

YOUR WEEKLY BULLETIN OF WIT AND WONDER



SILENT, SWEATY & STRESSED

Spare a thought for Year 11s right now



FLEXIBLY UNFAIR

How a post-maternity lawyer was overloaded and under-supported all the way to tribunal



JUST POINTING THIS OUT, JUNE

Our calendar is all wrong and I can prove it

YOU MAY NOW BEGIN

SSHHH. Sit still. Be quiet. Don't speak. Don't look at anyone else in the room. Make sure you have nothing in your pockets but a pen, a pencil and your lucky Justin Bieber eraser.

If you forget to switch off your phone and it rings at any time in the next hour anything you've been working on will be voided and you'll go home in disgrace.

If this is what your working day is like, you need to get another job.

If, however, you are 15 and (unfeasibly) reading this, you'll know exactly what I'm talking about.

This is the last full week of exam season and Year 11s are sweating it. Literally. You have to feel for them. Concentrating is never easy, but throw capricious summer heat and hay fever into the mix, along with a dose of natural adolescent terror, and you can bet the Year 11s in or around your life are having it worse than you.



An invigilator friend of mine says it's not easy for them either. Standing around, staring at teenagers as they silently wrestle with a combined science foundation paper for an hour and a half is no picnic. Invigilators have secret games to keep themselves awake, like sweepstakes for how many toilet visits any given exam will feature, who's most likely to ask for more paper, who's most likely to lay their head on the table and sob...

Apparently there's a complicated Pac Man style game, too, where invigilators roam the grid-like walkways between the desks and if one catches up with another, they've basically eaten them and they win. They also score a cherry if they can complete a grid without a youth sticking up a hand and asking for a tissue (remember the pollen count).

Every year there are allegations that exams have got too easy, but I don't think so. If nothing else, remember that attention spans are much shorter. How long is it since you last checked your phone? Yeah. Point taken?

So if you see a hot, bothered, weepy teenager leaving the school gates, give them a sympathetic smile. They need it...

FLAWED FOCUS

And speaking of testing environments brings me to the case of *Mrs G Long v British Gas Trading Ltd* 2021 the tribunal decided that an employee who was made redundant for lacking "focus" was actually discriminated against on grounds of pregnancy and maternity.

EVENTS SEASON
2022

Mrs Long worked as a solicitor for the company until her dismissal in July 2019. During her employment, she went on a period of maternity leave, returning to work in September 2017. She returned to work on a part-time basis, working three days a week 8am to 4pm.

In 2017 Mrs Long received a very positive performance review from her line manager, Sarah Hartnell. However, because she had been absent for most of the year on maternity leave, company

policy stated that her performance rating would be “capped”, meaning a lower performance rating was recorded than the one her manager said she had earned.

In 2018 Mrs Long’s colleague resigned and she took over her work, effectively doubling her workload until a replacement could be hired approximately six months later. During this time Mrs Long began to feel pressure to work on her days off. Ms Hartnell told Mrs Long via email that she should be “more flexible around mon-wed, given that work does not stop” and that she expected Mrs Long to “keep an eye on” her email on days she was not working. Ms Hartnell and her line manager Vickey Wells were critical of Mrs Long’s working patterns. The tribunal found this criticism to be unfair as Mrs Long did work outside her hours when necessary.

In Mrs Long’s 2018 performance review, she was rated “below expectation” and consequently placed on a performance improvement plan. There had been no previous discussions with Mrs Long about shortcomings in her performance.

In June 2019 she was informed that she and one other colleague were at risk of redundancy. In scoring Mrs Long for redundancy, Sarah Hartnell used her two most recent performance reviews. This included her 2017 performance rating for which her rating was capped. According to company policy, the 2016 performance rating should have been used instead.

In the scoring matrix, Ms Hartnell awarded Mrs Long a 1 out of 7 for focus which meant she “rarely demonstrates this capability and/or sometimes demonstrates the opposite.” Mrs Long challenged this score arguing it was “stacked against” her as a working mother and that no allowance had been made for the fact that she was the only Intellectual Property solicitor for six months at the company, her workload having effectively doubled.

Mrs Long was dismissed in July 2019. She appealed her dismissal but was unsuccessful. She subsequently brought claims in the Employment Tribunal for unfair dismissal, sex discrimination, equal pay, and less favourable treatment on the grounds that she was a part-time worker.

The ET found that she had been discriminated against on the basis of sex and had been treated less favourably due to being a part-time worker. The ET said that Ms Hartnell and Ms Wells’ unfair criticism of the way Mrs Long performed her role implied criticism of the way she worked due to her part-time status. Judge Gumbiti-Zimuto said the use of the 2017 performance rating was unexplained and had an “obviously discriminatory effect” which was not remedied at any stage of the redundancy process.

The ET also concluded that the dismissal was unfair. In reaching this conclusion, the ET noted the company had not consulted with the employees about the selection criteria, it applied the incorrect performance rating, and it failed to consider Mrs Long’s length of service when compared to her colleague. Further, the ET determined that because Mrs Long had been placed on a performance improvement plan, Ms Hartnell was of the view that her score would always be lower than that of her colleague. This mind-set prevented Ms Hartnell from performing a fair and objective assessment.

A remedy hearing was scheduled for a later date.

This case reminds employers that in a redundancy process, selection criteria should be fair and objective. While employers are not required to consult staff on the selection criteria, this may help them demonstrate the criteria and redundancy process was fair. Employers must also make sure that scoring criteria does not unfairly disadvantage employees who may have been absent due to pregnancy and maternity.

JUN 30

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

JUL 19
Practice Makes
Perfect
Masterclass

SEP 28
Peace of Mind
Members
Seminar

OCT 6
Settlement
Agreement
Masterclass



MIDSUMMER? NUDGE IT ON A BIT



Is it slightly OCD of me to think that we’ve got the date of midsummer all

Yes, yes, I *know* that the longest daylight day of the year currently *is* on June 21, and that calling June 30 midsummer would shorten the daylight by several minutes. That’s not what I mean. What I *mean* is that we should take the calendar like a big, see-through rug, and pull it backwards a bit until June 30 lands on the day formerly known as June 21.

This would, of course, mean that the darkest day of the year fell upon New Year’s Eve - but that ought to be perfect, because the firework celebrations would be marking the end of the darkest day, too.

The mid-point of the year would then be aptly titled as midsummer and everything would be extremely neat and tidy and as it should be.

wrong?

Are you with me?!

Because, honestly, it's quite annoying, isn't it? Summer is the mid-point of our year but it's not properly

Everyone?!

Anyone..?

reflected in the calendar. I am thinking of starting a campaign to get midsummer's eve moved to June 30.

OK. I'm off to alphabetise all my tinned food now...

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