

HR

# Solutions

## Monthly Newsletter | June 2023



### Hot Topics

#### Pay Award and the Cost of Living Crisis

Analysis by XpertHR has shown that pay awards reached a 32-year high in early 2023.

Based on responses from 266 organisations across the public, private and not-for-profit sectors, 83.7% of pay awards during the 2022 calendar year were higher than those given in 2021.

In the twelve months ending in December 2022, the median pay award was 4%; however, in the three-months ending in December 2022 this was 5% and by early 2023 it had risen to 6%.

82.9% of those surveyed stated that reason for the increased pay awards was the cost of living crisis. Maintaining pay levels within the relevant industry and skill shortages in the labour market were also cited as reasons.

Organisations are predicting a median 5% pay award in 2023, although more than one in ten (11.7%) are expecting them to be worth 8% or more.

***HRSolutions can provide Salary Benchmarking services, using data from over a million UK employees and filtering by job function, level, industry and geographical region to produce bespoke reports based on your needs.***

#### The Importance of Non-Financial Rewards to Employee Engagement

Conversely, however, prospective employees are not just interested in the financial compensation on offer when considering job roles.

- According to a 2022 MetLife study, 73% of employees cite health and wellness programs (such as access to fitness facilities, gym memberships, medical screenings, etc.) as a necessity for accepting a new position
- According to the 2022 LinkedIn Global Talent Trends Report, work-life balance was the most important factor for individuals seeking a new position.

- A poll conducted by EY of 6,000 UK adults (consisting of workers, students, apprentices and those seeking work after leaving higher education in the six months previous) found that 46% wanted their employer to demonstrate a commitment to ESG (Environment, Social and Governance). This figure rose to 63% amongst those aged between 18 and 24. A fifth of those surveyed said that they had turned down a role because the prospective employer's ESG values were not in line with their own.

Employees are increasingly driven to seek out employers who support sustainable practices. According to a survey conducted by Statista in 2001, nearly 75% of employees said that they found their job to be more fulfilling if they were given opportunities to impact positively on environmental issues. Employees who assist their employers to do this are therefore more likely to have good employee engagement.

The use of employee opinion surveys and the implementation of outcomes in response ensure that employees know that they have a voice which is being listened to. This can be backed up with reward and recognition initiatives.

Diversity, Inclusion, Belonging and Social Impact (DIBS) are also important both with implementing programmes, focus groups etc but also providing training around DIBS support in the workplace.

Employees today need to feel safe at work and to be able to trust the decisions of those who are running the business. When employees feel supported, they are more likely to give their best at work.

In the current labour market of skill shortages and competition for talent, corporate responsibility is all the more important.

Companies which excel in these areas are more likely to present an attractive employee proposition and therefore attract more candidates. The most successful employers will provide a mixture of organisation-led and employee-led programmes to encourage ESG values in the workplace.

***HRSolutions can advise you on intrinsic rewards in the workplace and the introduction of ESG and DIBS policies (this also forms part of the Firm's wider ESG offerings: ESG Advisory and ESG Audit Assurance).***



## Employment Law Cases

**Three recent employment tribunal decisions where unfair dismissal claims were successful due to procedural mistakes made by the employer.**

In **Dumigan v The Mount School Ltd**, the employment tribunal held that a teacher was unfairly dismissed for failure to attend a staff meeting.

Mrs Dumigan was employed as a music teacher. On Saturday 11 December 2021, the school director instructed all members of staff via email to attend a meeting on the following Monday. Mrs Dumigan did not work on Mondays. She replied to say that she was unable to attend as she was meeting with her family that day, although she did not say that this was to discuss her mother's cancer treatment.

The director stated that the staff meeting was not optional. After some repeated correspondence, he emailed Mrs Dumigan saying, "resignation accepted". Mrs Dumigan replied that she had not resigned at which point the director gave her formal notice to end her employment.

Mrs Dumigan brought claims for unfair and wrongful dismissal in the employment tribunal.

The tribunal found that the school had not acted reasonably in treating Mrs Dumigan's failure to attend the staff meeting as a sufficient reason for dismissal. It had not carried out an investigation nor held a formal disciplinary meeting, therefore Mrs Dumigan was not given an opportunity to explain her version of events. The director took the attitude that he did not think this was necessary, stating, "*I am the employer, the person that pays your wages*". He did not consider if his instructions were reasonable given that the meeting was at short notice and that Dumigan did not work on Mondays. No alternatives to dismissal were considered.

