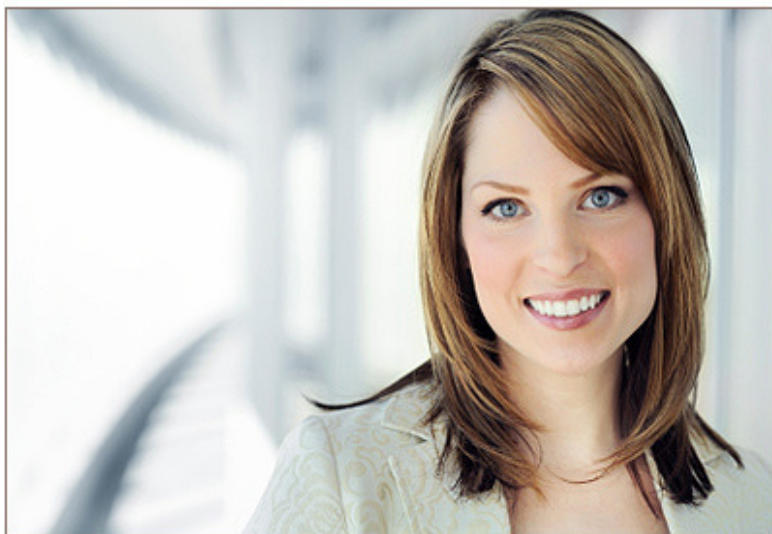




Human Resources & Health and Safety



Do you employ staff?

Employment Tribunal Fees Declared Unlawful

Background Information

In 2013, during the Liberal Democrats and Conservative Coalition Government, a ruling was passed to introduce fees when bringing a claim to an Employment Tribunal. These fees varied in amounts, depending upon the nature of the claim being raised, but could be up to £1,200. There were two main reasons for the fees being introduced:

- To reduce the number of vexatious / illegitimate claims being raised; and
- To reduce the amount of tax payers' money that was being spent on the running of Employment Tribunals.

However, the fees were not well received by a large amount of the public, Trade Unions, or Employment Lawyers. Whilst the introduction of the fees (and the introduction of the ACAS Conciliation Service) did help to prevent vexatious claims, the number of claims submitted fell by approximately 70%, causing the widespread belief that genuine claims were also being prevented by people who were unable to raise the funds / justify the cost without a certainty of success.

Because of this, Unison, one of the country's largest Trade Unions, has been fighting against the fees since the day they were introduced. After several unsuccessful claims they repeatedly appealed until the case reached The Supreme Court, where they have finally been successful.

The Supreme Court

On Wednesday 26th July 2017, Unison was successful in their fight against Employment Tribunal fees, when The Supreme Court declared them both unlawful and discriminatory.

The fees were declared unlawful because they acted as a deterrent, not only to the people who would raise illegitimate claims, but to people who could not justify the extra cost of a claim alongside their day to day living expenses. This meant that they obstructed a person's right to seek justice, which is a human right stated in both UK and EU law. Lord Reed also noted that Employment Tribunals cannot be treated as a public "service" that only benefits the individual "user", the Employment Tribunals and their rulings exist to benefit everyone, and people should not be prevented from using them.

The fees were also declared indirectly discriminatory because many women raise claims for discrimination (a claim with the highest fee), but women are also likely to have a lower wage due to pregnancy and maternity, making them less able to fund a claim.

Lord Reed stated that parliament created employment rights for public interest. Whilst it is desirable for claims/disputes to be solved outside of the Employment Tribunal, by way of mediation or a settlement agreement, there also needs to be a collective awareness that failure to solve a dispute may result in a just and fair system of adjudication. The fees brought forward the idea that Employment Tribunals were less likely, possibly resulting in ingenuine mediation, and a failure to uphold employment rights.

What Happens Now?

The fees have been immediately abolished. Before the ruling, Government promised that all fees of unsuccessful claimants would be repaid (successful claimants recoup the cost of the fees in their compensation). This currently amounts to approximately £27million, and discussions are currently underway about how repayments will be managed.

Whilst it was made clear that the current system is considered unlawful and cannot continue, the Supreme Court did leave open the possibility of more reasonable fees being introduced in the future. It has been acknowledged that having a system in place that discourages vexatious claims would be beneficial, but any system put in place can in no way be preventative of legitimate claims or discriminatory. Therefore, it is possible that the Government could review the previous fees, adjust the rates, and reintroduce them.

One of the arguments against the fees was that they were introduced via a statutory instrument and not an Act of Parliament. The Government could now try to counter the Supreme Court's ruling with an Act of Parliament, but as the current Government is not a majority, and since Labour and the Liberal Democrats agree with the removal of fees, it is unlikely this would be successful.

Risks for Employers

It is now highly likely that the number of claims brought before an Employment Tribunal will increase. Employers need to be aware of their management practices, and will need to consider the possibility that claimants may be less willing to accept a settlement agreement. By ensuring that HR Policies and Procedures are legally compliant and in line with the ACAS Code, and by ensuring management follow these procedures accurately, employers are less likely to have to respond to a claim.

How Can We Help

We provide our retained and ad-hoc clients with regular HR advice and support, specializing in employment law and employee relations. By doing so, we help ensure our clients are managing their employees correctly and following the ACAS Code, preventing the possibility of a claim before an Employment Tribunal. If you believe you would benefit from this service, or if you have any questions surrounding the content of this newsletter, please do not hesitate to contact us on hradvice@hasslefreehr.co.uk