
labour and employment lawflash

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All Change in the UK Employment Tribunals

New procedural rules to take effect and tribunal fees to be introduced on 29 July 2013.

On 3 June, the UK government published “The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013” (the New Rules).¹ The New Rules make several important changes to the procedure applicable in UK employment tribunals and will apply to all employment tribunal proceedings from 29 July 2013, irrespective (subject to certain exceptions) of when a particular claim was lodged.

New rules relating to employment tribunal fees will also be implemented on 29 July 2013.

Background

In response to criticism that the current rules governing employment tribunal procedure were too complex and poorly drafted, Lord Justice Underhill was asked, in November 2011, to review the existing rules of procedure. He was also asked to draft a new set of rules that would achieve proportionality, speed and efficiency, simplicity, and certainty and consistency for all parties participating in the tribunal process. In July 2012, Lord Underhill published his recommendations and new draft rules, following which the government carried out a consultation. The response to the consultation was published in March 2013, and, despite initially proposing an April 2013 implementation date, the government has now confirmed that the New Rules will come into force on 29 July 2013.

Key Procedural Changes

The New Rules make several changes to employment tribunal procedure, with the key changes set out below.

Introduction of an initial paper-sift stage to weed out very weak claims or responses. This process will be carried out by an employment judge, who will decide, on the papers, whether the tribunal has jurisdiction to consider a claim and whether a claim or response (or specific parts of either) have a reasonable prospect of success. Where the tribunal notifies a party that the claim or response should be dismissed due to lack of merit, the relevant party may present written submissions explaining why the claim or response should not be dismissed. The judge will consider any submissions and decide whether the claim or response (or part thereof) should continue or will fix a hearing to decide whether the claim or response should be allowed to proceed.

Relaxation of the rules for applying for an extension of time to present a response. Under the New Rules, a respondent may apply for an extension of time to present his or her response, either before or after the original 28-day deadline to present a response has expired. Also, there will no longer be a requirement for the respondent to explain why he or she cannot comply with the original time limit; the respondent will simply have to set out the reasons why the extension is sought.

Case management directions and pre-hearing reviews combined into new preliminary hearings. Tribunals will be able to determine both case management issues and substantive preliminary issues (for example, whether a claim or response or any part should be struck out) at the new preliminary hearings. Both parties will be given reasonable notice of the date of the hearing and will be provided with at least 14 days' notice if the hearing involves a preliminary issue.

1. View the New Rules at http://www.legislation.gov.uk/ukxi/2013/1237/pdfs/ukxi_20131237_en.pdf.

Costs orders. Currently, costs orders exceeding £20,000 must be referred to the county court for assessment. Under the New Rules, however, an employment judge may carry out this determination.

Introduction of a clear structure for combining multiple claims that have common or related issues of fact or law. The New Rules allow tribunals to designate one or more of the claims as a lead case (or cases) and stay the other cases. Any decision on the issues in the lead case will be binding on the common or related issues in the other cases. If a party to one of the stayed cases does not agree with the decision, it has 28 days to apply to the tribunal for a direction that the decision in the lead case does not apply to that party.

End of claim. When a claim is withdrawn, it will be automatically dismissed, without the respondent having to write to the tribunal.

The New Rules also provide details about how tribunal fees, as discussed below, will work in practice. A tribunal will reject a claim if it is not accompanied by either a tribunal fee or a remission application. However, where either (i) the tribunal fee submitted with the claim is less than the amount that is correctly payable or (ii) the remission application is rejected, the tribunal will notify the claimant of the date by which full payment is due. If payment is not made by that date, the claim will be rejected.

Further, if the hearing fee is not paid by the due date or a fee remission application is not received, the claim will be dismissed without further order. However, the tribunal does have the discretionary power to reinstate the claim if the fee is paid (or a remission application is received) after the deadline has passed.

Tribunal Fees

From 29 July 2013, all employment claims and appeals will need to be accompanied by a fee or, for those on low incomes, an application for fee remission. The level of the fee will depend on the nature of a claim.

Claimants bringing more straightforward and lower-value claims, such as claims related to unauthorised deductions from wages or breaches of contract, will be required to pay an issue fee of £160 when the claim is presented. If the claim proceeds to a full hearing, a hearing fee of £230 will become payable. For more complex claims, such as unfair dismissal or discrimination, claimants must pay an issue fee of £250 and a hearing fee of £950.

Other fees may become payable during the tribunal process if certain application types are made. For example, if an employer were to make an application to review a default judgment, it would need to include a payment of £100 with its application.

Fees will only be payable online or through a centralised processing centre. It will not be possible for fees to be paid in person at individual tribunals.

Tribunal judges will have the power to order the unsuccessful party to reimburse the fees paid by the successful party, although this will be at the judge's discretion, rather than automatic.

Contacts

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