

## Welcome...

...it seems that at every turn (and indeed every term) there is a major change for schools and academies to adopt. Possibly the biggest challenge for maintained schools in 2013 is teacher pay and the impact of implementing sensitive and potentially divisive decisions regarding entitlement. Important elements to consider include ensuring fairness in remuneration and any training and support required to protect schools against possible legal action from litigious staff. Another potential headache for headteachers is the proposed change to safeguarding of students and staff in relation to the vetting and barring system and the pitfalls arising from this.

### Teacher Pay Changes

The STRB 21st Report, which has been accepted by the government, proposes greater autonomy for schools to set teachers' pay within a broad national framework, alongside increased accountability for high professional standards and for contribution to pupil progress. The key recommendations in the report are summarised as follows:

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- Replacement of increments based on length of service by differentiated progression through the main pay scale.
- Extension of pay progression linked to annual appraisal for all teachers.
- Abolition of mandatory pay points within the pay scales for classroom teachers.
- Replacement of the threshold test for progression from main to upper pay scale, with simple criteria based on a single set of teacher standards.
- Local flexibility for schools to create posts paying salaries above the upper pay scale.
- More discretion for schools in the use of allowances for recruitment and retention (with freedom to pay fixed-term responsibility allowances of up to £2500 a year for time-limited projects).
- Reinforcement of the responsibility of headteachers to manage staff and resources.
- A much simplified School Teachers' Pay and Conditions Document. ■

### Points of Interest

#### Recruiting

"There are limits to what performance management can achieve. If the right people have not been recruited ... then managing performance effectively will be difficult or even impossible" ACAS guidance.

#### Discrimination

Employers should have a clear, transparent and non-discriminatory recruitment policy and procedure that is properly implemented and followed, and should retain an appropriate written record of each stage of the recruitment process. Failure to do so may result in inferences of discrimination being drawn, making tribunal claims difficult to defend.

## Flexible Working

Employees without children are to be given the same rights as parents with a universal right to request flexible working from 2014. The employer will still be able to turn down requests, but the government is to withdraw the current statutory procedure for considering such requests. It will be replaced with a duty for employers to deal with requests both "reasonably" and within "reasonable time".

A statutory Code of Practice will be drawn up by ACAS to assist employers in respect of this new duty. Until such time as this is agreed employees should be referred to the existing statutory procedure when they wish to request a change in their working arrangements. ■

## Disclosure and Barring Service (DBS)

On 1 December 2012 the ISA and the CRB merged to form the DBS. The legal duty to make referrals remains but these should now be addressed to the DBS.

From March 2013 once a DBS check has been conducted, the results will be available online to enable employers to confirm that no new information has been added since the check was originally made. This means that an employee will not have to obtain clearance every time he or she starts a new job.

[educateHR limited](#) is working with one of the largest Umbrella Bodies in the UK who offer an online electronic service with rapid turnaround times (often within 24/48 hours). For more information contact [Jo Lawless](#) on 07739351549.

## Recent Update – January 2013:

**The Court of Appeal has decided that the current Government scheme for issuing criminal records certificates is incompatible with article 8 of the European Convention of Human Rights (ECHR), which concerns the right to a private life.**

**Currently the DBS check discloses all convictions and cautions, even those that are officially spent, which are then revealed to prospective employers. It is this feature of the scheme which the Court of Appeal found to be unlawful. It held requiring disclosure of all convictions and cautions relating to recordable offences to be disproportionate and recommended that some form of filtering system be devised to remove old and minor past convictions from an individual's records.**

**It will, however, be a matter for Parliament to decide, in the light of this recent judgment, what amendments should be made.**

## Disciplinary, suspension or resignation - Duty to refer

In cases where an employee is dismissed from your organisation (or resigns in order to avoid dismissal) because they have harmed a child or vulnerable adult (or there was deemed to be a risk of harm) you have a legal duty to refer that person to the Disclosure and Barring Service (DBS).

For further information visit the DBS website: [www.homeoffice.gov.uk/DBS](http://www.homeoffice.gov.uk/DBS) which provides a range of materials/guidance to help you consider whether it is appropriate to make such a referral (and practical advice in doing so). You may also contact the DBS Helpline on 01325 953795. ■

## Disability Discrimination

In December 2012, a primary school in Coventry was ordered by an Employment Tribunal to pay £12,000 to a teacher after failing to provide appropriate support.

The teacher had been employed for 12 years and had been diagnosed with depression. He claimed that the school had failed to make any adjustments to help him cope with his disability and that he had been treated unfairly in comparison with other staff. He said his depression sometimes made him feel suicidal and he had also applied for ill health retirement.

The judge accepted that the school had failed to treat him properly, causing extreme injury to his feelings, and recommended the provision of special training for staff to ensure better handling of similar cases in the future.

It should be noted that depression is a debilitating illness (which often equates to a qualifying disability) and has been recognised as the basis for many successful compensation claims against employers. Statistics show that depression and stress are a leading cause of sickness absence in all professions and teaching is no exception. Many teachers suffer from depression which has a negative impact on teaching and learning, and an increase in prevalence may reasonably be anticipated due to the forthcoming changes imposed on teacher pay (at all levels) with regard to the direct link between performance and remuneration.

Adjustments that might be in order to help smooth the process of returning to work for an employee who has depression could include:

- Planning and managing a phased return to work (in accordance with guidance from occupational health).
- Allowing the employee to reduce their working hours (on either a temporary or permanent basis). ■

## Recruitment and Age Discrimination

A recent Employment Tribunal case serves as a reminder of the importance of having in place a recruitment policy and procedure that is not discriminatory and is properly implemented.

