

YOUR WEEKLY BULLETIN OF WIT AND WONDER



DEGREES OF COMFORT

Where will you set your office thermostat this winter?



GOODBYE, HELLO...

A complex case as Tesco seeks to redefine its T&Cs with fire & rehire



SHEER VELOCITY

An unforgettable rhino encounter

THE HEAT IS ON

So someone had better switch it off!

You may be worried about your soaring energy bills, but imagine the cost of heating WG Towers! As we ease into autumn and the ambient temperature drops I'm considering WG branded hot water bottles and fleeces for everyone and we're all debating at which point someone should officially be allowed to nudge the company thermostat up a notch.

I say it's probably when our fingers are too chilled to type while Howard maintains you have to see your breath in the air while at your desk.

There has been talk of Work Onesies as well and I can see two benefits here. One is the extra warmth, obviously, and the other is that once you're zipped into it you're not going to want to run to the toilet too often, meaning you'll store it all up for two or three times longer - and that will lead to fewer flushes, saving water!



Also, the Work Onesies will look so awful, we may invite clients to periodically walk through WG Towers to trigger warming flushes of embarrassment.

There's no law on workplace temperatures, but Government guidance is a minimum of 16 degrees indoors - or 13 degrees if the work is physical. Sitting at desks, typing and taking calls isn't very physical, so the next innovation might be getting everyone to hop around the room two or three times every hour (the Work Onesies not allowing for running) and then we can shave off another three degrees.

Also - pets in the workplace. Bring your dog, cat or guinea pig to the office and make them sit on your lap or feet and earn their furry keep for a change.

Look, I think of these solutions so you don't have to...

Do you have any better ideas? Please share them over on our [Facebook page](#).

YOU'RE OUT - YOU'RE IN

And speaking of extreme workplace measures brings me to the case of *USDAW and others v Tesco Stores Ltd*, in which the Court of Appeal overturned a High Court decision regarding "fire and rehire" practices.

Between 2007 and 2009, Tesco closed some distribution centres and opened new ones. They attempted to incentivise existing employees to relocate to the new centres which had less generous terms and conditions of employment through use of a "Retained Pay" arrangement. If employees refused to relocate, they would have been made redundant, but if they agreed to relocate, they were offered an additional £134.70 per week as Retained Pay. Many employees were incentivised by the Retained Pay arrangement to work at the new locations, which for some meant traveling up to an additional 45 miles.

EVENTS SEASON

2022

SEP 28
Peace of Mind
Members Seminar

OCT 6
Settlement



A collective agreement was established between Tesco and the Union of Shop, Distributive and Allied Workers ("USDAW") that this Retained Pay arrangement was described as "guaranteed for life" and would be a "permanent feature" of an individual's contractual entitlement and could only be changed by:

- mutual consent between Tesco and the individual employee
- in certain circumstances such as a promotion or general annual pay rises
- an individual's request to change working patterns
- Tesco making any shift changes that the individual employee agrees to

In January 2021, Tesco notified employees that they were intending to "buy out" the Retained Pay entitlement in exchange for an advance payment equal to 18 months of Retained Pay. Employees who did not accept this would be dismissed and offered re-employment on new terms and conditions, also known as "fire and rehire".

The USDAW then filed an injunction against Tesco in the High Court to prevent the termination of contracts of affected employees in order to re-engage them on terms and conditions which did not include the provision of Retained Pay.

The High Court decided that Tesco could not dismiss and re-engage employees in order to remove the Retained Pay arrangement that had been agreed. This was due to the context of the wording used, specifically the use of "permanent" and that a reasonable person would consider permanent to mean for as long as the relevant employee was employed by Tesco in the same substantive role.

Tesco appealed the decision in the Court of Appeal.

The Court of Appeal (CA) ruled in favour of Tesco. The CA reasoned that the use of the word "permanent" in the contract entitled them to the pay protection for only so long as the particular contract endured. The use of the word "permanent" did not limit the circumstances in which the contracts could be brought to an end. For example, if an employee was guilty of gross misconduct, Tesco would have the right to terminate their employment without notice. There was nothing in the contract or subsequent statements or agreements that meant the employees with Retained Pay would be employed for life or until normal retirement age.

Therefore, the CA overturned the decision made in the High Court and allowed the "fire and re-hire" practices. They reasoned that the previous decision given by the High Court appeared to give employees greater scope to argue that an employer's comments in regards to changes to terms of employment restricted their ability to make further changes at a later date.

USDAW have stated that they intend on taking this case against Tesco to the Supreme Court.

This decision comes as a relief to employers. However, employers should still be cautious as to how they communicate any offers and contractual changes to their employees. This decision emphasises the importance of incorporating flexible wording when making promises on the nature of contractual terms. When incorporating collective agreements into contractual obligations, employers should ensure these agreements contain sufficient flexibility to avoid disputes like this case arising. Employers should also explore all alternative options before deciding to "fire and re-hire" as this option carries significant risk and can damage work relations, morale, and performance levels in an organisation.

Alternative options that employers can implement may be:

- making non-permanent arrangements
- limiting changes to new recruits
- "buying off" the change in exchange for other incentives (e.g. additional holiday entitlement).

However, despite its unpopularity, "fire and rehire" is still an option for employers who cannot reach agreement with their employees if done properly.

TENT-ERHOOKS



The news that Bristol Zoo has closed this

Southampton Zoo used to be where the Hawthorns Wildlife Centre is now on the edge of Southampton Common, and it was typically 1970s - small, cramped, filled with disconsolate creatures and wildly inappropriate by today's standards.

But I remember it for the occasion when I first saw a rhino peeing. I have never seen anything like it. The pee came out like water from a jet pressure hose and went on and on and on and on. I was awestruck.

Was he simply venting his bladder, I now wonder, or making a comment on how he felt about the gaggle of kids sucking ice lollies and gawping down at him in his concrete pit? I like to think it was the
. . .

the news that Enterprise has closed this month after 186 years made me nostalgic for Southampton Zoo.

latter.

Such zoos are rightly in our past but I did learn something that day. Bull rhinos can even pee backwards. They also like to kick their dung some distance and height.

We all got off lightly, I think...

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