

YOUR WEEKLY BULLETIN OF WIT AND WONDER



PYRAMID SCREAM

Fun with fractures as the TikTok world falls over itself for views.



REDUNDANT THINKING

Failure to even consider furlough ends badly for firm in tribunal.



HASTA LA VISTA, BABY!

But nobody talked to the Nirvana baby model before the album cover came out...

SOME HAVE CRATENESS THRUST UPON THEM

If I can ask just one thing of you this week, it's this. Don't stand on a milk crate.

And *definitely* don't stand on a pyramid of milk crates.

If you're thinking this is **a.** sound advice and **b.** unnecessarily pointed out, then THINK AGAIN, people - because even as you read this, thousands are walking up badly-stacked milk crates, falling off them and breaking bones.

For TikTok, obviously.

Yes, as this weird old year reaches its turn of the season and millions of us have escaped serious illness thanks to vaccines and social distancing, it seems followers of The Milk Crate Challenge are seeking fresh new ways to get life-changing injuries.

The trend involves stacking milk crates in a pyramid like structure and then filming (obviously) some stooge attempting to walk across the crates without the structure collapsing. As a result, a plethora of broken bones, ligament injuries and dislocations are showing up in hard-pressed A&E departments.



Maybe I'm just too risk averse to be cool, but look, I *stay away* from these plastic holders of multiple milk bottles (try saying *that* after a sherry). Just ONE crate can disable you. Have you ever inadvertently stepped into one these things?

They are designed to snap your ankle.

Which doesn't mean I wouldn't ever *do* a challenge for the right cause. I was also concerned about my heart stopping when it came to the Ice Bucket Challenge a few years back, but I overrode that anxiety (spoiler - heart still working).

But some challenges are only for the, erm, *challenged*.

Like the WALK THE SPIKED RAILINGS CHALLENGE and the BREATHING IN WATER CHALLENGE and the LIE DOWN ON THE MOTORWAY CHALLENGE.

And THE MILK CRATE CHALLENGE.

Because I just like my ankles just as they are.

Unbroken...

CONSIDER THIS

And speaking of unnecessary breaks brings me to the case of *Mrs B Mhindurwa v Lovingangels Care Limited 2021* - and yet more lockdown fallout for the tribunal to consider.

Mrs Mhindurwa worked as a live-in care provider for the company from 2018 until her dismissal in July 2020. Due to the coronavirus pandemic, the company experienced a

EVENTS SEASON

2021

SEP 22

significant downturn in the amount of live-in care work it was able to offer its employees and Mrs Mhindurwa was informed that she may be made redundant. She asked if she could be placed on furlough and was told this was not possible because there was no work for her. At a redundancy meeting, Mrs Mhindurwa was told that the company could only offer her domiciliary work, but she could not accept this work because it was too far away from where she lived. Mrs Mhindurwa was subsequently informed that she would be made redundant, which she appealed, however this was dismissed.

Mrs Mhindurwa filed a claim of unfair dismissal against her employer, arguing that she should have been placed on furlough rather than dismissed, and that she was targeted for redundancy because she had previously raised issues at the company regarding underpayment of her wages. The company argued that they could not place her on furlough because there was no live-in work available.

The Employment Tribunal (ET) accepted the company's assertion that it did not have any live-in care work to offer Mrs Mhindurwa, and that she was dismissed by way of redundancy. Having established the reason for the dismissal, the ET then considered whether the redundancy was fair.

The ET noted that the whole purpose of the furlough scheme was to avoid lay-offs and redundancies in businesses impacted by Covid-19, and determined that "a reasonable employer would have given consideration to whether [Mrs Mhindurwa] should be furloughed to avoid being dismissed on the grounds of redundancy". The company had failed to give proper consideration to the option of placing Mrs Mhindurwa on furlough leave and waiting to see whether work levels might increase.

The ET was also critical of the company's appeal process, calling it a "rubberstamp exercise" where the person hearing the appeal simply accepted the position of the company without considering Mrs Mhindurwa's assertion that she should be furloughed.

The ET was satisfied that the company's failure to properly consider furlough as an option, combined with the failure to conduct a proper appeal, rendered the dismissal unfair.

A remedy hearing was scheduled for a later date.

This judgment was a first instance decision and so is not binding on future cases. This case also does not mean that a tribunal will necessarily find that an employee who was made redundant rather than placed on furlough was unfairly dismissed. The mistake the employer made in this case was that they failed to properly *consider* furlough as an alternative to redundancy, both when making the initial decision and again after the employee appealed. Employers are reminded to fully consider all potential alternatives to redundancy, and if proposed alternatives are determined to be unsuitable, to document the reasons why.

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



BABY SHOVE



The baby on the front of Nirvana's iconic *Nevermind* album is suing the band for exploiting him when he was four months old. Well, the man who was once the baby...

Despite willingly recreating the photo (which pictures a naked baby swimming underwater) several times across the last thirty years, and being widely quoted on the benefits of the notoriety, Eldon is now angry that a well-placed sticker didn't preserve his modesty.

He is after at least \$150,000 for damages.

I have often wondered about the small girl on the opening credits of *The Great British Bake Off* and how she feels about featuring each week. Particularly as her little face always looks guilty when she turns around, as if she's just poked a hole in a wedding cake and licked the icing.

By now she must be a teenager. Imagine the angst. Does she tell her friends about her Bake Off alter ego? Does she crumple with embarrassment with every fresh showing? Do they call her Cakey Bakey at school? Is her resentment at Love Productions building with every passing year? And worse... has she developed a hatred of cake? One can only boggle at what level of damages *that* would elicit!

What photos or film of *you* do your parents use for ritual embarrassment purposes? Do let us know over on our Facebook page.

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