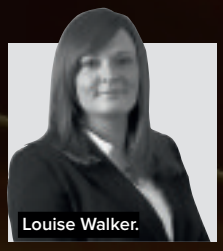
Louise Walker.

EMPLOYMENT LAW UPDATE:

TRIBUNAL FEES

In this article, Louise Walker, a Senior Solicitor with Just Employment Law, discusses the Employment Tribunal fees regime that was recently declared unlawful by the Supreme Court, and the potential impact on this for businesses.

Since July 2013, individuals wishing to bring a claim in the Employment Tribunal have been required to pay a fee unless they qualified for a fee remission.

The level of fee was dependant on the type of claim and claims were categorised into Type A and Type B claims. Type B claims attracted the maximum fee, which was £1200.

Following the introduction of the fees regime, the number of individuals bringing Tribunal claims decreased significantly.

Unison undertook to challenge the lawfulness of the fees regime on the basis that individuals could not afford to bring claims, and so argued that fees denied access to justice. Unison also argued that the regime was discriminatory against women as it was women who brought the majority of Type B claims (and these claims attracted the higher fee). Unison's challenge eventually took them to the Supreme Court and in July 2017 the Court confirmed

that the fee regime did prevent access to justice, that it was potentially discriminatory, and so the regime was unlawful. Immediately following the Supreme Court's ruling, the government confirmed that it would no longer charge fees and that it would reimburse all fees paid since July 2014. It is suggested that some £32 million will require to be repaid. This decision of the Supreme Court is a momentous decision in employment law, and one of which employers should be aware moving forward.

Given that fees will no longer be payable to the Tribunal by individuals seeking to bring a claim, employers may face a higher risk of claims being brought against them. When making management decisions, therefore, employers should take into account the risk of litigation and the potential costs associated with defending such claims. Taking legal advice at an early stage in internal proceedings is a sensible step in managing risk.

Shortly after the fees regime was introduced, in May 2014 ACAS early conciliation was implemented as a compulsory step in Tribunal proceedings. Essentially, this means that an individual seeking to bring a Tribunal claim will first have to go through a period of early conciliation with ACAS and their employer with a view to establishing whether the claim could be settled. This conciliation process will continue to apply even with the abolition of the fee regime so, whilst it is perhaps unlikely that claims will increase to their pre-fees regime level, employers should not ignore the potential risk of Tribunal claims when making decisions affecting their businesses.

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There are strict time limits that apply in Employment Tribunals and cases have to be raised within a fairly short period of time after the issue in question. For example, in an unfair dismissal claim, an individual is required to submit their early conciliation notification within three months of their dismissal date. However, Tribunals do have discretion to extend these time limits in certain circumstances, and consideration must now be given to whether individuals who chose not to bring a claim because they could not afford to pay the fees should now be able to do so.

Employers who are notified of any historical Tribunal claims against them would be sensible to seek legal advice at the earliest opportunity since there are potential arguments that can be put forward against claims that the Tribunal should grant an extension to these time limits.

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