

EARLY CONCILIATION AND EMPLOYMENT TRIBUNAL STATISTICS

1. Introduction

In July 2017 the Supreme Court held that the government policy of charging fees for claimants to make a claim to an employment tribunal (ET) had the effect of unlawfully denying potential claimants access to justice.

As a result, a system to repay the fees had to be developed and, unsurprisingly, both early conciliation (EC) and ET applications have risen continuously as the months have passed. This bulletin updates reps on the trends published by ACAS and the Ministry of Justice (MoJ).

2. Legal requirement

Since May 2014 it has been a legal requirement for most employment tribunal (ET) claimants to make an EC notification through ACAS. Once an EC form is received a conciliator approaches the respondent (employer) to attempt to settle the claim without recourse to an ET.

3. EC statistics

The latest published figures are for the quarter from April to June 2018 and therefore serve to indicate the impact of fees, even though there was never a fee for EC itself.

In the same quarter in 2017 there were 20,508 EC notifications by employees. By the same quarter in 2018 that figure had risen to 32,322. That amounts to an increase of almost 60%.

4. ET claims submitted

The increase in ET claims into ETs following the EC process is dramatically different, and clearly confirms the judgement made last year by the Supreme Court.

For the April to June quarter in 2017 only 4,463 claims were lodged.

In dramatic contrast the same quarter this year saw 12,540 claims submitted – a staggering increase of over 280%.

5. 2017 pattern of increase

While statistics have not yet been released for later quarters in 2018, the trend for 2017 showed a continuing increase of both EC notifications and ET claims received as each month went by. There is no suggestion, so far, that the upward trend is abating.

6. ET system response to fees

ETs are comprised of either a judge sitting alone (for contract and unfair dismissal cases) or a full tribunal with a judge and two lay members, one from each side of industry – employer and employee. Judges are either full time office holders of the MoJ or fee paid – paid a fee for each day they are required to sit on cases.

As the case load plummeted while fees were in place ET centres around the country divested themselves of most of their fee paid compliment because there was simply insufficient work for them to do.

7. MoJ response to increased case load

With the almost exponential increase in cases there is now a nationwide shortage of judicial resource available to hear cases. As a result, waiting times are increasing along with the case load.

There is currently a recruitment exercise being conducted for new full-time judges. Once appointments are made there will be a training programme for the new office holders before they are available to determine case outcomes.

8. Consequences for claimants

The effect of the ever increasing backlog means that when EC fails to produce an agreed settlement and a claim is submitted, there is a substantial delay in obtaining a full hearing.

For instance, for a recently lodged ET claim involving TSSA a preliminary hearing has been set for July 2019. Only at that point will we know get a date for a full hearing.

9. Reps action

Reps who believe a member has a claim to an ET should continue to refer the matter to their full-time officer in the first instance. TSSA's policy of only supporting claims we believe have more than 50% chance of achieving a successful outcome remains the same. Where the employment rights adviser does not believe there is that level of success available the individual member will, as previously, be provided with a written explanation of the legal tests that will apply, advice about how to make an independent claim, and a right of appeal to the executive committee.

While reps should not seek to advise members of the strength of success at an ET but refer the matter to HQ for

analysis, what they can very usefully do is advise members that, even with TSSA legal support they should expect a serious delay before their case will be heard.

Further Information

More information on this and other legal matters is available from:

- ❑ Val Stansfield, Employment Rights Adviser at stansfieldv@tssa.org.uk or 020 7529 8046
- ❑ the TSSA Helpdesk – 0800 328 2673

The information given here is for general guidance only and should not be regarded as a complete or authoritative statement of the law.

Fuller EC and ET statistics are available on the ACAS website at www.acas.org.uk