

news and articles of special interest for  
headteachers and senior managers

## Welcome...

### ...to our latest Newsletter.

This term has been busy with schools and academies in the midst of appraisals and subsequent pay reviews, where some (if not most) managers struggle with decision making and whether or not to progress a particular teacher on their individual pay range. In addition, the introduction of the SEND changes from September 2014 has placed further responsibility on all schools and academies to publish information on how they meet the needs of children and young people with SEND as part of a 'Local Offer'.

Talking of headaches, recent relaxation on the rules around flexible working requests and forthcoming changes with regard to (shared) parental leave will no doubt cause further anguish on how to deal with employees sensitively. More on this later... ■

### Leadership pay changes 2014

The 2014 School Teachers' Pay and Conditions Document has swept aside many of the regulatory restrictions that were previously in place. In relation to the leadership group: "Changes to the leadership group pay should only be applied to individuals appointed to a leadership post on or after 1 September 2014 or whose responsibilities have significantly changed on or after that date". Within this context the 2013 Document will continue to apply where there have been no new appointments to (or significant changes to responsibilities within) the leadership group since the beginning of term.

However, where there have been either new appointments or significant changes to existing responsibilities within the leadership structure, schools and academies may have to cope with a period of transition for leadership teams in that some members of SLT (those appointed after 1 September 2014) will require to have their individual pay ranges set under 2014 regulations whilst existing postholders need not necessarily be transferred to these terms (although this option exists).

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The potential situation of having to operate a two tier system may pose some difficulties and educateHR are recommending (within their Pay Policy) that serious consideration is given to having all members of leadership teams on the same set of regulations (ie in line with the 2014 STPCD) as soon as a new appointment to SLT is finalised. It is appreciated that extremely careful modelling is necessary (before committing to this strategy) to ensure that there will be no unintended consequences.

Although the setting of the headteacher group for each individual school (or group of schools) is based on pupil numbers and a total unit score, the indicative pay range for the headteacher may be set up to 25% higher than the top of the headteacher group if circumstances warrant it. That limit can only be exceeded after seeking external independent advice and presenting a business case which must be agreed by the full governing body. All decisions must be fully

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### Point of Interest

Quote: ...

"Teams should be small enough to be fed with two pizzas and every manager should have a maximum of seven people reporting to them, with performance and passion the true indicators of leadership potential"

From "How Google Works", a new book written by its CEO.

documented as such arrangements are open to subsequent challenge by (increasingly) Ofsted as well as EFA and/or local authority auditors.

In the near future, **educateHR** will be running a seminar on implementing the new pay regulations including considerations around pay points for teachers on the main or upper ranges and those holding leadership posts. If you would like to discuss your own particular school circumstances please contact Gill Meeson for further advice. ■

### Safeguarding – additional information

The DfE has published additional information as a supplement to the Keeping Children Safe in Education statutory guidance for those working in early years provision and childcare. This includes later years children up to the age of eight, as well as breakfast clubs and after school provision. The Childcare Act 2006 and the Childcare (Disqualification) Regulations 2009 place separate and additional requirements on schools.

Teachers and support staff working in any nursery or school setting may be disqualified from being employed in (or involved in the management of) such provision. The criteria for disqualification, in addition to appearing on the Children's Barred List, include being cautioned for or convicted of certain violent offences against children and living in the same household where another person who is disqualified lives or works (disqualification "by association").

Employers should ask existing employees working in these settings and those directly concerned in the management of such provision to provide the relevant information not only about themselves but also about **any person who lives or works in the same household** as them. This requirement (which might be predicted to be difficult to enforce with any certainty of truth) is intended to guard against the individual who may be under the influence of a third party who lives with them when that third party may pose a risk to children ie "risk by association".

Employers should also ask for this information as part of the pre-employment checks they undertake on appointing new staff. Employers may choose to ask staff to sign a declaration which would help identify those caught by the "risk by association" requirement, particularly where an individual may be reluctant to self-declare.

Affected individuals may, in some circumstances, apply to Ofsted for a decision to waive their disqualification. Ofsted guidance states that *"If you are an employer who wishes to employ someone who is disqualified, or you discover that an employee has*

*become disqualified, then the disqualified person, not you as their employer, must apply to us to have their disqualification waived."*

Further information on the supplementary advice is available on the DfE website. If you wish to discuss any of the issues raised above, don't hesitate to contact Gill Meeson. ■

### Pay uplift

**educateHR** has been informed by local government employers that for the academic year commencing September 2015 any pay uplift for teachers is likely to be mandatory only for the minimum of each pay range, unlike this year when it was applicable to both the minimum and maximum of each pay range. As was the case this year it will be your decision whether or not to extend this to all teachers.

