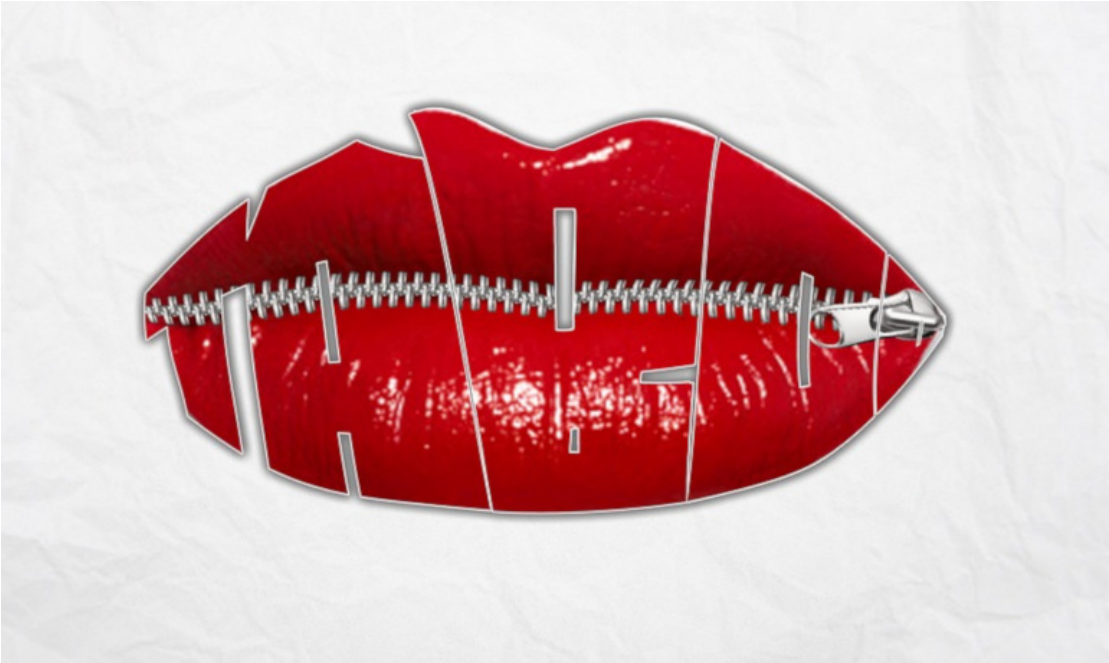

From solicitors behaving badly to conspiracy theories - The monthly round up of employment law news

By Dónall Breen - 31 October 2018

Every month, we take a look at the weird and wonderful employment law news from around the world, with a tongue in cheek assessment of what has kept our fellow workplace lawyers busy.

For some reason it has been a fallow month for outrageous employment law stories. Feeling the pressure to try come up with something mildly interesting and readable, I unashamedly and immediately turned to cannibalism – and started furiously Googling what naughty things solicitors have been up to lately. The results were brilliantly amusing.

First to catch my eye was the story of a poor doorman who walked in on a partner and paralegal fornicating in the office earlier this month. After a full investigation which uncovered some more uncomfortable truths about their relationship, both parties were fired. Although this may seem shocking, as I dug further into the world of solicitor impropriety I became acutely aware that this was one of the more vanilla stories to emerge from the legal world. Early last year a servant of the court was caught by SIX colleagues engaging in a sexual act with a co-worker. And in August of this year a partner of a major law firm was caught having sex with a trainee on the bonnet of a car – all in plain view of CCTV and, presumably, a highly amused security guard.

Not amused at all with lawyers right now are the Telegraph, who were green with envy when they had their story of sexual harassment by a major UK business man blocked by way of injunction. For all the difference it made, that person was subsequently named in parliament and is now every Tom, Dick and Philip know who he is – meaning said businessman's £500,000 on legal fees only made him more famous by trying to block the story. It prompted Theresa May to vow to the end the use of 'unethical' non-disclosure agreements. Although NDAs have been in the firing line for some time now, momentum seems to be building for reform of this area to stop their use by employers to cloak sexual harassment in the workplace.

Which makes this author think that the rich and powerful trying to protect themselves from the scrutiny of the press could be a conspiracy theory. Just like whether the Pope of the Catholic Church is a Jesuit, the earth is actually flat, the large Hadron collider is shutting down the atmosphere or if aliens are fallen angels. Belief in all of these theories is what led to an Australian government

department taking action against an employee. The child protection officer was put on sick leave and told not to return until she could provide a medical certificate stating that she was fit to perform her duties. A tribunal from the supposed country of Australia granted the employee a right to plastic pieces of tender with an apparent value of $20,000 for direct discrimination. The court found there was a presumed mental illness, despite the employee having no recognised mental illness of any sort. It was a painful reminder that if you treat someone like they do have a disability, they are actually protected by anti-disability discrimination legislation (similar rules apply here in the UK too).

The same is not true for notice of termination however, where no such presumption applies. In a slightly strange case an employment tribunal has found that an employee who handed in her notice of termination had not actually terminated her employment. Highlighting the danger of taking statements at face value, the tribunal found that (on the facts) the employee had actually 'resigned' from her position within that department and not her employment in general. The employee was thus found to be unfairly dismissed. The employer was seen pouring over the judgment to try ascertain what it *actually* meant.

Finally, our inaugural Unnecessary Litigation of the Month Award goes to the lawyers involved in the case of a hospital worker who sued his employer over a failure to update a job description. Although it would have taken literally minutes to pen something suitable for the employee, the judicial process has taken over five years. Even the facts of the case are curious. It involved a technician at a hospital who, for reasons unknown, developed a phobia of "blood, injections and needles", an unfortunate course of events for a healthcare worker. With only the top employment judges in the land being able to solve such a grievous case of absolutely no legal importance, the Court of Appeal found the hospital did not put the employee at a substantial disadvantage. No doubt the Supreme Court will have the final word on this.

And our inaugural Necessary Litigation of the Month Award goes to the employer (and their fantastic legal advisers) who successfully argued the 'banter defence' in the Employment Appeals Tribunal. The tribunal found that calling someone a "fat, ginger, pikey" was just some employees having the lolz and definably not harassment. It is a staple of employment law training that joking around in the office can definitely be harassment and, almost by default, if you mention it was 'just banter' you immediately lose your case. We will obviously have to think over this advice, with a few beers, before going on the lash.

So there it is, even during a slow month employment law still manages to squeeze out entertaining and interesting news. I look forward to the festive party season ahead, and the inevitable alcohol fuelled banter that will keep this blog post going for months.

