

26 July 2017

3HR Newsflash

Employment

Newsflash 26 July 2017 - Tribunal Fees Scrapped!

News Bulletin on *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51

The Supreme Court has today handed down judgment in the above case, ruling as unlawful the Fees Order which came into force on 29 July 2013 which introduced fees for employees to bring Employment Tribunal (ET) and Employment Appeal Tribunal (EAT) claims. The stated aims of the Fees Order was to transfer part of the cost burden of the tribunals from taxpayers to users of their services, to deter unmeritorious claims and to encourage earlier settlement.

By way of a brief introduction, the Fees Order required the majority of claimants to make payments of between £390 and £1,200 in order to bring a claim against their employer, depending on the type of claim.

UNISON, a trade union, brought a judicial review proceeding arguing that the Fees Order was unlawful because it interfered unjustifiably with the right of access to justice under both UK and EU law.

In its judgment, the Supreme Court observed that the Fees Order is unlawful under both domestic and EU law because it has the effect of preventing access to justice. It had this effect as soon as it was made, and it was therefore unlawful and must be reversed. The evidence before the court showed that there has been a dramatic and persistent fall in the number of claims brought in the Employment Tribunals, with a greater fall in the number of lower value claims and claims in which a financial remedy was not sought.

The likely impact of this judgment is potentially enormous. The recent downfall in the number of ET claims being brought is likely to see a reversal, and we will soon see many more ET claims being brought by employees. Employers will need to prepare for this eventuality by tightening up controls, measures and policies to make sure that they are up-to-date, and take a prevention-rather-than-cure approach by flagging up issues as and when they arise rather than wait until it is too late.



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