

Good practice vital for employers in managing tribunal claims

September 2017

In July, the Supreme Court ruled that [Employment Tribunal claim fees were unlawful, meaning all Employment Tribunal and Employment Appeals Tribunal fees paid since 2013 will need to be reimbursed](#).

This is likely to open a floodgate of litigation. A recent preliminary hearing in the Employment Tribunal has confirmed that an ex-employee should be granted an extension of time to pursue her out-of-date unfair dismissal claim, on the basis that the original action was dropped due to the fees.

In giving the go-ahead for an extension in the case of *Dhami v Tesco Stores Ltd*, the claimant could show they had lodged the original claim within the three-month time limit and the fees were an important reason for not proceeding. It is likely that many more out-of-date claims will be put forward, and, as a result, employers may find themselves firefighting situations that were considered closed.

The Supreme Court ruling in July in [R \(on the application of UNISON\) v Lord Chancellor](#) put an end to the requirement for a fee to be paid on submitting a claim, known as the issue fee, and another a few weeks before the hearing. Introduced in 2013, the cost was more than £1,000 for complex claims, and the number of tribunal claims dropped by two-thirds as a result.

The public service union UNISON brought the case, arguing that the fees undermined the fundamental principle of access to justice for all, and that it was discriminatory as women generally earn less and so were likely to find it harder to pay. The Supreme Court agreed, saying it was unlawful under both domestic and EU law, and the fees were abolished with immediate effect, and payments made under the scheme are to be refunded.

Commentators and employer groups were quick to predict a steep increase in claims back to previous levels, arguing that with no financial risk involved, employees will be more likely to make a claim, whether legitimate or bogus.

Our employment lawyer, Karen Cole said: *“For now, employers who focus on best practice and knowing their responsibilities will be better placed to manage any such claims. This is the time to identify any potential claims that may be made, and having reviewed the circumstances, take steps to avoid such things recurring. Demonstrating a positive attitude to any Employment Tribunal will stand a business in good stead.”*

She added: *“It’s more important than ever to have a positive working environment, as well as ensuring compliance with the many laws applying in the workplace. It’s not only good for business, but should minimise the risk of claims. If you do find yourself facing a claim, then think about maximising mediation efforts, and using [ACAS Early Conciliation](#) as an opportunity to resolve things swiftly. Equally, if having investigated the claim and having tried to resolve the matter by conciliation, you believe that the employee is just trying it on because they have nothing to lose, it may be worth being bullish and going for costs, a deposit order or applying to strike out proceedings. Each case will turn on the facts.”*

Karen Cole
020 7299 6909
karen.cole@riaabg.com
www.riaabarkergillette.com



Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

