

Supreme Court rules that Employment Tribunal fees are unlawful: What Next?

After a four year legal fight, UNISON, won its case against the government for Employment Tribunal fees to be scrapped. The introduction of the fees in July 2013 has meant that employees wishing to take their employers to a tribunal have had to pay fees of up to £1,200. On 26 July 2017, the Supreme Court has ruled unanimously that the introduction of tribunal fees is unlawful, unconstitutional and indirectly discriminatory. As well as the scrapping of the fees for future claimants, the court has said that the government must also refund those who have previously paid fees, at an estimated cost of £27 million.

Since the Judgment last month, the full extent of its implications has been rapidly evolving. Initially, the Employment Tribunal's reaction was to immediately freeze the processing and acceptance of tribunal fees. It also began to put in place systems to refunds those parties who had already paid fees for current cases. However, on 10 August, the Employment Tribunal took the extraordinary decision to stay all current cases, whilst the Ministry of Justice was working on reimbursement of fees. Just over a week later and, following a negative press reaction, the Employment Tribunal lifted the stay on current cases.

Aside from the obvious implications, the Judgment raises a number of other questions, which have yet to be tested. For example, what could an employee do who was put off from bringing a claim because of the fees, now that they have been held to be unlawful? Will the Employment Tribunal allow an extension of time for such employees to bring their claims? If so, for how long?

Whilst the news may be a boon to employees, employers may feel more ill at ease about the effects. Since the fees were introduced in July 2013, the number of claims brought in the Employment Tribunal dropped by an average of 60-70% each year. It is now expected that the number of claims will start to pick up again.

With employees again now able to bring claims without paying fees, employers potentially face the prospect of defending themselves in litigation more often (and incurring significant legal costs along the way), or otherwise, more readily considering entering into settlement agreements with their aggrieved employees to avoid litigation. There is also the potential management time cost to consider.

Prevention is better than cure, and as immediate action point, we would recommend that employers revisit their standard employment contract and staff handbook (particularly, the disciplinary and grievance procedures) and check they are up to date with existing legislation.

To discuss this matter in further detail and how it may affect your business, or if you are interested in your business' standard employment contract being reviewed, please contact a member of the [Rooks Rider Solicitors Employment](#) team.



Matthew Ball
Partner
Head of Dispute Resolution
mball@rooksriders.co.uk
+44 (0)20 7689 7142



Aaron Heslop
Associate
Dispute Resolution and Employment
aheslop@rooksriders.co.uk
+44 (0)20 7689 7209



Rooks Rider Solicitors LLP
Challoner House
19 Clerkenwell Close ■ London ■ EC1R 0RR

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