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Do you employ staff?

Employment Tribunal Claims are Still on the Rise

Employment Tribunal Fees

In 2013 the Government introduced fees for people who wanted to raise a claim against their employer / ex-employer in an Employment Tribunal. These fees were introduced to prevent unnecessary and vexatious claims from being raised, and to also ease the burden of funding the Tribunals from the tax payer. The fees ranged from between £390 to £1,200 with discrimination claims costing more for claimants due to their complexity often resulting in longer periods of time to deal with the cases. The Government considered this to be a practical solution to a timely and expensive occurrence for many employers, but both the Trade Union Congress and many employment solicitors considered the introduction of fees to be a barrier to justice, and the Trade Union Congress took the UK Government to court over the issue.

In July 2017 the Supreme Court agreed that the Tribunal Fees were both unlawful and unconstitutional. The fees were immediately banned, and the Government was required to refund millions to those who had paid fees since they had been introduced. One of the reasons this decision was reached is the fact that 79% fewer cases were brought before the Employment Tribunals during the years the fees were in operation, showing that they had an extremely significant impact on the average worker's ability to raise a claim. It was also decided that the higher fee for discrimination claims was an act of indirect discrimination in itself, because statistically a higher proportion of woman bring discrimination claims, who often tend to be part-time employees who are not financial capable of funding a claim against their current or ex-employer.

But what has happened since the fees were abolished?

Unsurprisingly, the number of claims submitted has increased tremendously. After the fees were abolished in July 2017, there was a 90% increase in the number of claims lodged between October and December in the same year

alone. The Ministry of Justice have recently confirmed the number of Employment Tribunal single claims in 2018 was 38,767. When we compare October – December 2018 with October – December 2017, we can see that there has been another 23% increase in the number of claims raised. A closer look at the statistics confirms the following:

- Claims relating to a failure to inform and consult during a redundancy procedure have increased by 118%
- Claims relating to a detriment or dismissal on the grounds of pregnancy of maternity have increased by 56%
- Discrimination claims relating to age, disability, race and sexual orientation have all increased.

The continued increase in the number of claims is affecting the amount of time it takes for a claim to be heard, with average waiting times now reaching nearly seven months. This long wait can increase the amount of stress and unease experienced by both claimant and respondent in what is already an obviously stressful time, making a difficult situation much worse.

What Does This Mean?

These statistics show us that the trend in rising employment tribunal claims is not going away anytime soon. As an employer, you need to ensure that you are aware of the risks that mis-management of an employee can pose. Whilst the fees were in operation many employers relaxed their approach to managing employees and corners were often cut and risks were taken under the assumption that employees were unlikely to pay the fees to raise a claim. With evidence now confirming the exact opposite to be true, you are advised to take a more cautious approach and ensure you are managing employees fairly and consistently in line with their contract of employment, Company policies and procedures, the ACAS Code of Practice and relevant employment legislation.

Many employers believe that policies and procedures can automatically be modified or disregarded if an employee has less than two years' continuous service (the necessary requirement to raise a claim for Unfair, Wrongful or Constructive Dismissal), but if consideration is not given to whether an employee has any protected characteristics then you may fall foul and be exposed to a claim of direct or indirect discrimination instead. Therefore, you are advised to not place too much weight on the 2 years' continuous service requirement and be mindful of the fact that anti-discrimination legislation is a "day one" right, i.e. it kicks in on "day one" of employment.

How Can We Help?

We regularly provide our retained clients with advice and guidance on how to manage employees in line with employment law. If this is a service you are interested in, or if you have any queries relating to any of the above, please don't hesitate to contact us at hradvice@hasslefreehr.co.uk