

YOUR WEEKLY BULLETIN OF WIT AND WONDER



STEP BY STEP AND DAY BY DAY

Lead me away from temptation to buy more petrol



SHAM ON YOU

The EAT decides a redundancy was a fake and awards accordingly



GETTING VERBY

We have redeployed a jubilant word

ROCK ON

It's a stressful time. (*I am going for the Understatement of the Year award.*)

But while some of you may be turning to yoga or running or motivational YouTube videos to get you through, here at WG Towers we are all about balance.

Inspired by this week's BBC online story of Kev Potts, who balances stones on the beaches of Dorset, we decided to try this kind of mindfulness in the office. With staplers.

We're also using hole punches, bluetooth keyboards, paperweights.... whatever we can find.



I mean, yes, we'd love to work with rocks but you don't see many of those around a law firm (other than ourselves, who, we like to think, are always a rock to you... *).

So far, the best balancer is Howard, with his impressive stack of A4 ream>mouse mat>hole punch>stapler>small staples refill packet>orange Penguin (the chocolate biscuit, not the flightless Antarctic bird - that *would* be a challenge). It stood for five minutes and three seconds before someone sneezed it over.

I'm close behind with my paperweight>business card box>mug>stapler>Parker pen tower. It stood for nearly three minutes until someone started the photocopier and the vibrations did for it.

During construction, the level of JENGA tension around WG Towers has been *off the scale*. Which isn't exactly what we were after, but at least it's a distraction.

Sadly, unlike Kev Potts, who makes stunning images from his balanced rocks (take a look here: <https://www.bbc.co.uk/news/uk-england-dorset-61743516>), our snapshots of stacked office gadgets don't have quite the same level of art.

We're not starting an Etsy account just yet...

Do you have an innovative way to find your Zen at the office? Please tell us about it over on the Facebook page.

*This comment comes to you with slushy heartwarming music and my own, personal, apology.

BEYOND COMPARE

And speaking of balancing acts brings me to the case of *Miss Natasha Allen v Primark Stores Limited* 2022 whose work-life balance issues led to her resignation... and subsequent indirect discrimination claims.

Miss Allen was a manager at Primark Stores Limited. She went on maternity leave with a planned return in November 2019. She was the sole caregiver for her child and during her leave she made an

application under the company's flexible working policy to change her contracted hours. Her main concern was that the company required managers to be available to work late shifts, which she could not do due to her childcare responsibilities. While the company agreed that on most days there were enough other managers to cover the late shift, it said there was not sufficient cover for Thursday evenings and so Miss Allen would still be required to guarantee her availability to work late on Thursdays. Her flexible working request was therefore denied.

Miss Allen subsequently resigned and brought claims of indirect sex discrimination and constructive unfair dismissal in the Employment Tribunal. She argued that the company's requirement that managers guarantee their availability to work late on Thursday amounted to a provision criterion or practice, and that it disadvantaged women due to the difficulty of working late while managing childcare responsibilities.

To succeed in a claim of indirect discrimination an employee must be able to show that their employer applied a provision, criterion or practice (PCP) and that this PCP placed or would place people who share the employee's protected characteristic at a disadvantage. In deciding whether there has been a disadvantage, the tribunal must first identify a comparison pool. The comparison pool should be comprised of the individuals whom the PCP in question affects, either positively or negatively, and exclude those who are not affected by it.

The ET dismissed both of Miss Allen's claims. In deciding whether the requirement to work late on Thursday disadvantaged women, the ET identified the comparison pool as the managers who might be asked to work late Thursday. These included four other managers, two of which were men who also had childcare responsibilities. These two managers had an "informal arrangement" with the store that they would not regularly work Thursday nights but sometimes would do so when asked to provide cover.

Using this comparison pool, the ET concluded that both men and women were disadvantaged by the requirement to work on Thursday evenings, and that "women were not at a particular disadvantage." The ET therefore concluded that there was no indirect sex discrimination and dismissed Miss Allen's claims. Miss Allen appealed to the Employment Appeal Tribunal. She argued that the ET had erred in its identification of the comparison pool.

The EAT allowed Miss Allen's appeal, finding that the ET's choice of comparison pool was unsafe. The EAT reasoned that there was a material difference in the way the company treated Miss Allen's male colleagues compared to her. While Miss Allen's colleagues were *asked* to work some Thursday evenings; they were not required to guarantee their availability as Miss Allen was. The relevant PCP therefore was not applied to these two managers, and they should not have been included in the selection pool. This error meant that the ET's decision had to be set aside.

Miss Allen's claims of indirect sex discrimination and constructive unfair dismissal were remitted back to the ET for a decision.

In order to help avoid a claim of indirect discrimination, employers should keep their procedures under review and assess their impact on different groups of people. Where a PCP does put a particular group at a disadvantage, employers must ensure they can identify a legitimate aim and that the PCP is a proportionate way of achieving that legitimate aim.

EVENTS SEASON

2022

JUN 30

HR Hangout - Practical Management of the Mental Health process: from concern to reasonable adjustments

JUL 19 Practice Makes Perfect Masterclass

OCT 6 Settlement Agreement Masterclass

NOV 23 Litigation Lessons Masterclass



SOFT CENTRES



Two factory workers had to be rescued from a large tank... of chocolate. It appears the pair, working at the Mars Wrigley plant in Elizabethtown, Pennsylvania, were attempting some maintenance when they fell in. A hole was cut in the bottom to allow them to crawl to safety in a tidal wave of liquid confectionary.

According to Huffpost.com, the pair were taken to hospital to be checked over but their condition is unknown. No doubt they're being kept in the high chocolate dependency unit...possibly wrapped in foil.

Now, look - if you HAD to have an accident at work which required the emergency services to cut you free, and you could choose the nature of it... you might plump for this one.

Especially if you're a fan of Roald Dahl.

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