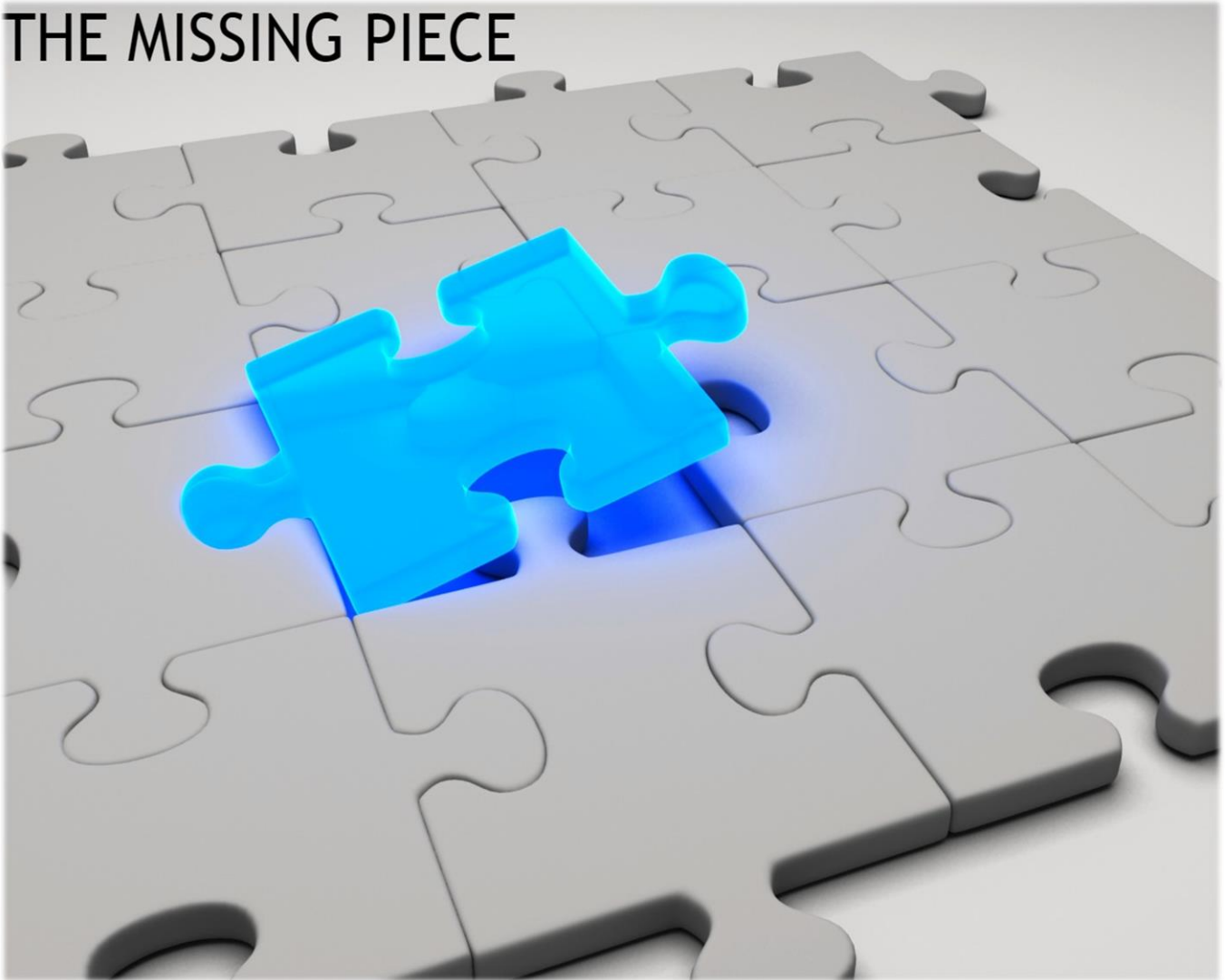


THE MISSING PIECE



Welcome....

to the latest issue of *The Missing Piece*, the monthly legal bulletin from *In House Lawyer*. *In House Lawyer* is my individual and exclusive legal service with strong ideals and a bespoke approach.

Following recent media reports about a woman sent home after she refused to wear heels at work I'll be highlighting the potential pitfalls of dress codes for employers.

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It is common practice within certain sectors to have dress codes and/or appearance guidelines for staff. However, the widely reported case of London receptionist, Nicola Thorp, who was sent home without pay for refusing her employer's request to wear heels of at least 2 inches throughout her nine hour shift, begs the question: is it unlawful to require female employees to wear high heeled shoes?

THE LEGAL POSITION

The Equality Act 2010 requires employers not to discriminate against its employees on various grounds known as 'protected characteristics' which include sex and age.

While the media interest in this case focused on the apparently 'sexist' instruction to wear heels, it is not on the face of it unlawful for an employer to have appearance guidelines, as long as these are comparable for male and female employees, the dress requirements for each gender do not have to be identical.

There are good business reasons why organisations may want their staff to present a consistent and smart appearance to the outside world. It is hard to see however why that objective cannot be met equally well by an employee wearing flat (but smart) shoes.

It would be a different story however if an employee could show that the reason for the requirement to wear heels was to make them look attractive and sexy and that male employees were not expected to promote the employer's business in the same way. That would potentially be direct discrimination, which cannot be justified by an employer and for which possible compensation is uncapped.

Employers have a duty to take reasonable care for the health and safety of their staff and employers should be mindful of this obligation when drafting any policy.

Depending on the duties the employee is required to perform, it is likely that wearing high heels for any length of time will jeopardise employees' health. There is plenty of medical evidence that they can cause joint damage, back pain, bunions as well as potentially contributing to sprains and falls.

DRESS CODE TIPS FOR EMPLOYERS

- When formulating a dress code consider the reasoning behind the requirements within the policy and whether these can be achieved in any different/ less prescriptive ways?
- Where possible consult with employees before imposing any new or updated policy on appearance. This would include explaining the business or other reasons for it
- Consider whether the policy treats male and female employees comparably. For example, it may be acceptable to say men must wear a shirt and tie and women must wear smart business dress but, it is unlikely to be acceptable to say women must wear skirts but men can wear jeans.
- Think about the impact of the policy requirements on disabled employees and whether any reasonable adjustments may be necessary?
- Consider how the policy might affect those employees who wish to dress a certain way for religious reasons?
- Does the policy present any possible health and safety issues? If so, how can these be mitigated?
- Communicate the policy to all employees and ensure it is enforced by managers consistently. For example, make sure the code is not enforced more strictly against women than it is against men. Consider whether training on the policy is necessary to achieve this?
- Follow best practice guidance issued by ACAS on 'dress code and appearance in the workplace'.

CONCLUSION



Dress and appearance in the workplace is likely to continue to be a high profile issue. A company's brand image and the 'look' considered necessary to promote that could tip over into unlawful recruitment practices, for example if a fashion retailer were to insist on only beautiful, thin employees. Earlier this year, female cabin crew at British Airways won the right to wear trousers. While this was achieved through trade union negotiation rather than legal proceedings, the risk of high profile media interest is, increasingly, just as much a threat to employers and their brands as the risk of legal liability.

THAT'S ALL FOR THIS MONTH...

If you have any queries, comments or request for future bulletins then get in touch, I would be delighted to talk to you or meet at your convenience.



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