

news and articles of special interest for
headteachers and senior managers

Welcome...

...to our latest Newsletter.

There are a number of topical changes affecting school leaders and HR professionals not least the introduction of shared parental leave, holiday pay and overtime, updated DfE guidance on 'disqualification by association' (with more to come), the publication of the new headteacher standards and changes to teacher pensions amongst others.

Shared Parental Leave – 5 April 2015 was the date that legislation became fully active. Are you ready? Do you understand the implications? We do (at least we hope we do!) and will be issuing our updated policy to subscribers within the next few weeks. ■

Disqualification (including 'by association') – further guidance

The NUT made a legal challenge to the DfE's supplementary advice on the Childcare Disqualification legislation and its application to schools. In the light of the NUT's action, the DfE (in the person of David Laws, Minister of State for Schools) responded positively to the NUT and as a result of this revised guidance on this topic has now been issued. Although many questions remain unanswered the guidance does appear to clarify certain issues. The government has also said that it is giving careful consideration to a range of options for change and **educateHR** will update you accordingly.

There are helpful examples of who is, and who is not, subject to the legislation. This clarity should help schools in two ways: in determining which of their employees are included in the first place (for example, it is now clear that staff providing only education or supervised activities, within the school day, to six or seven year olds, are **not** covered by the Regulations) and in relation to possible redeployment of employees deemed to be disqualified.

There is also helpful flexibility around how schools communicate with staff about the Regulations, with an emphasis on schools being free to choose how to engage with employees and clarification that schools are not required to ask staff to complete self-declaration forms.

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However, the guidance is less than helpful in other areas: how are schools able to "take steps to gather sufficient and accurate information about whether any member of staff... is disqualified by association" or comply with the regulations to "record the date on which disqualification checks were completed" without undertaking a relatively formal and written data gathering exercise?

Schools/academies should: decide which of their staff are covered and what actions they will take to communicate with them. They will require to: consider which contracts and policies need amending; decide how sufficient information will be sought to ensure compliance with the guidance; review self-declaration forms (if in use); consider amending the Single Central Register to demonstrate how the school has complied with the guidance.

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Point of Interest

In the recent case of *Game Retail v Laws*, an employment appeal tribunal ruled it was fair to dismiss an employee for making offensive tweets made in his own time on his personal account. His employer had received complaints from his followers who included 65 of the employer's stores. The EAT decision was based on the employer being entitled to reduce reputational risk from social media communications.

With regard to **educateHR** policies, the relevant sections (and appendices) contained within the Recruitment Policy remain essentially fit for purpose (although we will give some thought to rewording these over the next few months as and when further guidance emerges).

The most serious concern facing school management may be how to deal with someone who has been disqualified and whose appeal has not been upheld: redeploy or dismiss? If the latter on what grounds? Should you require advice or guidance on this difficult and sensitive topic, do not hesitate to contact Gill Meeson. ■

Headteacher standards 2015

DfE guidance: *“These standards are intended as guidance to underpin best practice, whatever the particular job description of the headteacher. They are to be interpreted in the context of each individual headteacher and school, and designed to be relevant to all headteachers, irrespective of length of service in post”.*

It states that the standards can be used to inform appraisals. The guidance is clear that *“the headteacher standards should not be used as ‘cut and paste’ objectives”.*

The DfE goes on to say that the standards are different from the Teachers’ Standards in that they are non-mandatory and they do not set a baseline of expected performance but are to be viewed as representing aspirational standards of excellence. They therefore should not be used as a checklist against which performance should be measured and any shortcoming with respect to the standards must not, of itself, form the basis for questioning competence or initiating capability proceedings. ■

Shared Parental Leave and Pay

This is a complicated topic and the following points simply highlight the basic principles. Shared parental leave and pay is available to parents of babies due on or after 5 April 2015 and allows eligible women to curtail their right to maternity leave to enable their partner to take shared parental leave. Eligible parents can share 50 weeks’ leave and 37 weeks’ pay. Similar rules apply for adoptive parents. **Both** parents must be in paid employment to be eligible and the government is anticipating that uptake will be limited to between 2% and 6% of eligible men.

Schools/academies should:

- ✓ Review and update existing maternity, paternity and adoption policies and prepare policies and procedures relating to shared parental leave.
- ✓ Consider how employee requests for continuous blocks of

leave will be administered (given that these requests cannot be refused).