On 14 November 2014 members of Unison, GMB and Unite ended a row over pay for local government and school support workers after the LGA initially offered a 1% pay increase for most workers in 2014/15. Following a strike on 10 July 2014 and a threatened further strike last month, the LGA made an improved offer of a 2.2% increase on local government spinal column points 11 and above (and higher percentage increases for those earning less than this) across the period from January 2015 to 31 March 2016. One-off lump sum payments would also be made. Further details will be distributed by the LGA. ■

### Salary determination and notification for teaching staff

**Reminder** – there is a requirement (statutory for schools and contractual for academies where teachers have transferred under TUPE) for decisions on pay progression to be communicated to the individual employee in writing. This refers to ratified decisions (of the pay committee) rather than recommendations (which should be intimated (most often verbally) by the appraiser). This is contained in the STPCD 2014 (paragraph 3.4); the communication is generally referred to as a 'salary statement'. ■

### Maternity/sickness (disability related) and pay progression

This is always a tricky question and senior managers should be very careful when making a decision when the teacher has been absent for either all or a significant period of the appraisal cycle. The initial consideration where the employee has been at work for some of the appraisal cycle is to look at the evidence available and make a considered judgement on whether they were on target to meet their objectives. Failure to follow a fair process could result in a charge of discrimination. The following is advice that we have been given from local government employers' legal advisor:

**Pregnancy is a protected characteristic under the Equality Act and taking maternity leave should not adversely affect a woman's pay.**

**If taking maternity leave impacts on a teacher's chances of meeting their objectives you should look at the performance during the previous year and if they were meeting their objectives in that year, you need to consider that they would have met their targets during the period of maternity leave; you are assuming that objectives would have been met but for the pregnancy. This is best evidence viewpoint.**

**The same process should be adopted for those staff reporting sick where this is related to a disability. ■**

### Shared parental leave

This is a precis of the changes which take effect from 5 April 2015 in respect of staff who qualify for shared parental leave, further to the brief overview in our 009 Issue.

Employed mothers will continue to be entitled to 52 weeks of Maternity Leave and 39 weeks of statutory maternity pay or maternity allowance. Paternity leave (up to 2 weeks) will continue to be available for fathers and partners.

Should she choose to do so, an eligible mother can end her maternity leave early and, with her partner or the child's father, opt for Shared Parental Leave instead of Maternity Leave.

Shared Parental Leave will enable eligible mothers, fathers, partners and adopters to choose how to share time off work after their child is born (or adopted). This could mean that the mother (or adopter) shares some of the leave with her partner, perhaps returning to work for part of the time and then resuming leave at a later date.

Shared Parental Leave may be taken at any time within the period which begins on the date the child is born (or adopted) and ends 52 weeks after that date. An employee is entitled to submit three separate notices to book leave. Leave must be taken in complete weeks and may be taken either in a continuous period, which an employer cannot refuse, or in a discontinuous period, which the employer is entitled to refuse. If a request for discontinuous leave is refused then the total amount of leave requested in the notice will automatically become a continuous block unless the request is withdrawn.

The important thing is that within a Shared Parental Leave scheme, men and women are treated equally and paid at the same rate in the same circumstances.

Employers could start to receive notices of eligibility and the intention to take Shared Parental Leave from qualifying employees as soon as January (for births after 5 April 2015).

educateHR is currently developing a guide (to be contained within our 'Leave of Absence' policy) that sets out the rules and procedures for applying for and taking Shared Parental Leave. Should you require advice and guidance on dealing with such requests we have templates that can support you.

**Shared parental leave in touch (SPLIT) days** – parents can both work up to 20 days during SPL. These are called 'shared parental leave in touch' (or SPLIT) days.

These days are in addition to the 10 'keeping in touch' (or KIT) days already available to those on maternity or adoption leave. ■

### Antenatal appointments – being accompanied

Since 1 October 2014, an expectant father or the partner (including same sex) of a pregnant woman is entitled to take unpaid time off work to accompany the woman to up to 2 of her antenatal appointments. The time off is capped at 6 and a half hours for each appointment and there is no qualifying period before employees can take up this right.

