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European Employment Law ALERT

UK Employment Tribunal Fees Abolished with Immediate Effect

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The regime by which claimants in the UK bring employment-related claims is set for radical change after the UK's highest court ruled that the current fee system is unlawful. With immediate effect, claimants no longer have to pay fees to bring claims in the Employment Tribunals. A spike in claims is expected.

In *R (on the application of UNISON) v Lord Chancellor 2017*, the Supreme Court (the highest legal authority in the UK) has unanimously ruled that the Employment Tribunal (ET) fee regime introduced by the government 4 years ago is unlawful. The fee regime required those bringing claims in the ET, and those appealing to the Employment Appeal Tribunal (EAT), to pay fees on filing a claim and at hearing stage (subject to very limited exemptions). This ruling means that, if and until a replacement scheme is put in place, with immediate effect, no fees are payable in the Tribunal system. Further, the UK government will have to reimburse all fees that have been paid to date, estimated to be around £30m.

How did this decision come about?

The UK government introduced the Tribunal fee system in 2013 with a stated aim of reducing "unmeritorious" employee claims and funding the cost of the Tribunal system. This was coupled with a requirement that employees seek to conciliate claims before being allowed to litigate. The volume of Tribunal claims has since reduced by 70%. A major UK trade union, UNISON, challenged the legality of the fee regime on the basis that it unreasonably restricted access to justice under both UK law and EU law, and that it discriminated against women because higher fees were payable to bring discrimination claims. The challenge has now succeeded on all counts in the UK's highest court, the Supreme Court.

The court held that the fee regime was not justified. The aims of the scheme were not met, and the level of the fees was disproportionate to the (often low) value of claims and to average incomes in the UK.

The requirement to conciliate claims (via a third party, ACAS) remains in place and is not impacted by this decision.

What are the implications for employers?

Put simply, we are likely to see a noticeable rise in claims brought against employers over the coming months, which may possibly then reduce if the government introduces a revised, lower fee regime. There is also an open question as to whether employees who are outside the time limit to bring claims can argue they should be allowed to bring claims now, on the basis they were deterred from bringing claims by the fee regime.

Given the expected uptick in litigation, employers need to take extra care to avoid prompting employee claims, and to identify and resolve valid claims at an early stage.

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