- ✓ Consider how employee requests for discontinuous patterns of leave will be evaluated and responded to, including the relevant factors to be taken into account. ■

Do you have a Vaping Policy?

There has been considerable confusion over where electronic cigarettes can and cannot be used and this has increased in recent months with members of the public and organisations equally uncertain as to how this phenomenon should be managed.

Using an electronic cigarette is not the same as smoking. Electronic cigarettes are (logically) not covered by smoke free legislation because they don’t produce smoke. There is not yet sufficient scientific research evidence to be sure what harm smoking e-cigarettes (vaping) may do. There are a number of question marks not least around the nicotine used in e-cigarettes.

The first employment tribunal regarding e-cigarettes in the UK has highlighted the importance of having a ‘vaping’ policy relating to the use of e-cigarettes at work. It involved a school whose headteacher complained to the school’s catering contractor that a member of staff had been smoking in front of pupils. The catering assistant (who was employed by the contractor) resigned just before her employer’s disciplinary hearing was to be held and took her case of constructive dismissal to an employment tribunal.

The tribunal dismissed the claim (on the basis that the employee had resigned) but noted that the school’s smoking policy would have been relevant had she been dismissed (on the grounds of gross misconduct) and that there would have been a risk of an unfair dismissal claim as the policy did not stipulate that that use of e-cigarettes was prohibited. The legislation prohibiting smoking in the workplace defines smoking as “lit tobacco or any other substance that can be smoked when lit”. E-cigarettes emit an aerosol that users inhale or ‘vape’. This is produced from a heated solution containing nicotine and is technically not covered by the legislation. Employers therefore cannot rely on either the legislation or their own policies that prohibit smoking to control the use of e-cigarettes in the workplace or to take disciplinary action for using e-cigarettes.

All school managers responsible for policy development should review their existing smoking policy and make the necessary amendments. An acceptable rationale for the banning of e-cigarettes could be the requirement to set a good example for pupils. For instance, although the BBC has banned electronic cigarettes it is reported that their policy is “based solely on appearance and etiquette, not health and safety”. ■

Teacher pay progression

As you already know the banding arrangements within each individual pay range are no longer determined nationally but are now entirely at the discretion of the employer (and with regard to leadership groups individual pay ranges under the new regulations may be of whatever length is deemed appropriate and may or may not include fixed scale points).

As those who have sourced policies from educateHR will know, our own recommendation (as last year) with regard to UPR is to move to a five point range with progression dependent on **annual** appraisal (this has been agreed with Calderdale unions) rather than the historic (and distinctly anomalous) progression based on biennial appraisal. .

Employers are of course now free to devise their own scales for progression with no limitations (other than observance of the statutory minimum and maximum points within each individual pay range) and may wish to take a radical approach to pay progression, but all schools should be mindful of certain caveats in this respect:

- progression must be linked to performance (rather than time served) for all teachers
- too few bands may not permit outstanding performers to reach the top of the scale faster than others
- too many bands may lead to accusations of discrimination on grounds of age (if it takes so long to reach the top that only older teachers ever get there).

Our intention is to offer a breakfast briefing seminar in the near future to offer advice and guidance on current flexibilities open to employers with regard to utilisation of the various pay ranges. If you have any questions that will not wait until then please do not hesitate to contact Gill Meeson. Please note, however, the requirement to consult with unions should you intend to amend your current pay policy significantly. ■

Unqualified teachers

It has come to our attention that some schools may be remunerating certain members of support staff as ‘unqualified teachers’ rather than paying them the appropriate NJC rate of pay. This is (more often than not) unacceptable practice as the Regulations with regard to the circumstances in which unqualified teachers may be employed are both specific and restrictive. If you require guidance on this issue do not hesitate to contact us. ■

Governance and academies

In the maintained sector, sections 35(3) and 36(3) of the Education Act 2002 require every school to have a head teacher and limit the number of head teachers at a school to one, although the post may be job-shared. If the head teacher is reporting to an ‘executive head’, that must mean that the ‘executive head’ is not a member of the teaching staff but is in reality fulfilling a senior management role – and cannot discharge the legal functions of the head teacher.

Academies however are not bound by the same governance and delegation rules as maintained schools. They are, instead, bound by their articles of association which set out the governance structure and usually specify matters such as frequency of meetings, arrangements for proxy votes etc. The academy board of trustees is responsible for determining any schemes of delegation although they retain ultimate responsibility for decision-making.