The tribunal upheld her claims and she was awarded compensation of £16,802.31, including a 25% uplift due to the school's failure to follow the ACAS Code of Practice

In **Rootes v Edward Harte Solicitors**, the employment tribunal held that a legal secretary who made homophobic comments was unfairly dismissed.

Ms Rootes was employed by the law firm from 2003. Her employer had occasion to speak to her several times about her conduct towards one of its partners who was a lesbian. In 2013, she was given a written warning for making a racist remark.

In June 2021, the firm's receptionist told a WhatsApp work group chat that Ms Rootes had told her "*she will never speak to a lesbian because it's a deadly sin...and she is okay with gay men but not gay women*". In September 2021, the receptionist raised a complaint citing a number of offensive discriminatory comments made by Ms Rootes. Following an investigation, Ms Rootes was suspended and invited to a disciplinary hearing in respect of allegations relating to derogatory, racist and homophobic conduct. She was summarily dismissed.

After appealing unsuccessfully, Ms Rootes brought a claim for unfair dismissal claim in the employment tribunal.

The tribunal found that she had made homophobic remarks and they agreed that this constituted gross misconduct. It found, however, that there was insufficient evidence to support all the allegations and that the employer had relied too heavily on the historic incidents rather than focusing on the 2021 allegations. It also found the dismissal to be unfair based on the firm's conclusion that Ms Rootes' claim not to remember her remarks from several years ago was dishonest.

The tribunal did conclude that the compensation awarded should be reduced by 75% for contributory fault due to the fact that Ms Rootes had shared unpleasant and personal homophobic views.



In **Webb v London Underground**, the employment tribunal held that a train manager who posted offensive remarks about the Black Lives Matter movement was unfairly dismissed.

Ms Webb worked for London Underground for 32 years until her dismissal in 2021. She was employed at the Seven Sisters depot, a culturally diverse area. In June 2020, she posted a number of comments on Facebook relating to the killing of George Floyd, including "*Never deserved to be murdered by a policeman. But... really was not a nice guy.*" She was identifiable as a London Underground employee on her profile.

Another of her posts stated, "*On 22 May 2013, no-one rioted in the UK when two black men hacked Lee Rigby to death. It's time to bring back the death penalty. Where were you all then? 'All lives matter'.*"

Following complaints by colleagues, London Underground investigated Ms Webb and then suspended her. She was dismissed after a disciplinary hearing in February 2021. She appealed, claiming that she was entitled to post her views on her Facebook account and that London Underground were denying her right to freedom of speech. Her appeal was dismissed.

