

## Employment

### Settling Employment Tribunal Claims

With the removal of employment tribunal fees, it is now free for an individual to commence a claim against their current or former employer. Individuals can represent themselves in employment tribunals so generally they do not incur legal fees. The employer on the other hand will often incur legal costs for taking advice and defending itself. Unfortunately, unlike the civil courts, if the company successfully defends itself it is not entitled to recover those legal costs from the other side except in very limited circumstances.

The result is that any employment tribunal claim can lead to a difficult choice for the employer. Either the company defends itself and faces paying for legal advice or settles the claim and pays compensation. At its most basic, a settlement decision will likely come down to commercial sense as it may be cheaper to settle than defend the claim. This will generally be commercial response to a claim but this may not always be the right response. Some companies choose, as a matter of principle, to fight all claims that come in. This is because paying out on a claim can have wider repercussions than just the cost. Some wider considerations are set out below.



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#### Internal Reputation

Even though a settlement agreement will be confidential, word of the settlement sum may still spread across your workforce. It is very difficult to ensure that a settlement payment remains confidential. This is particularly true if a former employee remains in contact with current employees or where you operate a unionized workforce.

Once the workforce comes to a collective understanding that the employer will pay compensation if a claim is issued, you may see claims come in from other dismissed employees. If this happens, then the total cost of all those claims will soon outweigh any cost that would have been incurred fighting the earlier claim.

#### Audit Justification

For many companies, it will generally be easier to justify paying legal fees than paying a settlement. The assumption being that if you are sued then you must defend yourself but if you pay a claim then something must have been done wrong.

If the company is part of a larger group of companies, then you may find that justifying the settlement to a parent company will necessarily involve a discussion about blame. As it seems illogical to pay a claimant if you have done nothing wrong then any settlement may lead to an assumption by the parent company of bad management. This may also be true when it comes to explaining the situation to shareholders who may come to the same conclusion as a parent company.

#### External Reputation

By fighting and winning a claim, you make a public statement that you are a lawful employer. An employment tribunal's judgment is a public document and is available for others to read. A strong judgment in your favour can help to develop a reputation that can result in reducing the prospect of future claims.



#### Supporting your managers

If a claim is started then the managers who made the decisions will need to be informed so they can provide evidence. If the claim is settled, they are likely to interpret that as meaning that they made a bad decision and that the company had no confidence in them.

**If you would like to discuss any employee disputes or employment tribunal claims you may have, please contact our employment team.**

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