
DAC Beachcroft Employment Law Expert Reacts to Employment Tribunal Fees Appeal Judgment

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Today (26th July), the Supreme Court has allowed the appeal by Unison against the legality of the current system of employment tribunal fees, holding that the fees regime introduced in 2013 is unlawful in one of the most significant decisions in employment law in recent years.

The Supreme Court held that the Fees Order is unlawful because it has the effect of preventing access to justice. The Fees Order is also unlawful because it contravenes the EU law guarantee of an effective remedy before a tribunal and it is indirectly discriminatory against women.

Fees were introduced in the employment tribunals and EAT on 29 July 2013 by the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013. Unison, the public sector trade union, challenged the lawfulness of the introduction of the fee regime by way of judicial review. This challenge was dismissed by the High Court and the Court of Appeal before Unison's appeal to the Supreme Court.

Reacting to the judgment, Guy Bredenkamp, Partner in the Employment & Pensions Group at international law firm DAC Beachcroft LLP, commented:

"Make no mistake: this is a ruling that will send shockwaves around those working in the field of employment rights. Under legislation implemented in 2013, claimants have had to pay fees of several hundred pounds to pursue claims in employment tribunals, unless they qualify for means-tested remission from the fees regime. Prior to that, access to employment tribunals was free of charge. The imposition of fees resulted in a dramatic decline (almost 70%) in the number of tribunal claims submitted each year and a particularly marked decline in lower-value discrimination claims. However, the Supreme Court has ruled that fees under the current regime are not set at an affordable level and effectively prevent access to justice in employment tribunals. For that reason, the current fee regime is unlawful. The Court went on to rule that the fees regime is also disproportionate and therefore unlawful under EU law, which underpins many employment rights in the UK.

It remains to be seen what the full practical effect of this dramatic ruling will be. The Supreme Court has quashed the 2013 Fees Order, meaning that claimants in employment tribunal cases cannot now be required to pay fees. It has been agreed that any fees paid by claimants since 2013 will be refunded, which will place an enormous administrative burden on the employment tribunal system. Clearly, the government will now have to think about whether any fee regime would be lawful in the light of this clear and unanimous judgment by the Supreme Court."