Tribunal News

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Tribunal News

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In the last month, a number of new issues have been clarified.

Unison Challenge

The High Court dismissed Unison's challenge to the introduction of fees for Claimants bringing cases in the Employment Tribunal although the reasons given by the Court leave open the possibility of a further challenge in the future. The primary reason the case was rejected was because as fees are so new there is no substantial evidence that the

fees are unlawful and therefore should be overturned. The Court said that in the event that future statistics show that the EU 'principle of effectiveness' (i.e. the ability to bring a claim has been rendered almost impossible in practice) is infringed, the Chancellor will be under a duty to reconsider Tribunal fees. In the meantime, Unison has confirmed that it will appeal this decision.

Recovery of fees

The Employment Appeal Tribunal has held that employees who win their claims should generally expect to recover Tribunal fees from their employers. In Portnykh v Nomura International, the Employment Appeal Tribunal ordered an employer to pay the employee's appeal fees. In making this decision, the EAT took into account the fact that the employer had lost the appeal and that it had the ability to pay. This was the case even though it was reasonable for the employer to defend the appeal and despite the employee conducting the litigation unhelpfully.

Employer penalties

Tribunals have new powers to impose financial penalties on employers, payable to the Government for failure to comply with Employment law. This applies to claims decided on or after 6 April 2014.

Mandatory early ACAS reconciliation

From 6 May 2014, claimants who wish to bring a claim against their employer must contact Acas to engage in pre-claim conciliation, with the aim to resolve the dispute without litigation. Acas will offer conciliation services to try to settle the matter. If conciliation is refused by either party or fails, Acas will issue a certificate allowing a claim to be submitted to the Tribunal.

In terms of limitation, employees have three months from the

cause of action to submit a claim form. However, entering into early conciliation will ‘stop the clock’ on the limitation period. Time will only start to run again when the certificate is issued by Acas.

There has been some debate on the potential consequences of this new rule. Whilst it may encourage some settlement pre-action, particularly by litigants in person who wish to avoid paying the costs of issuing their claim form and employers who want to resolve situations outside of costly legal proceedings, others consider it to be nothing more than an administrative hurdle.

Changes to rehabilitation periods

The Government has announced that from 10 March 2014 the periods during which certain convictions need to be disclosed to new employers will be reduced. Under current legislation, convictions are ‘spent’ after a specific rehabilitation period following which an offender does not have to reveal convictions unless the occupation is “excluded” (e.g. where it involves working with children). This means there are now some offences which previously had a rehabilitation period of 7 years that now have a rehabilitation period of 2.5 years from the end of the sentence.

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