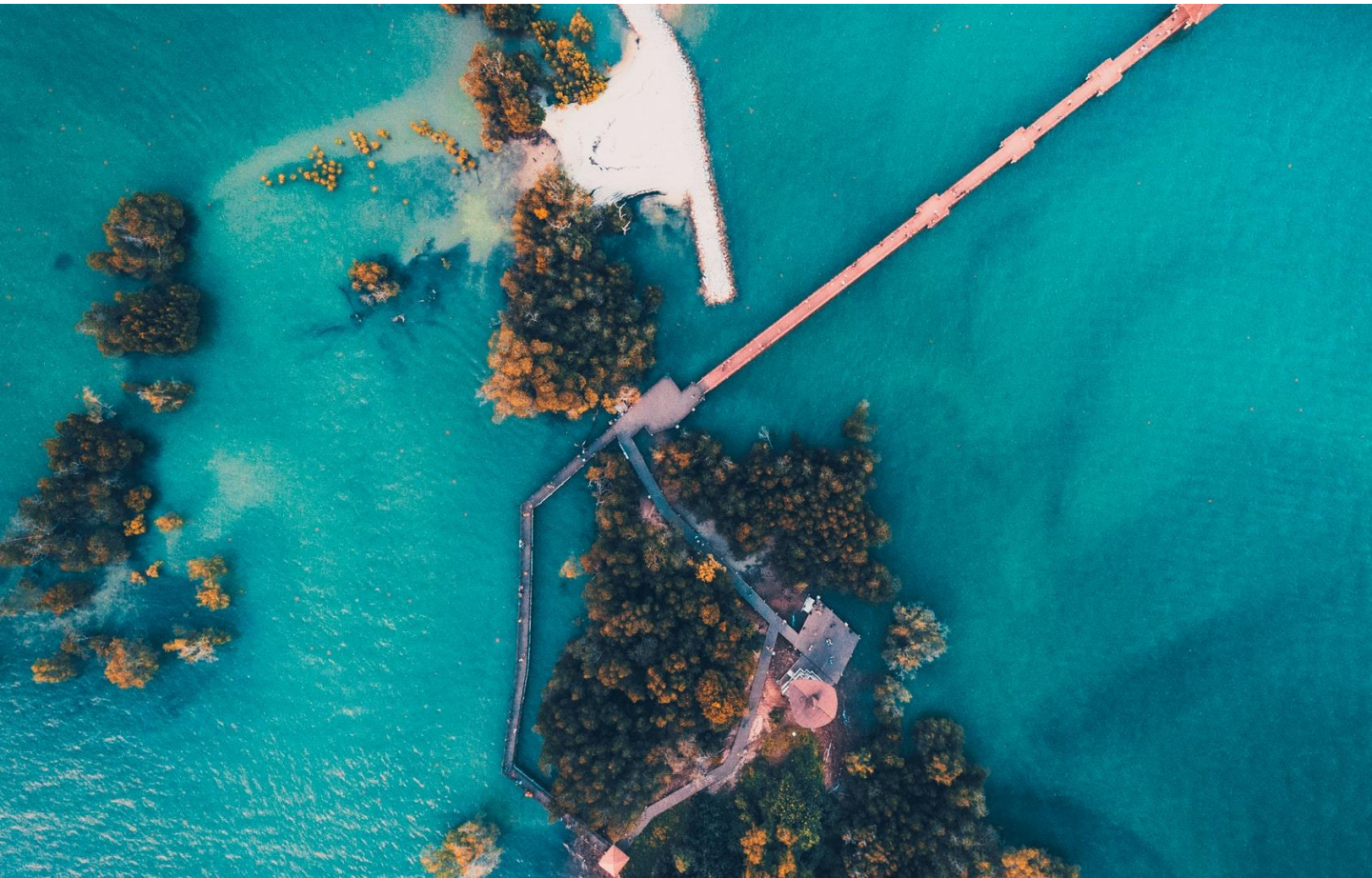
Ms Webb brought a claim for unfair dismissal claim in the employment tribunal.

The tribunal agreed Ms Webb's posts were offensive, racially divisive, and inflammatory. It found that her right to freedom of speech had been restricted but that this was justified. It was satisfied that London Underground had reasonable grounds to dismiss her for gross misconduct.

The tribunal found, however, that the dismissal was unfair because of the procedural irregularities. The disciplining manager had adopted an attitude towards Ms Webb's trade union representative which meant that he did not engage with the points he was making. The chair of the appeal panel admitted that he had not read any of the investigation documents, only the four posts in question, and the tribunal believed that the appeal was a box ticking exercise.

The tribunal did conclude that her compensation should be reduced by 75% due to her conduct; she was awarded £3,564.

***These cases highlight the importance of following a fair disciplinary procedure, particularly when seeking to dismiss for gross misconduct. Even where a fair reason is established, a dismissal may be unfair if there are procedural irregularities. HR Solutions can advise you on how to conduct a fair procedure and so minimise claims for unfair dismissal.***



Please see below some examples of the work that we have completed recently.

## Office

## Type of work

London

Settlement Proposal Letter, drafting of Settlement Agreement and liaison with solicitor for signature

Maidenhead

Early Conciliation via ACAS to settle a claim prior to Employment Tribunal

Northampton

Employee Handbook with additional policies

Northampton

Advice regarding post-termination restrictions and potential age-discrimination

London

Advice in relation to the TUPE transfer of employees and requirements for Employee Liability Information (ELI)

London

Advice in relation to performance management and guidance on managing a Performance Improvement Plan process.

If you require HR support, please contact us at [HRsolutions@mha.co.uk](mailto:HRsolutions@mha.co.uk) to discuss how we could assist you. We can provide support on an hourly, fixed-fee or retainer basis so there are a number of options available according to your needs; as you can see from the above examples, we can assist with a large project or a one-off piece of advice.



[HRsolutions@mha.co.uk](mailto:HRsolutions@mha.co.uk)

**Now, for tomorrow**