The issues related to the appointment of a pizza chef with the successful candidate being 10 years younger than the claimant, and the manager having passed comment about him having 'grey' hair.

The ET found that the company in question was not able to give a "satisfactory and cogent" explanation, on the basis of evidence, of a "transparent and coherent" recruitment process that would rebut the inference of age discrimination. It therefore held that the company discriminated against the unsuccessful candidate (and litigant) because of his age. ■

## Redundancy

Consultation should take place at an early enough stage to allow discussion as to whether the proposed redundancies are necessary at all. Consultation should include ways of avoiding dismissals eg asking for volunteers, reduced hours etc and should be undertaken with appropriate trade union representatives and staff.

From 6 April 2013 changes to collective redundancy rules clarify legislation so that fixed-term contracts which have reached the end of their natural life are excluded from obligations for consultation. ■

## Abolition of the DRA (Practical Implication)

The abolition of the Default Retirement Age (DRA) appears to be encouraging people to stay in work for longer. 23 per cent of people aged between 65 and 74 were in work during December 2012, up from 18 per cent only three years ago.

For those schools and academies who have concerns about the performance of such staff, all managers should consider, in dealing with this sensitive situation, whether it is a capability issue or a health issue and invoke the appropriate procedures, following discussions with the staff member. If there is thought to be a health issue you should consider referral to an occupational health practitioner in order to ask (with appropriate HR support) pertinent questions regarding their capacity to continue in employment. ■

## Social Media – Case Law Update

When an employer became aware of comments on an employee's Facebook page that a colleague perceived as

homophobic, the employee was suspended, investigated, found guilty of gross misconduct and dismissed. However, the High Court judge found that the Facebook comments were not judgemental or disrespectful, and that no-one reading them would have assumed they represented anything but the personal opinions of the employee. The judge ruled that there had been no breach of contract and that the employer had no right to dismiss.

A point to note is that employers should remember that individuals have a legal right to express themselves freely, especially if done in measured and moderate terms. Moreover, people reading blogs, tweets and posts are also usually able to discern the difference between private opinion and the views of an organisation. ■

## Specifying Number of Years in the Job Advert

Clearly, it is legitimate for an employer to wish to appoint a job applicant who is most suitable to fill a particular vacancy. However, instead of specifying years of experience or service, (which is time-based and potentially equates to indirect age discrimination) employers should specify the type, breadth or level of experience needed for the job and the particular skills and competencies required. Employers should use the person specification to assist in the drafting of a suitable advertisement.

educateHR limited is always happy to help with drafting (or vetting) the precise wording of any job advertised to ensure compliance with discrimination legislation. ■

## Offering a Higher Salary to Attract New Candidates

The new flexibilities recommended in the STRB's 21st Report should be implemented in line with equality legislation. It is not unlawful for an employer to offer a better salary than that offered to existing employees in order to attract candidates, but it does create potential risk of a pay claim under the "equality of terms" provisions of the Equality Act 2010 (from colleagues of the opposite sex who may perform the same work for lower pay). Therefore when creating posts attracting salaries above the upper pay scale it should always be made clear that these are different posts to the existing UPS3 job description.

In terms of recruitment and retention allowances, employers must have objective evidence of a recruitment problem with regard to the post in question to establish beyond doubt that this can be addressed effectively only by offering new recruits a recruitment allowance. Any premium that is paid to a new recruit in these circumstances should be clearly identified as a temporary market supplement that is not intended to be consolidated into basic salary. ■

## Legislative Changes

### 1 February 2013 Increase in unfair dismissal compensation

- Maximum compensation rose from £72,300 to £74,200.
- Maximum amount of one week's pay used to calculate redundancy pay and basic awards increased from £430 to £450.

### 8 March 2013 Revised parental leave directive

- Increase in amount of unpaid parental leave from 13 weeks to 18 weeks per child (only a maximum of 4 weeks to be taken in any one year).

### 7 April 2013 Standard rates increase

- Statutory Maternity, Paternity and Adoption pay rate will increase to £136.78.
- Statutory Sick Pay rises to £86.70 per week (from 6 April 2013).
- Earnings threshold for these payments rises to £109 per week. ■

## Pensions Auto-enrolment Earnings Thresholds Amendments

The earnings thresholds for pensions auto-enrolment change on 6 April 2013:

*the lower level of qualifying earnings increases to £5,668;*

*the earnings trigger for auto-enrolment increases to £9,440;*

*and the upper level of qualifying earnings decreases to £41,450.*

The updated earnings thresholds can be viewed on the Pensions Regulator website. ■

## Professional Skills Tests

All trainee teachers are required to pass skills tests in numeracy and literacy before they can be recommended for the award of qualified teacher status (QTS). The key changes are:

- The removal of the ICT test.
- The introduction of pre-entry skills tests so that students starting teacher training after July 2013 will have to pass the skills tests before starting the course.
- A limit of two resits per subject.
- Raising the pass mark for both tests from 60% to 63%. ■

## New and Improved Employment Policies

Following successful consultation with unions, **educateHR limited** has produced a revised set of HR policies for use in any educational institution eg academy, maintained and trust schools.

All schools and academies should have a set of up to date policies to help them in dealing with the myriad of HR issues that can occur. All staff in your establishment are entitled to have ready access to current policies, either via the staff room and/or on your website/VLE etc. ■

## Workshops and Training

In the coming weeks **educateHR limited** is running workshops and seminars on teacher pay changes, disciplinary issues, restructuring, managing attendance etc. Please look out for our email alerts.

In this period of change you may wish to review your current HR provision please contact **educateHR limited** for further information:

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