

Hot Topic: Employment Tribunals set to change!

There has been much discussion over the last 6-12 months about revamping Employment Tribunal procedures and protocols and with the launch of the “Resolving workplace disputes” consultation by the Department for Business Innovation and Skills (BIS) changes actually look set to take place.

The consultation outlines its aims to promote the resolution of disputes before reaching the Tribunals so that employer-employee relations can be maintained and jobs are not lost needlessly. At the same time it also deals with those situations where a solution cannot be reached in the workplace and the parties need a quick and straightforward route to conclusion. In the case of Employment Tribunal matters the consultation proposes changes to the current system, which encourage swift progress of claims and costs control.

Suggested changes

Areas for possible change and/or improvement are:

Mediation – Enabling greater use of alternative dispute resolution tools such as mediation is seen as key. The consultation seeks to obtain more information about current use, costs and benefits, and barriers to determine how best to action this.

Early conciliation – It is proposed that all claims be submitted to ACAS in the first instance, rather than the Tribunals Service, with the aim that ACAS have a specified period (up to 1 month) to offer pre-claim conciliation in all cases and hopefully avoid claims ensuing.

Encouraging settlements – The consultation recommends that to promote settlement, fuller information should be provided at the outset of a claim including an obligation to provide a statement of loss setting out monetary compensation. A process should also be created to allow offers of settlement to be paid in to the Tribunal if they are rejected.

Tackling weaker cases – It has long been suggested that far too many claims are allowed to continue when the chances of success are negligible. The consultation sets out a number of ideas for addressing this:

1. making the power to strike out more flexible
2. allowing a judge to be able to issue a deposit order at any stage of the proceedings
3. making the deposit order test more flexible
4. allowing the Employment Appeal Tribunal (EAT) to be able to make deposit orders
5. increasing the deposit and cost limits for weak & vexatious claims from £500 and £10,000 to £1,000 and £20,000 respectively (although the consultation makes it clear that it is not an intention to move towards a general costs recovery policy).

Shortening tribunal hearings – In this area, it is suggested that witness statements could be taken as read in all hearings, resulting in shorter hearings and therefore saved costs for all parties.

Withdrawing the payment of expenses – It is believed that by doing this it will encourage parties to settle quickly and earlier in the process. It should also provide an incentive for parties to think more carefully about the number of witnesses they call, which is always a major factor in determining the length of hearings.

Extending the jurisdictions where judges can sit alone – This would allow more efficient use of lay member resource.

Introduce the use of Legal Officers – such officers could deal with certain case management functions freeing up more expensive judicial time to concentrate on matters requiring judicial expertise.

Perhaps the most divisive changes put forward are:

Extending the qualifying period for unfair dismissal claims – At present the period is one year, which many would-be Claimants already believe to be unfair. However the consultation suggests that this period should be increased to two years and estimates such a change could reduce the level of claims by 3,700 – 4,700 a year.

Introducing fee charging mechanisms – Examples provided include where Claimants lodge claims (and Respondents choose to counter-claim), and/or for parties in claims that proceed to full hearing.

Introducing financial penalties for employers – What is sure to be unpopular with employers is the idea that if they are found to have breached rights, they should be subjected to fines or penalties. However it is hoped that the introduction of such a scheme would encourage greater compliance with the law and ultimately limit the number of claims going to Tribunal.

Reviewing the formula for calculating employment tribunal awards and statutory redundancy payment limits - The aim would be to correct inconsistent effects on the level of increase each year and to provide discretion to prevent possible decreases.

Conclusion

It is clear that many of the changes recommended above will be out of favour with employees and unions who will seek to argue that they will impede access to justice and prevent Claimants from seeking legal redress unless various hurdles are overcome first, two years service being the biggest one. Equally there are some proposals, especially those relating to costs and penalties, that will upset companies who already believe the system is weighted against them.

Nevertheless, there is a need to reform the current Tribunal system, which has gone through numerous overhauls in recent years to try and improve itself but without any positive results. The Tribunals are still inundated with claims, strong and weak and companies are still failing to learn from their mistakes, some of which are in Tribunals on a regular basis. The regime is undoubtedly flawed at present but whether this consultation will provide a path to a better, more efficient and user friendly Employment Tribunal structure remains to be seen.

Next Steps

There is still some time before the consultation closes and the government decides whether to implement any changes. Views are sought from businesses and social enterprises, individuals, trade unions, representative bodies, and other interested parties on these possible measures before 20 April 2011. To have your say you can respond to the consultation electronically or on a response form which can be faxed, posted or emailed to BIS.

If you need guidance on how to respond to the above measures or have any questions about Employment Law and practice generally, we at Sydney Mitchell are here to help. Our team of dedicated Employment Solicitors are on hand to walk you through any employment problems you encounter in your business or in the workplace and can advise you on all aspects of Employment Law generally whenever you need them. For further information on the firm and the Employment Team please contact us on 0121 698 2200 or visit our website at www.sydnemitchell.co.uk.