

# FACTSHEET – EMPLOYMENT TRIBUNALS

In July 2017, employment tribunal fees were abolished and as a direct result, employment tribunal claims have more than doubled. In this factsheet, we provide further detail for employers to be aware of in relation to employment tribunals.

## Types of Employment Tribunal Claims

There are 3 main types of employment tribunal claims:

- Unfair dismissal (qualifying service of 2 years required to make such a claim);
- Discrimination based on 9 protected categories (no qualifying service required); and
- Underpayments (no qualifying service required).

## The Employment Tribunal Claim Process

Below are the key steps to the employment tribunal claim process:

- An employee has 3 months from termination of their employment to make a claim.
- Before they can make a claim, they need to obtain an ACAS early conciliation certificate which 'stops the clock' on the 3 month time limit. They have 4 weeks from receiving the certificate to make a tribunal claim and in that time, they and the employer can decide if they wish to enter into early conciliation to avoid a tribunal case but there is no obligation on either party to do so.
- To make a claim, the employee can do so by completing an ET1 form either online or by downloading the form.
- The employer should then respond to this using an ET3 form.
- A tribunal hearing date will likely then be set thereafter.

## Common Pitfalls of Employers in Employment Tribunal Claims

Below are common pitfalls which many employers are not aware of:

- Even if you have dismissed someone for what you consider to be a strong reason, the dismissal can be considered automatically unfair, most commonly for failing to follow a fair process.
- All employees are legally required to have a contract of employment within 8 weeks of joining you – failure to do so can be included in an employment tribunal claim and can increase the award.
- All employers are expected to follow the ACAS code of practice in disciplinary and grievance issues- failure to do so can increase any award by 25%.

## Costs of an Employment Tribunal Claim

The cost of an employment tribunal claim can vary widely. Below is an indicative guide from 2016/17 statistics:

- The average cost of an unfair dismissal claim was £16,543 which has more than doubled in the last 10 years (incidentally the highest award was £1,744,575 for a whistleblowing case!); and
- There are several different types of discrimination claims (e.g. race, sex, disability, age) and average awards go up to around £36,000.

The above does not take account of the additional costs of a tribunal, including:

- Legal representation;
- Management time; and
- Any loss of business through a damage to reputation.

## Avoiding an Employment Tribunal Claim

It is our recommendation that given the higher risk of claims and the increasing costs, employers avoid an employment tribunal claim wherever possible:

- Prevention is better than cure – ensuring sound decision making in employment decisions and compliant policies and procedures will significantly minimise the risk of an employment tribunal.
- Settlement agreements can be used where an employer wishes to minimise risk but this can be a costly approach.
- As above, an ACAS early conciliation certificate is required before an employee can make a claim, but there is no requirement for the employee to enter into conciliation.

### Free consultation

To minimise the risk of an employment tribunal claim and ensure compliance, our HR Services team are able to provide a free consultation to cover:

- An assessment of your current employment practices and processes;
- Identification of potential risks to your business from an employment perspective; and
- How we can support you in minimising risk and ensuring compliance.

To arrange a free consultation, please contact your usual contact at French Duncan or Louise McCosh, HR Director on 0141 271 2803 or email [l.mccosh@frenchduncan.co.uk](mailto:l.mccosh@frenchduncan.co.uk).