

Employment Newsletter

YOUR WEEKLY BULLETIN OF WIT AND WONDER



WET BEHIND THE KNEES

A different kind of typing pool.



GRIPPING STUFF

A bullying manager ends up in tribunal.



WHO DID YOU WANNABE?

Girl band anniversaries that lead us to ponder our life choices.

POOL YOUR RESOURCES

Sitting here, typing this from the comfort of my inflatable paddling pool, I'm reminded that it's useful that our laptops work on batteries.

I'm sure all of you, currently reading this in your paddling pools, will agree, given the health and safety issues around electrical charging and water.

Then you'll pause to flick a struggling fly from your personal pond and carry on.

That's if there isn't a puncture and the water isn't even now streaming across your patio.

Punctures are a tiresome reminder that when you're spending a working day in an inflatable paddling pool, it's best to take off spiky heeled office shoes. I know many of us are clinging to pre-pandemic standards of dress, but even so...



You can still put on a blouse or a shirt if you need to Zoom, of course. We're not *heathens*. Just keep the out-of-shot splashing to a minimum.

I am not, of course, in a paddling pool. But I wish I was. And maybe if these hot summers are to be a permanent thing, we need to examine a new working practice where a whole office can operate in cool water from the waist down, any time from April to October. Forget the boardroom - get in a pool room.

OK, so US-style air conditioning might be simpler, but it's not imaginative, is it? And think of the therapeutic effect of water buoyancy as you go about your tasks, like a Thunderbirds puppet or an astronaut on the moon. And then there's the aqua-fit sessions at lunchtime. I guarantee you - *damp but productive!*

I think I'm onto something here. Or else I've just got water on the brain...

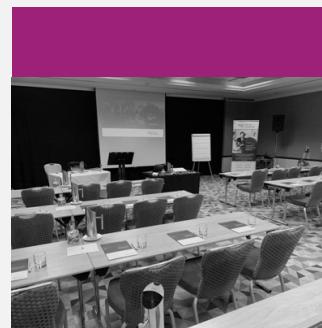
DESKTOP PUNISHMENT

And speaking of desk work with compromises brings me to the case of *Ms Bethan Oakley v EEA Limited* 2021, who was told to "get a grip" by her manager while in the throes of a panic attack.

Ms Oakley began working for her employer in 2013 as a level two tech adviser. In the summer of 2019, Mr Roberts became Ms Oakley's line manager. She informed him that her personal life had been very stressful over the past year, and that it was causing her difficulties at work. She explained that she was seeking support and counselling through an occupational health programme.

In September 2019, Ms Oakley attended a colleague's sickness absence meeting as moral support. The meeting went much longer than expected, leaving her unable to buy lunch at the canteen as it had closed, so Mr Roberts allowed her 30 minutes to go offsite to buy her lunch.

When Ms Oakley returned with her food she sat at her desk intending to eat while checking her callbacks and emails. Mr Roberts told her to leave her desk as eating hot food at desks was



prohibited. Ms Oakley then went to the break room to finish her lunch.

Five minutes later, Mr Roberts "came and stood over her and challenged her with regard to being late". Mr Roberts apparently became aggressive and said that they were very busy while Ms Oakley was in the break room "not doing her job." Ms Oakley became very upset and felt like she was going to cry and it was at this point that Mr Roberts told her to "get a grip" and "come on then, you're late..".

Once Ms Oakley was back at her desk, Mr Roberts went to speak with her about being late and eating food at her desk. Ms Oakley asked Mr Roberts to leave her alone as she was still upset over how he had spoken to her in the break room. After he left her desk, Ms Oakley experienced a panic attack and a co-worker had to help calm her down.

After the attack, Ms Oakley stepped away from her desk. She was again approached by Mr Roberts whom she again told to go away. After giving her some time, Mr Roberts said he expected Ms Oakley to go back online in five minutes. She responded that she could not take calls, to which Mr Roberts said she would have to take sick leave. Ms Oakley subsequently left for the day.

A couple of days later, Ms Oakley sent a letter of resignation, stating: "I was humiliated in front of everyone, being harassed and bullied into experiencing the worse panic attack of my life, something that I have never had happen to me previously in work." The company sent her an invitation to discuss some of the points she raised in her resignation. Ms Oakley responded that she may have been too hasty, but she also raised a grievance regarding Mr Roberts' harassment of herself and "other female staff with mental health issues." She indicated she did not wish to return to work until these issues were addressed.

Though the investigator found it was inappropriate for Mr Roberts to tell Ms Oakley to "get a grip", the rest of her grievance was dismissed.

Ms Oakley then confirmed her resignation and subsequently lodged claims with the Employment Tribunal (ET) for unfair constructive dismissal, and discrimination related to disability.

Ms Oakley's claim for unfair constructive dismissal succeeded. The ET found that Mr Roberts breached the implied term of trust and confidence by causing Ms Oakley to become "extremely distressed" and by exerting "unreasonable pressure on her to resume work" once she was distressed.

Her claims of disability discrimination and harassment also succeeded. The ET was satisfied that the employer and Mr Roberts were aware that Ms Oakley was disabled as a result of her anxiety and depression. She had been subjected to unfavourable treatment by Mr Roberts when he expected her "to resume work in circumstances where she had demonstrated, and continued to demonstrate, symptoms of distress and panic attack and an inability to work". The ET also found it "significant" that despite knowing that Ms Oakley was disabled, Mr Roberts said he would treat every employee "exactly the same way." This treatment, in addition to Mr Roberts' remarks of "get a grip" and "come on, hurry up" also had the effect of violating Ms Oakley's dignity and "creating an intimidating, hostile, degrading, humiliating or offensive environment".

While some employers may feel it is important to treat all employees in "exactly the same way," it is more important to ensure all employees are treated with dignity and respect. Where an employee has a disability, employers should be mindful about how it may affect the employee's work performance and should approach any potential issues with added sensitivity.

WHATEVER YOU WANNABE



It was released in July 1996 and spent seven weeks at number one.

Whether you vaguely recall bopping along to it in your pushchair or going out to buy a pair of breeze-block platform sandals like Baby Spice's or just turning it up in the car because, even if it wasn't cool, it was a stonking summer tune, will tell you how old you are today.

There's nothing quite like girl band anniversaries for reminding you of the passing of time - and what you've achieved while it was passing. Or might have achieved if you'd passed it in another way.

I'm now an Equity Partner in a busy and successful law firm and I can't ask for more than that.

But I do sometimes wonder whether, had I loitered around backstage at festivals a bit more in 1996, I could have made it as a roadie and even now be loading Chris Martin's keyboard into the back of a tour bus... *stares wistfully into the middle distance*

What different path might you have taken in 1996..? Do share it with us over on our Facebook page.

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