Governors (trustees) in the academy may rewrite their governor scheme of delegations to suit their requirements (taking into account employment legislation) and this should be done as a matter of urgency where both an executive headteacher and headteacher(s) report to them – especially in relation to dismissals, capabilities, grievances etc. As the role of an executive headteacher is not defined in education legislation it is imperative that governors within an academy or MAT draft appropriate delegations to cover the remit of each role to ensure consistency of approach.

If you require support and advice in preparing documentation, educateHR has experience in drafting such material to suit your specific requirements. ■

Leadership pay – potential pitfall

As previously indicated, STPCD 2014 affords a governing body the opportunity to review the salary ranges of all leadership posts whenever there is a new appointment to (or a “significant” change in responsibilities of one or more members of) the leadership group. Our recommendation remains that the duties and remuneration of all leadership posts should be reviewed in order to avoid the problems inherent in maintaining a two tier system.

It is clear, however, that some schools have caused themselves difficulties in the course of restructure by appointing internal candidates to new positions in the leadership team without adequate modelling and/or consultation regarding pay ranges for the new posts. If staff are disadvantaged by their new salary range they may be entitled to salary safeguarding (for up to three years) and considerable thought needs to be given to the implications of any reorganisation of this nature. educateHR will be happy to advise if you are considering a review of leadership pay and/or structures.

Additionally, if a school is considering paying a headteacher above the remuneration applicable to their school group, the 'new' pay range will require to be set out clearly in the school's pay policy showing a progression route for performance pay which remains within the 25% maximum as detailed in STPCD 2014 (in addition to documenting the rationale for exceeding the accepted maximum salary for the school group size as advised within DfE guidance). ■

Flexible working requests – 8 key points

1. The legislation confers the right for employees with 26 weeks' continuous service to have a request **given serious consideration** (at intervals of no less than 12 months).
2. All requests should be considered in the order in which they are received and must follow a fair process (with each taken on its own merits).
3. All requests should be treated in a consistent manner (notwithstanding point 2 above).
4. It is good practice to meet the applicant to discuss and clarify their request (unless the employer feels able to agree to the request without reservation, in which case there is really no necessity to meet them). educateHR recommends that this meeting is undertaken by either the headteacher or a senior manager and that governors are not involved until any appeal materialises.
5. Three outcomes are possible – a flexible working request can be:
 - a. accepted (in full)
 - b. accommodated in part (ie a compromise acceptable to both parties)
 - c. rejected (but only on solid business grounds).
6. Any rejection must be based on the 8 business reasons cited in legislation.
7. If a reduction in hours/days worked is agreed this becomes a **permanent** change to contract.
8. If a reduction in hours/days worked is agreed on either a time-limited or trial basis the employee has no legal right to resist a return to full time work on completion of the agreed length of time (ie it is the school's decision alone as to whether a trial has been successful).

Over the last few months we have been supporting a number of schools/academies in drafting outcome letters (and/or attending meetings) where they feel unable to support a request for flexible working. It should be noted that where the applicant is a female with caring responsibilities the employer could potentially be exposed to allegations of indirect discrimination because of her sex, unless the decision can be objectively justified. ■

Teacher Pension changes April 2015 – summary

As you are all aware the Teachers' Pension scheme changed from final salary to being based on career average from 1 April 2015.

Who is affected?

Protected member: Active immediately before 1 April 2012 and within 10 years of normal pension age (NPA) on that date – remains in final salary scheme.

Tapered member: Active immediately before 1 April 2012 and within a **further** 3.5 years of NPA in on that date – remains in final salary scheme for a tapered period of time until moving into career average on individual "transition date".

Transition member: All other existing members entered career average on 1 April 2015.

New starters: Join career average on entry if started teaching on or after 1 April 2015.

Pensioner and deferred members are not affected by the changes (unless they take up further employment).

For teachers who fall under the 2015 changes the following apply:

- ✓ NPA is equal to the State Pension Age (SPA) or 65 where that is higher.
- ✓ No lump sum but can convert part of pension to receive an optional lump sum.
- ✓ Flexibilities – 3 options: additional pension, faster accrual and buy out of actuarial reduction.
- ✓ Death grant before accessing pension: 3 x final salary at date of death (Active member).

If you have any queries relating to your pension you should contact TP directly as detailed on the new look teacher pension website which explains all the changes: www.teacherspensions.co.uk ■

For further information visit our website: www.educatehr.co.uk or please contact:

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