

EAST HERTS COUNCIL

THE LOCAL JOINT PANEL - 13 JUNE 2006

REPORT BY SECRETARY TO THE EMPLOYER'S SIDE

8. REVISED VERSIONS OF THE FOLLOWING HUMAN RESOURCE POLICIES & PROCEDURES: (A) AGE DISCRIMINATION; (B) CAPABILITY; (C) DISCIPLINARY; (D) ABSENCE MANAGEMENT; (E) ENDING OF FIXED TERM; (F) GRIEVANCE

WARD(S) AFFECTED: NONE

'D' RECOMMENDATION - that the above Policies and Procedures be recommended by the Panel for adoption by the Council without further amendment.

1.0 Purpose/Summary of Report

- 1.1 To provide all employees of the Council with policies and procedures that provide a workable, effective and fair framework for managers and staff to carry out their roles and responsibilities.
- 1.2 Following negotiations with Unison and having brought some of these documents to the previous LJP, the amendments have now been incorporated and management have now arrived at versions of the above mentioned policies and procedures which are ready to be adopted for use.

2.0 Contribution to the Council's Corporate Objectives

- 2.1 To improve the health and sustainability of the organization.

3.0 Background

- 3.1 The main concerns were that over the last few years there has been a rash of new Acts of Parliament that place statutory obligations on employers. These have not been incorporated into existing documentation nor have new policies been issued to address certain new legal requirements. Additionally, the status of current

policies is debatable because it is unclear which version of a policy is most current and whether a formal decision was taken to adopt the particular version. The result is that the Council has been left open to challenge.

4.0 Report

4.1 In the previous report to the LJP on 16 January 2006, management advised that they were working on HR documentation to:

- provide a workable, effective and fair framework for managers
- reduce bureaucracy and shorten timescales
- provide managers with guidance, training and support

4.2 Recent experience has highlighted the lack of proper HR procedures to deal with employee relations issues. All the policy and procedure documents submitted as appendices with this report have been extensively reviewed by management and Unison. Management do not consider that further consultation would serve any useful purpose following amendments agreed since the last LJP in January and at the last HR/Unison.

5.0 Consultation

5.1 These Policies have been discussed with Unison representatives.

5.2 Two points that Management and Unison have failed to agree upon are:-

- Appeal Rights, which has been decided at full Council on 10 May 2006, and
- Human Resource support for Managers at hearings.

5.3 Management believe it unreasonable to deny managers' the support of an H R Officer at hearings. Opinion was sought from EERA who commented as follows:-

- The manager may not be an expert in this kind of event and may need professional support from HR (otherwise you are effectively handicapping the manager in their presentation of evidence),

- If HR have been involved in the investigation, they may need to be present to answer questions that are directly relevant to their involvement.
- The employee is entitled to support in the meeting and the manager should also be entitled to support.
- the manager is also an employee of the organisation and may feel very uncomfortable in this situation without support.

5.4 Human Resources believe it unreasonable to expect one person to advise the panel and management and, in some case, minute hearings.

6.0 Legal Implications

6.1 All policies are being reviewed to ensure compliance with new legislation and where there is guidance from ACAS, this is being incorporated. The result of the review is that each policy has had to be extensively rewritten incorporating equalities considerations, statutory standard and modified procedures and statutory requirements on timescales. This has enabled HR officers to produce documents containing more consistent and straightforward procedures.

7.0 Financial Implications

7.1 None.

8.0 Human Resource Implications

8.1 As set out above.

9.0 Risk Management Implications

9.1 Failure to update HR procedures to comply with latest Employment Law will leave the Authority open to challenge at Employment Tribunals which may be costly and damaging to our reputation. This is becoming increasingly evident.

9.2 Currently for unfair dismissal awards may range from £8,400 to £65,200. Additionally, for refusal to comply with a reinstatement order, a further award of between £7,280 and £15,680 can be made. Awards against unlawful discrimination can be unlimited.

Papers attached

- Age Discrimination Legislation Overview
- Absence Management Policy and Procedure May 2006
- Grievance Policy and Procedures May 2006
- Disciplinary Policy and Procedure May 2006
- Capability Policy and Procedures May 2006
- Ending Of Fixed Term Employment Policy and Procedure May 2006

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Age Discrimination Legislation Overview

From 1st October 2006 Employers must ensure that they do not discriminate against employees or potential employees on the grounds of age. This will impact on the following areas

- Recruitment
- Benefits
- Other policies during employment
- Redundancy
- Retirement
- Culture and Communications

What this means

Under the law as with other anti-discrimination legislation, direct and indirect discrimination are addressed along with harassment and victimisation.

There is a wide definition of worker although there are some exemptions in the legislation, for example volunteers. Unfortunately legal advice is that it is foolish to assume that this category of workers will not be covered.

The legislation will require case law to test what is considered lawful and what is not.

The statutory retirement age has been set at 65 and will be reviewed in 4 years. However as an employer East Herts will have to decide whether to set a retirement age (normal local government retirement age is 65) or not.

The law provides for a process to cover dismissal on grounds of retirement which is prescriptive with timescales to adhere to and ensure fair dismissal.

HR is reviewing its policies and procedures to ensure we are in line with the new legislation. It is a large piece of work because it impacts on every area of employment.

It is likely that this legislation will spark a rush of claims because it affects everyone. The UK Government anticipate 8 times as many claims on age compared to sexual orientation or religion. There will be many angry and articulate workers who feel they have nothing to lose in lodging an employment tribunal claim. So it's important we get it right!

Recruitment

For recruitment HR will review applications forms to ensure that we do not discriminate against those applying.

- Do we need to ask applicants to complete a full chronological history or education and employment?
- Should we move to more competency based person specs?
- Any recruitment advertising must send out age neutral messages – number of years experience will not only be bad practice but unlawful if it appears in adverts.
- We need to ensure our selection process is age neutral.

Benefits

We need to ensure that our benefits package is not discriminatory. The law allows for service up to 5 years to be taken into account to awarding increased benefits but no more. Nevertheless we will need ensure that all benefits on offer are age neutral.

Redundancy

Under the legislation the lower age limit of 18 and the upper age limit of 65 have been removed for Statutory Redundancy compensation. Employers can no longer select on age grounds so the old Last In First Out criteria will be deemed unlawful. HR is currently working to ensure that its new policies relating to Redundancy are lawful.

Other policies during employment

The areas of training, management development and performance management will need to be scrutinised. A manager can no longer ignore poor performance because the employee will shortly be retiring. He/she may not want to retire at, say, 65 and it will be

unlawful to decide to retire someone because of their poor performance.

Similarly managers will no longer be able to refuse training on the grounds that someone may be retiring in 2 years.

In some areas East Herts is busy growing its own and promoting them. The process must be age neutral.

Work-life balance policies such as flexible working will now need to be open to all.

Communicating the Changes

We will need to inform all employees of the ramifications of the law because as with other legislation affecting people at work, an employer is vicariously liable for negligent acts or omissions by his employee in the course of employment whether or not such act or omission was specifically authorised by the employer.

So if an East Herts employee, in the course of his/her work, commits an act for which another employee can claim discrimination, then East Herts as well as the employee would be liable. Awards for such cases are unlimited. Where girly calendars were deemed discriminatory under sex discrimination, age related birthday cards may also be a thing of the past in the work place.

Advice on this is exercise a 'zero tolerance' approach.

Conclusion

East Herts is already beginning to experience problems in attracting and retaining workers. It is important that we ensure the legislations is incorporated into our employment practice, that it is communicated to staff and that it is transparently fair so that it is seen to be fair.