

Employment

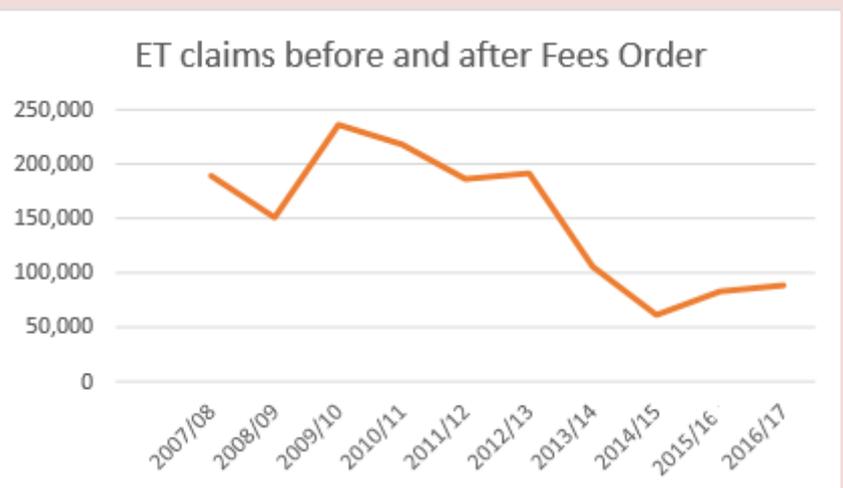
Employment Tribunal fees are unlawful

Following on from our newsletter published on 26 July 2017 when the Supreme Court handed down judgment in *R (on the application of UNISON) v Lord Chancellor*, we continue to review some practical considerations that this will have on employers who are undoubtedly grappling with the potential ramifications of this decision.

The Supreme Court unanimously decided that the Fees Order which came into force on 29 July 2013, which imposed fees on claimants to be able to issue proceedings against their employers, is unlawful as it undermined access to justice for potential claimants. It further held that those claimants who have had to pay fees to bring their claims since July 2013 ought to be refunded their fees (thought to be in the region of £32 million). As of the date of the judgment, the Employment Tribunals and the Employment Appeal Tribunal have stopped charging fees.

Under the Fees Order, fees were payable for both type A and type B claims. Type A claims (for which fees were £390) were specified and generally required little or no pre-hearing work and very short hearings. Type B claims (for which fees were £1,200) included all other types of claims such as unfair dismissal, equal pay and discrimination. Claimants could be exempted from paying these fees if the disposable income for the claimant and their partner was below a certain threshold (in most cases, £3,000). The graph below is a stark illustration of the dramatic fall in the number of Employment Tribunal claims since the fees were introduced at the end of July 2013.

This is welcome news for employees and will act to encourage them to bring claims which they otherwise would not have done previously when the Fees Order was in place. The practical considerations for employers, however, are very different. We expect to see a reversal of the recent trend in the fall of ET claims, and employers should prepare for this by re-reviewing employment practices, especially in the following areas which are particularly prone to litigation: breach of contract, unfair dismissal, equal pay and discrimination. In order to prevent unsuccessful lawsuits, we recommend that employers tighten up contractual documentation, handbook and internal communications. From a data protection perspective, subject access requests should be handled with utmost caution and care since the recent court decision that they can be used for the purposes of litigation.



Sungjin Park
Solicitor Advocate
E: sungjin.park@3hrsc.com



This newsletter is designed to provide general information only. It does not constitute legal or other professional advice and thus should not be relied on. Definitive advice can only be given with full knowledge of all relevant facts. If you would like to discuss any aspect further, please contact us.

3HR Corporate Solicitors Limited is a Solicitors Practice, authorised and regulated by the Solicitors Regulation Authority, No: 597935.
3HR Benefits Consultancy Limited is authorised and regulated by the Financial Conduct Authority. Firm Reference Number: 556015

The registered office of both 3HR Corporate Solicitors Ltd and 3HR Benefits Consultancy Ltd is New Broad Street House, 35 New Broad Street, London EC2M 1NH. Mainline Tel: 0207 194 8140 Web: www.3hrsc.com