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3HR focus

UNFAIR DISMISSAL AND TRIBUNAL CLAIMS RISING STEEPLY

From 1 April 2009 to 31 March 2010 Employment Tribunal claims rose by 56%; blamed partly on the recession 236,100 claims were accepted by tribunals in 2009/2010 compared with 151,028 in 2008/2009.

Average awards include:

- £9,120 for unfair dismissal (highest single award: £234,549)
- £18,584 for race discrimination (highest £374,922)
- £52,087 for disability discrimination (highest £729,347)
- £4,886 for religious discrimination
- £19,499 for sex discrimination (highest £442,366)
- £20,384 for sexual orientation discrimination, and
- £10,931 for age discrimination



What other costs are involved?

First of all, remember that compensation in discrimination claims is theoretically unlimited. There are also the legal costs incurred in preparing for a tribunal, and the tribunal costs themselves. Not so obvious are the costs involved in management being distracted by the need to investigate claims and to arrange for witness statements. There is the possible impact on staff morale, and on the Company's reputation should it lose the case.

Recent trend

Increasingly, claimants are using lawyers to present their case at employment tribunals, believing that this increases their chances of success. In the year in question, this activity rose by some 86%.

What is the role of an Employment Tribunal?

Employment Tribunals are designed to deal with claims that may be brought against employers by employees relating to their employment or its termination.

Of course, when faced with an employment dispute, employers and employees may attempt to resolve matters either:

- Between themselves directly
- By using pre-claim conciliation services, or
- By the use of a private mediator or arbitrator

Once Employment Tribunal proceedings commence, employers may wish to settle the matter without going through a full hearing, and two avenues are available to 'compromise' claims in this way:

- Through a Compromise Agreement
- Through an agreement achieved through conciliation

PLEASE TURN OVER

What is a Compromise Agreement?

Over 70% of tribunal cases settle before the hearing stage is reached. A formal Compromise Agreement must fulfil section 203 of the Employment Rights Act 1996 (ERA). Compromise Agreements are an effective way for an employer to conclude a binding agreement of an unfair dismissal, discrimination or other statutory claim.

For a statutory Compromise Agreement to be effective, the following conditions from the ERA section 203 must be met:

- Must be in writing
- Must relate to the particular proceedings that might be brought by the employee
- Should be tailored to the particular employee and the claims that they have asserted or that are available to them
- The employee must have received advice from a relevant independent advisor
- The advisor must have appropriate insurance cover in place
- Must identify the advisor in the wording
- Must state that the conditions regulating Compromise Agreements under the relevant statute have been met



If the above conditions are not met, the employee would still be theoretically free to make statutory claims against the employer. If an employer produces their own Compromise Agreement which fails to comply with the above conditions, it will be void for statutory claims (like unfair dismissal) but may be effective for contractual ones (like wrongful dismissal).

Compromise Agreements have attractions, not least the perception of employers that employment may be terminated without following time-consuming procedures, and, through a confidentiality clause, ensure that the dispute between the employer and employee does not become public. Clearly, however, such ease comes at a price and appropriate compensation must be paid to the employee.



Five tips for avoiding Employment Tribunals

◆ Don't think it won't happen to you

No one is invincible, and prevention is always better than cure. A clear paper trail is the key to defending your case, plan ahead and always get everything in writing. If a situation arises, get advice early and you'll have a greater chance of avoiding a costly tribunal case.

◆ Follow a reasonable process

80% of tribunal claims are lost as a result of failing to follow a reasonable process.

Employers and employees are both expected to have attempted to resolve matters themselves, by following the ACAS Code of Practice on disciplinary and grievance procedures and by using the employer's own procedures. If no

attempt is made to comply with the ACAS Code then financial consequences may ensue.

◆ Learn from your mistakes

If you have been taken to a tribunal before, you need to ensure that you make changes following that case. This is not only to protect you in the future, but also demonstrates to the tribunal that changes have been made. Apart from the cost of subsequent claims, tribunals will not take a lenient approach in favour of the employer if they discover a prior claim on a similar topic which had not lead to any improvements.

◆ Keep calm and carry on

Managers need to have emotional and social intelligence to manage possibly inflammatory situations and potentially difficult people. There are a range of training courses available on this topic and managers should take responsibility and seek to always behave appropriately, whatever their personal views, to ensure the company is fully protected.

◆ Don't be afraid to ask for help

3HR offer a range of related legal services to help in this area: For example, we can help with drafting policies, advice on the nature of tribunal claims, dealing with the preparation paperwork, preparing and negotiating compromise agreements, planning a strategy for defence and representing the company at tribunal. Our general HR support services provide companies with effective preventative and defensive measures. Prevention is better than cure. Tribunal costs can be substantial.

For further information on any of these issues, please contact:

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