



Employment Law Update – October 2013

Following on from the recent costs litigation between Lord Sugar's company and 2010 Apprentice winner Stella English, this employment law update includes a Q&A about the costs regime in the Employment Tribunal.

1. National Minimum Wage increased to £6.31 per hour

From 1 October 2013 the standard adult National Minimum Wage (NMW) rates increased to £6.31.

2. Q&A - Costs in the Employment Tribunal

The costs regime in the Employment Tribunal is markedly different from the costs regime in the civil courts.

- **Do costs follow the event in the Employment Tribunal?**

No. If a party is successful in defending (or bringing) a claim, the Employment Tribunal will not necessarily make a costs order that the unsuccessful party pays the winning party's costs.

- **Who decides if a costs order should be made?**

The Employment Tribunal (Constitution and Rules of Procedure) Regulations set out the criterion for when an Employment Tribunal Judge must, or may, make a costs order.

- **In what type of situation might a costs order be made?**

The Tribunal **may** make a costs order, and **must** consider whether it should exercise its discretion to do so, where it finds that a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party (the specific grounds); or where a party (or their representative) has acted vexatiously, abusively, disruptively, or otherwise unreasonably in the bringing or conducting of the proceedings; or any claim (or response) that had no reasonable prospect of success (the general discretionary grounds).

- **Does the Employment Tribunal have to consider the paying party's ability to pay?**

When considering either whether to make a costs order, or the amount of the costs order, the Tribunal *may* have regard to the paying party's ability to pay.

- **Can an Employment Tribunal Judge make a costs order against a Claimant who is unemployed?**

Yes they can. Just because a person is unemployed does not necessarily mean that the Employment Tribunal Judge will not make a costs order. Last year the Employment Appeal Tribunal upheld a decision to make a costs award of £87,000 against a Claimant who was both unemployed and unrepresented. However, in that case, decided under the old rules, the Claimant's claims were misconceived.

3. Financial penalties for losing employers

It has recently been announced that a highly controversial provision of the Enterprise and Regulatory Reform Act 2013 (ERRA), will come into force in April 2014.

Section 16 of the ERRA will give Employment Tribunals the power to fine an employer **up to 50%** of any award (with a cap of £5,000) if they lose and their case has "*aggravating features*". Any fine will be halved if paid within 21 days. The money goes straight to the government, rather than the Claimant.

4. Abolition of discrimination questionnaires

The much derided discrimination questionnaires will be abolished from 6 April 2014. It is hoped that this will reduce some of the initial costs for employers defending discrimination claims.

Contact us

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