An employer is not entitled to ask for any evidence of the antenatal appointments, such as an appointment card, as this is the property of the expectant mother attending the appointment. However, an employer is entitled to ask the employee for a declaration stating the date and time of the appointment, that the employee qualifies for the unpaid time off through his or her relationship with the mother or child, and that the time off is for the purpose of attending an antenatal appointment with the expectant mother that has been made on the advice of a registered medical practitioner, nurse or midwife. ■

### Whistleblowing: new list of prescribed persons

The Public Interest Disclosure (Prescribed Persons) Order 2014 contains a revised list of prescribed persons for whistleblowing purposes and replaces the Public Interest Disclosure (Prescribed Persons) Order 1999. These regulations give legal protection to a worker who makes a qualifying disclosure to a person or body prescribed in the new list, provided that any disclosure of information is in the public interest, is made to the correct prescribed person, and is substantially true.

Employers should take note, particularly those who list prescribed persons in their whistleblowing policy, as they will need to update the content. educateHR is currently updating all its policies to reflect this, and other recent changes in legislation. ■

## Support Staff Standards

The Government has stated that it is committed to raising the status and professionalism of teaching assistants. It is proposing to establish new standards for all teaching assistants in schools that reflect the diversity of the existing responsibilities of schools in a self-improving system.

The new standards will take into account the different types of teaching assistant working with pupils (including those with medical conditions) at all levels and across all phases of education. These standards will form a benchmark for use in assessing performance and it is envisaged that they will steer the professional development of teaching assistants at all levels.

These standards are to be developed by a small independent panel. As a first step, the Department for Education has launched a call for evidence from headteachers, governors, teachers etc and the closing date for consultation has been set as 21 November 2014.

Until agreed standards are available, educateHR is advising schools to refer to the national occupational standards which cover a variety of roles and are a useful tool in the drafting of appraisal objectives. ■

## Apprenticeships

Schools and academies who use apprentices in their workplace need to be clear that there are two types of arrangement (namely 'apprenticeship contracts' and 'apprenticeship agreements') and that there are inherent dangers in drafting documentation relating to the apprenticeship which can result in employment issues should the employer subsequently wish to terminate the relationship.

Apprenticeship contracts have been around for hundreds of years and are governed by case law. An employer has an agreement with an individual, the main purpose of which is for that individual to be trained by the employer. This type of apprenticeship confers additional rights to the apprentice and it is very difficult to terminate the arrangement.

Apprenticeship agreements, on the other hand, are a newer concept. An arrangement, agreement or contract cannot be an apprenticeship agreement unless it meets specific requirements. These include the stipulation that it must be in writing and must additionally state it is entered into in connection with a qualifying apprenticeship framework (a requirement often overlooked).

Employers should be careful. Often they will try to use their standard contracts and change the job title or heading to "apprentice". This meets the requirement for the agreement to be in writing, but fails to include all the required clauses, thus unintentionally creating an apprenticeship contract instead. Apprentices who are employed under an apprenticeship

agreement can be treated like ordinary employees and the normal unfair dismissal rules apply. DWP confirms that there are still grants available for employers taking on apprentices. For more information on employing apprentices please contact Gill Meeson.

For up to date information visit: [www.apprenticeships.org.uk/standards](http://www.apprenticeships.org.uk/standards). We note that there will be an Early Years Trailblazer Apprenticeship standard available in the near future which some schools may find useful in the recruitment and training of staff. ■

## Employment Tribunal fees

July 2013 saw the introduction of fees for claimants to access employment tribunals. An analysis of the first year under the new regime has reignited the debate over the wider impact of fees. Between April and June 2014, 3,792 single claims were recorded, a 70% reduction on the same period last year. The trend for multiple claims is similarly downward. Many employers are thought to be settling claims before they reach tribunal by using the ACAS Early Conciliation scheme.

The government's decision to introduce Employment Tribunal and Employment Appeal Tribunal fees was challenged by UNISON with a Judicial Review in the High Court late last year. UNISON argued that the introduction of fees would deny access to justice for workers treated unfairly by employers and would therefore be unlawful, and that the requirement to pay fees has a disproportionate impact on women. At that time the High Court ruled that it was too early to assess the impact of fees on claims presented but UNISON has launched a new Judicial Review into the introduction of tribunal fees, following a hearing at the Court of Appeal in September. Although the outcome is awaited, Labour has already pledged to abolish the current fee system to ensure that all workers have proper access to justice. ■

## Human Resources Services

We offer a range of flexible HR advice and guidance to suit your needs from 'pay as you go' to a 'retainer'. We also run training programmes and briefings to keep schools and academies up to date with current legislation and best practice. We will be running further courses on safeguarding and recruitment, understanding school staff pay, how to effectively implement your disciplinary policy, how to effectively delegate and manage staff, etc in the coming months.

For further information visit our website: [www.educatehr.co.uk](http://www.educatehr.co.uk) or please contact:

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