



## The monthly round up of weird and wonderful employment law news

By **Dónall Breen** - 30 April 2019

### From #FreeTheNipple to Fierce Flatulence - The monthly round up of weird and wonderful employment law news

We start this week with a topless selfie that has reignited the gender equality debate over whether bearing your chest as a woman is different to a man. A US high school teacher is suing her former employer for unlawful termination after a topless selfie she sent to a colleague (she was dating) was somehow obtained by a student and sent around the school. The facts are certainly sympathetic to her case - the photo was sent in confidence to a partner and shared without her consent. Her argument is that no male teacher would be fired for a photo in which their chest was exposed. The court case, which the teacher values at \$3m, will be an interesting test case for the #FreeTheNipple campaign which argues that many social media platforms unfairly discriminate against women by banning photos containing female nipples but not male nipples. It is an issue that many people have been wanting to get off their chest for a while.

Also exposed this month is the cinema who were found to have unfairly dismissed an assistant after she encouraged 'digital picketing' at her employer's establishment. The trade union rep suggested supporters should block book seats online that they didn't intend to buy, thus clogging up the website. The peculiarity of the case was that she did not engage in this electronic picketing herself, and after being advised that such action may be unlawful, took no further steps to encourage it. The tribunal went on to find that being dismissed for merely suggesting industrial action amount to an automatic unfair dismissal. Unfair dismissal awards can be up to c.£95,000, the equivalent of three buckets of popcorn and a cola at most cinemas.

Finally, in a modern rendition of *Gone with the Wind*, an employee dispute turned into a major stinker in Australia when a man who claimed his former supervisor at work repeatedly broke wind at him lost his multimillion dollar compensation claim for bullying. He accused his former supervisor of repeatedly breaking wind inside his small, windowless office, which he said amounted to bullying. The Court of Appeal in Victoria dismissed the case and ruled that, even if his allegations of malicious flatulence were true, it would not necessarily mean he had been bullied. One notable extract from the transcripts is that the colleague "...thrust his bum at me while he was at work." In retaliation the employee said he would spray his supervisor with deodorant and call him "Mr Stinky". Seriously,

this was all said in open court. The appeal judges summarised the claimant’s case by saying that he “put the issue of [his supervisor’s] flatulence to the forefront” of his bullying case, arguing that “flatulence constituted assaults”. It is unclear if the employee will appeal the ruling arguing that those who denied it, supplied it.

So that’s it for another month, where the truth can often be stranger than fiction. Although some issues are new frontiers for us, like cyber picketing, other cases simply throw up the same old story of humans not getting on so well when kept in close confident. From all of us here at GQ|Littler, we wish you all the best as you contemplate who is the Mr Stinky of your own office.