



A reduction in Employment Tribunal Claims – but at what cost?

Since the introduction of the new rules there has apparently been a reduction in Employment Tribunal claims of – some say- as much as 40%. However the new rules are causing headaches all round and are leading us to question whether they have improved the system despite what the statistics may say!

While it may be the case that the Regulations have resulted in 40% more disputes being settled amicably in the work place without the need to resort to the employment tribunal - this is not our experience of the Regulations.

The Regulations are very complex. Employers can find themselves tied up in knots trying to ensure that they meet the statutory requirements and thus avoid a finding of automatically unfair dismissal for a procedural failure while employees without legal advice may well find it difficult to work out what they are supposed to do and what time limits apply.

As an example, except in a dismissal case, employees must present a grievance to their employer (former employer) before they can claim in the Tribunals. However, the time limits for the lodging of the grievance and any subsequent claim are far from clear and mistakes are being made resulting in employees being barred from bringing claims.

For those interested in the technics here is how the time limits work: - the employee must "grieve" in writing within 1 month of the original 3-month time limit for lodging an employment tribunal (ET) claim and allow 28 days before presenting a claim to the ET. However although the time limit for lodging the grievance is one month after the original time for presenting the claim, the time limit for presenting the claim remains 3 months (normally) so the grievance should be lodged within the normal 3-month time limit.

If the grievance is lodged within the normal time limit, then the time limit for presenting the ET claim is extended by 3 months from the end of the original 3-month period. But there is no discretion to extend the time limit for grieving. And if you follow that on first reading you are a step ahead of most employment lawyers! Add in the potential that the employee has a certain disabilities or a first language that is not English and it is easy to see why he/she may give up and not present a claim to the ET.

So why doesn't the employee take employment law advice? Unfortunately for the employee legal aid is generally not available for representation at an employment tribunal and the cost of proceeding to an ET can be prohibitive.

The consequence of the extended time limits for Employers is that it can be 6 months before even the internal procedure is exhausted – hardly a speedy resolution to problems in the workplace!

Medium to large employers may well take legal advice but it is not always easy to give clear answers as to how the Tribunals will interpret the new rules and often despite their

best endeavours employers could still find themselves in the wrong. Employment Law has become more and more specialist over the years and it has now reached the point where we believe it is unsafe for generalist lawyers to dabble in this area. For small employers or those remote from the largest cities in Scotland this can make accessing accurate legal advice difficult and expensive.

The drop in Tribunal claim numbers could be used to support the view that the new dispute resolution rules have been successful in their aim. However, it is equally possible that what they have been successful in achieving is penalising employers for minor procedural failures – often innocently made - and deterring employees from raising employment claims. If that is so, then that can only be described as a hollow success.

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