

Employment Tribunal Statistics: a grim example of how the recession has hit UK employers

Every year, the Tribunal Service, which includes the employment tribunals, publishes its statistics. Usually, not a great deal changes from one year to the next. However, the 2009/10 statistics, which were published last month, show that there has been a 56% increase in claims brought in the employment tribunals last year. With 236,100 claims over all, this is the highest total ever.

Unfair dismissal, redundancy and breach of contract claims have increased by approximately 17%. However, one of the biggest increases can be seen in multiple claims, up by nearly 90%. These are claims where two or more people bring cases involving one or more type of claim, usually against a single employer. Typically, these cases arise from failures in collective consultation procedures, transfer of undertakings or equal pay claims.

One of the repercussions of the increase in cases is that the employment tribunals have slipped from their target of ensuring that 75% of single cases make it to a hearing within 26 weeks of the claim being made. In 2008/09 they were at 74%. In 2009/10 this had dropped to 65%. With employment tribunal claims on the increase, the time between lodging a claim and reaching a hearing is slipping from six months to at least nine.

The statistics bear out what we have experienced over the past 12 to 18 months with our clients. One of the main reasons for this increase is the economic down turn. More employers are making redundancies or selling their business. This results in more people having their employment terminated. Although the number of jobless overall is slowly declining, the number of those unemployed for 12 months or longer is on the rise and there has been a significant increase also in the numbers of people in part time work.

The compensation for many claims is calculated using the employee's net loss of earnings. This means that in times when the job market is buoyant and employees obtain new work quickly, there is little incentive to bring a claim as the level of compensation is likely to be relatively low compared with the legal costs involved in bringing a claim. In times when it is difficult to get a new job, employees have a greater incentive to claim. We are also seeing more and more employees having their legal costs covered through legal insurance attached to their home or car insurance.

The economic downturn is also affecting the willingness of employers to settle a case just to get rid of it. We have certainly seen this with our clients, where we are bargaining hard on their behalf, offering smaller sums in circumstances where, in the past, the offer would have been more generous. Some of our clients simply prefer to wait until a few weeks before the hearing date before entering into settlement negotiations. This is in the hope that, over the time the case takes to get to a hearing, their ex employee will move on with their life and either drop the claim or obtain new employment limiting any potential compensation.

We have also been involved in a number of complex tribunal cases over the past year, most recently with a whistleblowing case that we successfully brought to the tribunal. What has been striking in all of these cases is the unwillingness of the employer to come to a settlement, even though the risk of paying significantly more if they lost should have been a strong incentive to settle.

It is clear from the statistics and our experience that we are not out of the woods yet. With an increase in the numbers of claims brought to the employment tribunals, and with potentially less budget for settlement, it is important that you take careful advice before terminating the employment of any of your staff. We can't render an unfair dismissal fair after the event. If you want to negotiate on a shoestring, you need to be able to convince the other side that the dismissal was fair.

For more specific information or to discuss your requirements please call either Amanda Galashan or Julie Calleux at EmployEase on 0845 123 3741, or email us at info@employease.co.uk.

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