

news and articles of special interest for
headteachers and senior managers

Welcome...

to our latest publication as we fast approach the final weeks of another challenging academic year.

One of the main areas of concern for schools and academies at the beginning of the year centred around the changes to teacher pay. Following the most recent guidance from DfE, schools/academies should now be aware not only of the impact on pay policies, but also how the key changes will affect appraisal and recruitment policies with amendments likely to be required in the light of these developments. Some unions have broadly welcomed strengthening the link between performance and pay but it is the speed of implementation and the radical departure from current policy which concerns others including many teachers and leadership teams.

If you wish to receive further information into drafting your pay policy (and related policies), please contact Gill Meeson. ■

Rewarding Performance

REMINDER: the current arrangements (as set out in the September 2012 STPCD) still apply to pay decisions in September 2013. This year will be the last time that teachers' pay progression is based on an (automatic) annual incremental system.

In our previous **HRfocus** (issue 005) we summarised the general changes, however there are additional factors to consider for successfully implementing the legislation.

We already rely on performance related pay for UPS and leadership progression and this mechanism will be extended to all teachers. Major issues arising from the removal of national pay bandings include ensuring fairness and objectivity. An equitable structure must be in place to determine pay progression and this may include feature such as bonuses (either percentage or flat rate) which may or

may not be consolidated, increasing (or reducing) the number of bandings between set minimum and maximum pay levels and removal of 'matching' of salaries for new employees. All of these factors may impact on the market place with implications for advertising, including the possibility of developing innovative ways of attracting teachers.

Additional training may be required for management who may become more directly involved in pay recommendations and also for governors with regard to appeals (or even litigation). Thought must be given to the new concept of 'lead practitioner posts' involving the creation of new job descriptions with appropriate gradings whilst preserving clear differentiation between teaching posts.

All parties must have a clear (and shared) understanding of the 'teacher standards' as well as absolute clarity regarding the definitions of 'exceeding', 'meeting' or 'not meeting' objective

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Points of Interest

"We all now know every really great teacher has to finish one day". Headteacher bids farewell to a teacher in the parents' newsletter (school in London). Readers spotted an acrostic, costing the Headteacher his job!

An Oldham Headteacher who closed her school one-and-a-half hours early for "staff development" was left with questions to answer when the entire faculty decamped to a wedding reception. The Headteacher said staff were making up the time in the evening "doing research".

targets set, in addition to establishing clear and appropriate criteria for the descriptors of 'sustained' and 'substantial' achievement (which is currently part of the UPS criteria).

The criteria for progression beyond the upper pay spine to the 'lead practitioner' role must also be transparent (modification of the AST standards or Chartered Teacher standards may be used as well as the 5 point pay bandings). Schools/academies should be aware that if they already have AST/ET posts in their staffing structure and do not intend to create 'lead practitioner' posts, salary safeguarding (or even redundancy) may be the outcome.

OFSTED will be looking at patterns of progression through different salary scale points and comparing with overall quality of teaching to determine clear evidence of correlation.

Market Allowances

There is a way to pay market based salaries and protect your school/academy against permanent high salaries should the market rate subsequently decrease.

One way is to use market based premiums. If your particular pay market dictates that a premium of say £XXX needs to be paid to attract (or retain) specific skills sets you could, rather than simply raising the basic salary, pay any necessary market premium as a separate allowance which is a severable feature of the individual's contract of employment. The market allowance can be varied or terminated by giving separate notice without affecting the main employment contract. In this way you retain flexibility in how to respond to any change in market conditions.

In effect this is equivalent to the existing 'recruitment allowance'. Now that schools/academies will no longer be bound by the 3 year period for 'retention', you should be mindful of how you would implement such incentives.

For information: the letter and advice giving the DfE perspective on some of the items in the recently issued NUT and NASUWT pay policy checklist have been published on the DfE website: <http://www.education.gov.uk/schools/careers/payandpensions/a00203870/strb-remit-21st-report> ■

Training for Appraisers

We can train your appraisers in objective setting for the appraisal process with a view to facilitating realistic recommendations on pay. Governors will also require support and guidance in recommendations on headteacher pay (and also in hearing appeals from dissatisfied staff) and we can provide the necessary training to support them in these roles.

Governor Handbook – Academies and Schools

The Department for Education has published the Governors' Handbook for school governors in academies as well as maintained schools. It is also of interest to sixth-form colleges. It replaces the Governors' Guide to the Law, which applied only to maintained schools.

The handbook sets out essential information on academy governors' strategic roles and responsibilities and can be downloaded via the link on the Department for Education website:

<http://www.education.gov.uk/schools/leadership/governance/b00224781/govhandbook> ■

Sickness, Injury and Assault – Teacher Pay

There have been a few teacher cases recently where, following a period of absence stating "work-related stress" on the fit note, union representatives have written to schools requesting that their member's pay should be unreduced and quoting Section 4 paragraph 9 of the Burgundy Book. Last year **educateHR** brought this to the attention of school managers in our '**HRfocus**' number 004 (October 2012).

educateHR advice: If you find yourself in such a position you may wish to write to the union/teacher that if they wish to advance this argument (for full pay) the school/academy will require sight of unequivocal evidential statements "from an approved medical practitioner" to confirm that such stress has "arisen out of and in the course of their employment from the day of the accident, injury or assault up to the date of recovery ..."

If you would like further advice and guidance on such matters, please contact Gill Meeson. ■



Fit Note – Revised Guidance

The DWP has issued revised guidance (see below for details) from which some interesting points emerge including:

Employers are not bound by the advice on the fit note: it is for employers to determine whether or not to accept any advice set out in a fit note.

Employers are within their rights to gather other evidence about the employee's fitness for work from other healthcare professionals (such as occupational health providers) and may choose to give this precedence over the advice in the fit note.

