

# Employment Newsletter

YOUR WEEKLY BULLETIN OF WIT AND WONDER



## 20TH CENTURY DROPS

A 108 year-old moment in history, on August 19



## THE CHILDCARE CONUNDRUM

Does a whole gender get disadvantaged over weekend shift demands?



## STARRY, STARRY NIGHT

Have a shower in a field near you!

## DAYS LIKE THESE...

Today is a very significant day for my friend and colleague, Howard Robson. He didn't know it, but it is. I just asked him what today is and all he said is 'Um... Thursday..?'

But NO, Howard. NO. Today is the day, 108 years ago, that Adolphe C elestin P egoud became the first man in Europe to use a parachute.

A discharged French soldier, P egoud was fascinated by aviation and obtained a civilian's pilot licence in March 1913. He made his historic descent, under a canopy of silk, on 19 August 1913.

This is relevant to Howard because, as many of you will know, he is a keen skydiver. I thought this was reason enough for him to get the doughnuts in at the end of the day...



He then countered with the news that on this day in history one woman and four men were hanged for witchcraft in Salem, Massachusetts. Not sure what point he was trying to make, but certainly didn't think it warranted cake from me.

At this, Emma informed us that the very first electric cab arrived on the streets of London on this day in 1897. Yes. 1897! According to an article in The Engineer magazine, one 'Mr W H Preece inaugurated a service of electrical cabs which are to ply for hire in the streets of London in competition with the ordinary hackney carriages'. Known as Hummingbirds, these cabs were invented by Walter Charles Bersey, aged 23 - a man well ahead of his time.

At which point Natalie called out that perhaps we should all get OFF the *This Day In History* websites and crack on with *this day* in 2021. And so we did.

**Did we miss out any other amazing happenings on this day in previous years? Do let us know over on our Facebook page.**

## DAYS WHEN YOU CAN'T

And speaking of days when things happen brings me to the case of *Mrs G Dobson v North Cumbria Integrated Care NHS Foundation Trust 2021* and days in which things can't.

EVENTS SEASON  
2021

Mrs Dobson was a community nurse for the Trust, working fixed days. In 2016, the Trust changed its policy and required community nurses to work flexibly, including during weekends if required. Mrs Dobson was unable to work weekends as she had to care for her three children, two of whom were disabled. When she told her employer that she would not be able to work flexibly she was dismissed.

Mrs Dobson subsequently brought claims for indirect discrimination based on sex and unfair dismissal against the trust.

The Employment Tribunal (ET) found that the Trust had a provision, criterion or practice (PCP) of requiring nurses to work flexibly, including on weekends, but that there was no evidence that this PCP put women at a disadvantage compared to men. Relevant to this decision was the fact that all of Mrs Dobson's colleagues, most of whom were women with children, were all able to meet the new flexible working requirement. The ET consequently dismissed Mrs Dobson's claims.

Mrs Dobson appealed to the Employment Appeal Tribunal.

The EAT accepted the ET's finding that the Trust had a PCP of requiring nurses to work flexibly, including on weekends. However, the EAT found that the ET had improperly limited the pool of comparison to just the team in which Mrs Dobson worked. As the PCP applied to all community nurses working for the Trust, the correct pool of comparison was all community nurses across the Trust.

The ET also erred when it rejected Mrs Dobson's claim on the basis that there was no evidence of group disadvantage. The EAT noted that women still often bear the majority of childcare responsibilities and that this limits their ability to accommodate certain work patterns. "The childcare disparity," the judgment read "is so well known in the context of indirect discrimination claims and so often the subject of judicial notice in other cases that it was incumbent on the tribunal, in the circumstances, to take notice of it here."

The EAT remitted the case back to the ET to determine whether Mrs Dobson had been subject to sex discrimination and whether she had been unfairly dismissed.

This ruling could impact future discrimination cases brought by women that involve work patterns that conflict with childcare responsibilities. This ruling by the EAT means that future tribunals will need to take judicial notice of the fact that women tend to have greater childcare responsibilities than men, and that this affects the hours they are able to work. While the employee will still need to produce evidence that the group disadvantage is made out, they will not need to produce evidence of this disparity.

We'll let you know what happens next.

## Peace of Mind Members Seminar - Solent Hotel

SEP 28  
Peace of Mind Members Seminar - Virtual Event

OCT 12  
Employment Law Masterclass - Settlement Agreements

OCT 20  
HR Hangout - Creating a Diversity and Inclusion agenda



## NIGHTS WHEN YOU MIGHT



Want to go and lay in a field tonight?

I'm not going all New Age on you. It just might be worth it if there's not too much cloud cover, because you might catch the tail end of the annual August Perseids meteor shower.

You can watch from your back garden, of course, but light pollution dims all those shooting stars. Getting away from street lighting is best.

Imagine the delight, if you take a child with you and point out the wonders of the universe while lying on a blanket.

Soon there will be streaks of bright light and cries of wonder...

...as they bundle up under the blanket to play *Plants vs Zombies* or *Punch Quest* on their phone.

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