’, school leaders must demonstrate that they are taking a proactive role in tackling any areas of staff underperformance. All schools should have clear policies and procedures to assist them to deal with sensitive staff issues.

Management should take immediate action when they have concerns over performance and during any informal stage targets should be set, written notes taken, observations documented with feedback, support plans etc must be evidenced to demonstrate that action has been initiated and that the teacher has been fully aware of the expectations placed upon them. In this way it will make it easier to move into formal capability where performance has failed to improve and this approach would apply to any policy in relation to capability issues.

OFSTED and Appraisal Information – consultation on the proposals include the request for anonymised appraisal objectives and to challenge governors on why they have agreed to pay progression for underperforming teachers. If this proposal is accepted, senior leaders will need to ensure they have robust appraisal systems in place in the event of being challenged on any performance related pay concerns. ■

Flexible Working Requests

The proposed extension of the right to request flexible working for all employees was not mentioned in the Queen's speech on 9 May 2012. (The Government had previously announced plans to extend the right to request flexible working to all employees).

The right is currently available only to parents of children under 17 (and disabled children under 18) and certain carers; under the law an employer must seriously consider an application and only reject it if there are good business reasons for doing so. It must be remembered that it is only a "right to request", not the right to have it granted automatically.

Many school managers have difficulty in dealing with requests from staff returning from maternity leave; any refusal should be clearly communicated including the business rationale. As an employer you should take into account that the refusal of a request to return to work part time after maternity leave may constitute indirect sex discrimination.

However, if any of your employees request a change to work flexibly, good practice suggests that you should consider it in the same way as other applications under the "right to request" procedure.

Additional Paternity Leave – a reminder for managers that new fathers have the right to 26 weeks' additional paternity leave within the first year of the child's life if the mother returns to work.

In terms of requesting time off, parents do not have an absolute right to decide what leave they want to take. While an employer should not unreasonably refuse any requests, if the reality is that the request would not work for genuine business reasons, then it is possible to say no. ■

Redundancy and Selection

Samsung successfully defended an unfair dismissal claim when an external candidate was appointed to a newly-created role instead of the current employee.

Samsung undertook a restructuring exercise and the Claimant was put at risk of redundancy. As part of the re-organisation new roles were created and those at risk of redundancy were invited to apply for the new roles. The Claimant and a colleague applied for one of the roles for which they were interviewed and scored

using ten competencies that Samsung regularly used in its annual assessment process. Neither the Claimant nor his colleague were successful in their application and Samsung appointed an external candidate.

The Tribunal had held that the Claimant had been unfairly dismissed, primarily because the selection criteria for the new role were "too subjective". The EAT however overturned the decision and confirmed that the Tribunal should have adopted the approach in **Morgan v Welsh Rugby Union [2011]** which confirmed that where there was more than one candidate being considered for a new role, an "employer's assessment of which candidate will best perform in a new role is likely to involve a substantial element of judgment".

NB – employers will not be bound by the same framework used to judge redundancy selection criteria when interviewing candidates for an alternative job role. Subjective judgment is recognised as being inevitable and, providing the recruitment process is not seriously flawed, this will not undermine the fairness of a redundancy process. ■

Social Media and Misconduct

Following a recent employment tribunal case involving a dismissal in relation to the use of inappropriate and offensive language about a colleague (and which also made reference to the employer on 'Facebook') this may be within the range of reasonable responses.

However, cases such as this should be considered on an individual basis, for example taking into account whether or not it was a one-off incident that the employee took steps to rectify immediately; the real likelihood of the employer being brought into disrepute; and the employee's knowledge of the rules. Although adverse comments on 'Facebook' will often warrant some sort of disciplinary action, some employers are too quick to dismiss, and in many cases a warning should be given for a first offence.

An employee who has made offensive comments publicly on social media cannot use the argument that his or her privacy has been violated by the employer. Once an employee posts something publicly on social media, it ceases to be private. ■

Master Standards

Following the final (second) report of the review of teacher standards, Michael Gove is considering how they might be introduced and he is asking the School Teachers' Review Body (STRB) to consider the implications for teachers' pay of the proposal for discontinuance of the existing standards.

From September 2012 for those schools who are bound by the new regulations, teachers' performance will be assessed against the "relevant standards". In so far as upper pay spine (UPS), excellent teachers (ET) and advanced skills teachers (AST) are concerned their current standards should be used to set objectives for assessment. ■

QTLS

Since 1 April 2012, further education teachers who have been awarded QTLS by the Institute for Learning (IfL) and are members of the IfL will be recognised as qualified teachers in schools. This will allow them to be appointed to permanent posts in state maintained schools in England and they will be paid on the qualified teachers' pay scale. They will continue to be recognised as qualified school teachers providing they remain a member of the IfL.

A person with QTLS status and membership of the IfL will not have to apply to the Teaching Agency for QTS, a certificate from the IfL is sufficient evidence.

It is recommended that schools review their use of unqualified teachers, firstly to ensure that they comply with current

regulations, (STCPD 2011 section 3, paragraphs 148 to 159) and secondly to check which teachers are now recognised as qualified teachers. Guidance on how to assimilate unqualified teachers onto the Teachers' Main Pay Scale can be found in the STPCD 2011, paragraphs 37.1, 37.2 and 37.3.

If an individual fails to meet the conditions for IfL membership, thereby allowing their QTLS status to lapse, then they will no longer be qualified to teach in schools. Schools seeking to verify that an applicant holds QTLS status should do so via the IfL website.

Appraisal Assessment – Under the 2012 regulations, the DfE states "all teachers except for QTLS holders will be assessed against the Teachers' Standards that were published by the Secretary of State in July 2011. In the case of QTLS teachers, alternative standards may be more appropriate. The regulations therefore give schools and local authorities the flexibility to decide which standards are relevant to QTLS holders. They can assess teachers against the Teachers' Standards, any other set of standards relating to teachers' performance published by the Secretary of State for Education, and/or any other relevant professional standards". ■

In this period of change, you may wish to review your current HR provision to ensure that it is both offering value for money and is fully capable of responding appropriately to new challenges facing the education sector.

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If you have any comments or queries about anything in this publication please contact Gill Meeson.

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