Access to Work grants can help employees with a disability or health condition. This may include paying towards necessary equipment or support.

The fit note may not tell employers what changes to make, but will give advice about how the employee's health affects what they can do at work.

If employers can't make any changes to take account of the advice in the fit note, they are under no obligation to do so.

If the fit note says the employee may be fit for some work with adjustments but these cannot be agreed then employers should treat the fit note as if it says that the employee is not fit for work. The employee does not need a new fit note from their doctor to confirm this.

The employee does not need to be signed back to work (and there is no option on the fit note to do so). If the employee's doctor assesses that they are fit for work, they will not be issued with a further fit note.

An employee can come back to work at any time, even if this is before their fit note expires. They do not need to go back to their doctor first.

The DWP guidance states that: "Your employee can go back to work at any time (including before the end of the fit note) without going back to see their doctor – even if their doctor has indicated that they need to assess them again. This will not breach your Employers Liability Compulsory Insurance, providing a **suitable risk assessment** has taken place if required."

There are occasions when employees wish to return from long term sick at short notice but you may be sceptical as to their motive (such as reduction of entitlement to sick pay). You may wish to refer them to occupational health to assess the individual before allowing them to return to work.

The revised guidance for employers, patients and GPs is available at <http://www.dwp.gov.uk/fitnote> ■

National College for Teaching and Leadership (NCTL)

The NCTL is the government agency created to enable and support the development of a self-improving, school-led system and is also responsible for investigating allegations of serious misconduct against teachers and headteachers.

Allegations of serious misconduct against a teacher may be referred to the NCTL by a teacher's employer, who has a legal duty to consider whether to refer a case to the NCTL when they have dismissed a teacher for misconduct, (**or would have dismissed them had they not resigned first**).

educateHR advice: If a teacher resigns to avoid a disciplinary hearing under such circumstances, it is recommended that the hearing goes ahead to determine the outcome which should, if the case is deemed proven, be forwarded to the NCTL.

Information about making a referral can be found at: <http://www.education.gov.uk/schools/leadership/teachermisconduct> ■

DBS Changes

The DBS is now issuing a single certificate upon completion of a DBS check. Only one certificate will be produced by the DBS and this will go directly to the applicant. A certificate will no longer be issued to the employer. The school/academy will thus be wholly reliant on applicants to show them their DBS Certificate.

You will still be able to track and view applications through an online DBS Application system, but will no longer be able to view/print/download a certificate.

Paper applications – once the above change has been implemented, organisations who submit paper DBS applications will not receive any notifications that checks have been completed. It is therefore strongly recommended that you switch to an online application system.

educateHR is working with one of the largest umbrella bodies in the UK who offer an online electronic service with rapid turnaround times (24 to 48 hours). For more information contact us at: info@educatehr.co.uk

Filtering of old and minor convictions and cautions (update)

DBS checks are being amended and changes are as follows: an adult conviction will be removed from a criminal record certificate if (i) 11 years have elapsed since the date of conviction (ii) it is the person's only offence and (iii) it did not result in a custodial sentence. Even then, it will only be removed if it does not appear on the list of specified offences. These changes will not come into force until the legislation has been passed through parliament (later this academic year). ■

Summary of Legislative Changes (Summer 2013) - Enterprise and Regulatory Reform Act 2013

Employment tribunal rules: Claimants who issue a claim against their employer in the employment tribunal will be required to pay a fee. There are two levels of claim, depending on the complexity of the case. The claimant will pay an initial fee to issue a claim and a further fee if the claim proceeds to a hearing. The tribunal may order the fees to be repaid to the claimant if his or her claim is upheld. Fees are also payable for appeals submitted to the Employment Appeal Tribunal.

Compensatory award cap: Introduction of a 12 month pay cap on the compensatory award for unfair dismissal claims. The existing cap on the compensatory award (£74,200) will still apply, meaning that the cap will be the lesser of 12 months' pay or £74,200.

Pre-termination negotiations: Tribunals hearing an unfair dismissal claim will not be able to take into account discussions between an employer and an employee or an offer made prior to the termination of employment with the aim of ending the contract on agreed terms.

This will potentially make it easier for employers to approach an employee to discuss a potential settlement offer, without the fear of this being used against them later in tribunal. The circumstances in which these discussions can take place are relatively limited and will be most often used in cases of poor performance or "personality clash" where there is no perceived risk of a discrimination claim. This is normally preparatory to signing a compromise agreement, now to be renamed 'settlement agreement'. A statutory code of practice is to be introduced, along with model letters, a model settlement agreement and supporting guidance.

Whistleblowing rights: The Act amends the Employment Rights Act 1996, so that a disclosure will not be protected unless the employee reasonably believes that it is made in the public interest. Disclosures no longer need to be made "in good faith". The Act introduces vicarious liability for the employer where a worker is subjected to a detriment by a co-worker for making a protected disclosure. The employer has a valid defence where all reasonable steps to prevent the detriment were taken. ■

Workshops and Training

We will be holding workshops/seminars on the following topics in the near future:

Rewarding Performance – Revising Your Pay Policy

Tuesday 18 June 2013 (8.30 am – 10.30)

Venue: Rennie Mackintosh Suite, Berties Banqueting Rooms, Brook Street, Elland.

Training for appraisers (including line managers) in implementing a successful appraisal policy

To be confirmed

Dealing with Disciplinary Issues – following a fair process

To be confirmed

Policy Development

We have produced comprehensive sets of HR policies to support academies and maintained schools, all of which have been agreed with local (Calderdale) union representatives. These policies may be purchased individually or as a suite – please contact Gill Meeson for details.

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.

Please contact **educateHR Ltd** for further information:

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

Notes
