

labour and employment lawflash

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UK Government Publishes Employment Tribunal Statistics

The statistics show a huge fall in the number of claims, which may be due to the introduction of tribunal fees.

On 13 March, the UK government published the latest Employment Tribunal statistics for the October to December 2013 period. Significantly, this is the first full quarter of statistics since Employment Tribunal fees were introduced on 29 July 2013. Depending on the type of claim, it can now cost employees up to £1,200 to bring a claim before an Employment Tribunal.

The headline messages from this quarter's Employment Tribunal statistics are that:

- There were 79% fewer claims received (9,801) in October to December 2013 compared to the claims received (45,710) in October to December 2012.
- There were 75% fewer claims received in October to December 2013 compared to the claims received (38,963) in July to September 2013.
- There were 63% fewer age discrimination claims, 58% fewer disability discrimination claims, 57% fewer race discrimination claims, 77% fewer sex discrimination claims, and 65% fewer unfair dismissal claims received in October to December 2013 compared to the claims received in October to December 2012.

At first glance, this would appear to be good news for employers. A frequent complaint under the old system was that it was far too easy for a disgruntled former employee to bring a tribunal claim with little or no cost to the employee whilst putting the employer to considerable expense and inconvenience in defending itself. The tribunal fee was introduced with the express intention of deterring unmeritorious claims by requiring claimants to meet at least some of the costs generated by their complaint.

Interestingly, whilst the trade union Unison recently lost its legal challenge against the introduction of these fees, the High Court accepted Unison's argument that the EU law principle of effectiveness could be violated by the requirement for an employee to pay fees as a condition for accessing the Employment Tribunal and Employment Appeal Tribunal. This principle would be violated if the fees made it "virtually impossible or excessively difficult" for an employee to exercise rights conferred by EU law, such as in relation to claims for discrimination. The High Court ruled this legal challenge to be premature but accepted that the "disputed evidence as to the dramatic fall in claims may turn out to be powerful evidence to show that the principle of effectiveness, in the fundamentally important realm of discrimination, is being breached". If so, the High Court stated that it expects the government to change the system without any further litigation.

Of course, the fall in claims may not necessarily be connected to the introduction of Employment Tribunal fees and may instead be attributable to the improving economic landscape. It will be for economists and statisticians to find any correlation between the fall in claims and the introduction of Tribunal fees. That said, it is hard to escape the impression that the fees have had an impact. It remains to be seen whether Unison will appeal this decision armed with this latest data. Alternatively (although perhaps less likely), the UK government may now review and potentially reform the system in accordance with the comments of the High Court. The opposition Labour party may also have something to say on this topic in the build up to next year's general election.

Implications

However, it is not all good news for employers. Under the 2013 Employment Tribunal rules, the Employment Tribunal now has the power to require an employer to pay a successful claimant his or her tribunal fee where the claim is successful. This is separate to any compensation that may be awarded to the successful claimant. Furthermore, from 6 April 2014, the Employment Tribunal will have the power to order a losing employer to pay a financial penalty to the government of up to £5,000 in certain circumstances. The other worrying trend for employers is the report that the number of trade union subscriptions are on the rise. If employees cannot get legal redress through the Tribunal system, they might look to collective employment law rights, and this could prove even more disruptive and costly for employers in the long run.

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