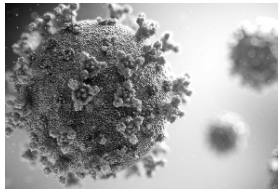


YOUR WEEKLY BULLETIN OF WIT AND WONDER



### HEATED DEBATE

Should the kids be kept in this summer?



### LENGTHY DECISIONS

Watch this precedent unfold - the first Long Covid disability discrimination claim begins



### INSUPPORTABLE

A new fashion which probably won't hold you up for long...

## WARNING! WARNING!

Children everywhere in the UK are under virtual house arrest this week after the NHS decreed that letting them play outside in temperatures of 30 degrees or more might be 'bad for their health'.

Parents across the country are undoubtedly gobsmacked at this shock heatwave advice. Many were probably intending to let their toddlers run barefoot in the streets wearing only swimsuits and a light basting of sunflower oil.

A spokesman from the Department of the Bleedin' Obvious said: 'It's hot out there. Ouchy, Don't touch.'



Of course, it *is* very sound advice and I suppose people might need reminding, especially when they're out on the beach for the day.

I don't remember warnings from the NHS in the 70s and 80s when I was running around in a seersucker swimsuit and water-wings. I don't even remember warnings from parents. We did get the odd slick of Ambre Solaire at about the point that cows were dropping dead in the fields from heatstroke, but most of the time we just ran about outside, oblivious to the sun crisping up our backs and shoulders. (Yes children, *that's* why we grownups fearfully stare at each other's moles.

In fact, peeling the frizzled skin off each other's backs was the highlight of the summer. Along with sitting on the edge of melting roads, poking the tar bubbles with a stick.

Today's children are smothered in Factor 50 at all times, wear cotton hats and constantly lug around flasks of water. There is so much water in your average classroom today it's like a small human irrigation project. When I was in school, accessing some water in the middle of maths entailed lengthy permission-getting from a sceptical teacher followed by a trip to the toilets to drink it directly out of the tap.

At secondary school it might even be mint flavoured, thanks to a Year 10 shoving a bit of ready-chewed Wrigleys up there...

I'm not saying it was better back then. Just... minter.

## A LONG ROAD

And speaking of dangers without warnings brings me to the case of *Burke v Turning Point Scotland 2022*, in which the Employment Tribunal had to determine whether a man with Long Covid was disabled for the purposes of the Equality Act 2010.

Mr Burke worked as a caretaker for Turning Point Scotland for around 20 years. In late 2020, Mr Burke contracted COVID-19, suffering initially with mild flu-like symptoms. After his isolation period, Mr Burke began to suffer from severe headaches and fatigue which prevented him from completing tasks in his daily life. Due to this, he did not return to work. Mr Burke's symptoms fluctuated from day to day which caused him anxiety.

Mr Burke's employer obtained two occupational health reports, both of which concluded that he was fit to return to work on a phased basis and that it was "unlikely" that the disability provisions of the Equality Act 2010 would apply. Following this, Mr Burke's symptoms worsened and he was subsequently signed off work for four weeks.

In August 2021 Mr Burke was dismissed on grounds of ill health. His employer accepted that he had an 'impairment' caused by COVID-19, but they denied that it was 'long-term'.

Mr Burke claimed that he had been unfairly dismissed, discriminated against because of the protected characteristics of disability and age and that his employer had failed to pay him a redundancy payment.

### EVENTS SEASON

# 2022

JUL 19  
Masterclass -  
Practice Makes  
Perfect

SEP 28  
Peace of Mind  
Members Seminar

OCT 6  
Settlement  
Agreement  
Masterclass

NOV 23  
Litigation Lessons  
Masterclass

His employer argued that the disability claim should be struck out as they believed that his condition did not constitute a disability under the Equality Act 2010 due to the outcome of the two occupational health reports.

A person is deemed disabled under the Equality Act 2010 if they suffer from a physical or mental impairment which has a substantial (i.e. more than minor or trivial) and long-term effect (has lasted or is likely to last at least 12 months) on their ability to carry out normal day-to-day activities.

The ET applied the above definition to the facts of Mr Burke's case. It found that he did have a physical impairment which had an adverse effect on his ability to carry out day to day activities and that this adverse effect was substantial. The ET disagreed with the employer's suggestion that Mr Burke was exaggerating his symptoms, reasoning that Mr Burke had no reason to exaggerate his symptoms and had no financial incentive to remain on sick leave as his sick pay had ceased in June 2021. His length of service also suggested that he would not pretend to be sick.

The ET then considered whether the impairment could be considered "long term". Mr Burke's employer stated that there did "not appear to be a potential date on which there [would be] a likelihood of [Mr Burke] being able to return to [his] full duties in the future". Due to the fact that Mr Burke's impairment had already lasted so long and that there was no potential return to work date, his impairment was found to fit the long term definition because it "could well" be that it would last for a period of 12 months when viewed from the dismissal date.

The ET concluded that all the relevant tests were met and Mr Burke was disabled at the time of his dismissal. As a result, he could proceed with his claim for disability discrimination which would be considered with his other claims at a separate hearing.

This was a first instance decision in a Scottish Employment Tribunal and so is not binding on future Employment Tribunal decisions. Nevertheless, this case highlights that long COVID-19 may be classed as a disability and therefore employers should bear this in mind if they have employees who are suffering from these symptoms. Employers should consider any reasonable adjustments that they can make to reduce an employee's sickness absence. This may be difficult given the fact that we are still on a learning curve with regard to this condition and the wide variety of symptoms it may cause. However, keeping an open mind and engaging in conversations with employees will be key to understanding your employee's condition and any appropriate adjustments.



## FASHION FLIPS



Thereby cutting down on bikini top waste - which we all know is a major contributor to landfill and climate change.

I think we could go a step further with a bikini top which can be literally *unworn* at any time in a virtually limitless combination with anything else you don't want to wear or only half wear... or wear sideways, inside out, screwed up in your armpit...

Someone get me on Dragon's Den!

I learned this week that Love Island stars are being credited with a brand new fashion for wearing bikini tops upside-down. The trend, where a bikini top is put on... upside down... is said to almost more than double the fashion potential for a bikini top.

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