

YOUR WEEKLY BULLETIN OF WIT AND WONDER



THRILLS AND CHILLS

Something cool and sweet for the workplace..?



PRACTICALLY PERILOUS

How jokers on your payroll can cost you dearly... or, sometimes, not.



EIGHTIES TIME-WARP, ANYONE?

Tears For Fears (*the band, not the prevalent state of mind*) are back!

FOR THE OFFICE THAT HAS EVERYTHING...

This week it's been a struggle to find good news to share with you, as I'm sure you'll understand.

BUT I HAVE DONE IT!

Foraging through the outlying areas of quirkery on the BBC website I have found THE VERY THING that we, here at Warner Goodman Towers, have been missing. For as long as I can remember.

Oh yes, we've had water coolers and drinks machines. We've got a microwave in our kitchen and occasionally cakes are to be found on the worktop.

But we have never had an instant ICE CREAM DISPENSER!!!

All hail ColdSnap, an innovative company which is set to bring instant ice cream to a home or an office near you... in a quite eco-friendly way. The tech involves popping the dry ingredients in an aluminium can, which gets hydrated, freshly churned, frozen and delivered into your happy little bowl (add sprinkles or flake to taste).



It cuts down massively on CO2 emissions because it doesn't need to be stored in a freezer 24/7 for days or weeks before it's bought by the consumer. And the cans are fully recyclable.

Excited? Of course you are! Putting a call through to Finance to see how this can be actioned? Naturally. Watch the video for even more icy thrills on the [BBC website](#).

And if you're up for a really deep dive, you'll also find the history of ice cream getting discussed on You're Dead To Me on [BBC Sounds](#).

Don't thank me here. Just invite me to the launch of your ColdSnap in your office kitchen/reception area...

What would be your dream item for your office? Do let us know over on our Facebook page.

And speaking of chilling occurrences at work brings me to the case of *Andrew Chell v Tarmac Cement and Lime Limited 2022* in which the Court of Appeal considered whether an employer was vicariously liable for harm caused by their employee's practical joke.

Mr Chell was a contractor performing work as a site fitter on one of the company's sites. Mr Heath was an employee of the company, performing work on the same site. The Employment Tribunal (ET) heard that there had been some tension between contractors and employees, but nothing at the level of threats or violence. While Mr Chell was bent down to pick up a length of steel, Mr Heath placed two pellet targets on a bench close to Mr Chell's ear and hit them with a hammer. This caused a loud explosion right next to Mr Chell's right ear causing him significant injury, including loss of hearing in his right ear, and tinnitus. Mr Heath had not intended to cause injury; it was a practical joke gone wrong.

Mr Chell claimed that the company was vicariously liable for the acts of Mr Heath and that the company had been negligent for failing to take steps to prevent the foreseeable risk of injury.

The County Court found in favour of the company, reasoning that Mr Heath's actions were outside the field of activities assigned to him by the company, and that there was no foreseeable risk of harm from a deliberate act of Mr Heath such as to give rise to a duty on the part of the company to take steps to avoid that risk. Mr Chell appealed to the High Court. The High Court dismissed the appeal and Mr Chell appealed to the Court of Appeal.

The Court of Appeal dismissed Mr Chell's appeal. The CoA found that there was insufficient connection between Mr Heath's actions and his employment to make it "fair, just and reasonable" to hold the company vicariously liable. It was not part of Mr Chell's duties to use pellet targets and the pellet targets were not company equipment. The risk of harm was not inherent to the business; the company only "provided the background and context for the risk." Regarding the tension between employees and contractors on site, Lady Justice Davies noted that the tension had apparently eased before the incident, there were no threats of violence, Mr Chell had not asked to be removed from the site, and Mr Heath had not been identified as the source of the tension.

The CoA also found that there was no breach of duty owed to Mr Chell by the company. Lady Justice Davies accepted that "horseplay, ill-discipline and malice" could create a foreseeable risk of harm in some cases, but did not do so on the facts of this case as there were no threats of actual violence, there was no indication Mr Heath would act the way he did, and the availability of dangerous tools did "not of itself create a reasonably foreseeable risk of injury due to misuse of a tool." The judgment continued that even if there *had* been a foreseeable risk of injury due to horseplay "it would be unreasonable and unrealistic to expect an employer to have in place a system to ensure that their employees did not engage in horseplay," and at any rate the company did have a site rule that "no one shall intentionally or recklessly misuse any equipment."

This judgment is good news for employers. Had the decision been in favour of Mr Chell, employers may have had to include the risk of horseplay in their health and safety risk assessments and implement additional measures such as training and supervision to ensure employees did not engage in horseplay or pull pranks. As this is a Court of Appeal decision it will be binding on lower courts in future cases.

However, this case turned on its facts and does not mean that employers cannot ever be found vicariously liable for harm caused by practical jokes committed by employees. Employers should still ensure they have clear policies on what type of behaviour is acceptable in the workplace and that they take seriously any concerns raised by staff regarding tension or misconduct in the workplace.

EVENTS SEASON

2021

MAR 8
Peace of Mind
Members
Seminar

MAR 22
Mental Health
Masterclass

JUL 19
Practice Makes
Perfect
Masterclass

OCT 6
Settlement
Agreement
Masterclass



TIP ME BACK TO THE 80s...



Nipping, mentally, back to the fun-filled past is appealing to many of us,

Eighties chart-toppers *Tears For Fears* have brought out their first album since 2004.

The Tipping Point is hotly tipped to top the charts by the end of this week, perhaps proving that authentic synth pop never really goes out of fashion.

Mad World, Shout, Pale Shelter, Everybody Wants To Rule The World... they could be a bit less on the nose with *The Tipping Point* but not much.

Even so, any revival of a hit band from the eighties is a good excuse to get some shiny shoulder pads, white jeans and big hair on and revisit your youth.

and sometimes you get a helping hand in the here and now.

Even if it wasn't *your* youth, just... visit it. My happy place is *your* happy place.

Feel free. You're welcome...

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