

## UK Update

# Employment Tribunal fees update

New rules introducing Employment Tribunal fees have now been set out and are expected to come into force towards the end of July 2013. Under the new system, claimants bringing a claim in the Employment Tribunal will be required to pay a fee, first on issue of Employment Tribunal proceedings (**issue fee**), and subsequently, if the case is not settled, withdrawn or otherwise dismissed, another fee 4-6 weeks before the hearing date (**hearing fee**).

Claimants who can't afford fees will be able to apply for a waiver of the fee under a scheme set out in the new rules. A new scheme is currently being proposed which includes a test which assesses a claimant's savings - this scheme is currently subject to a public consultation which will be closing on 16 May 2013. If those proposals go ahead it could mean less claimants will be eligible for a fee waiver.

### The main features of the new system

- The level of the fee will depend on the type of claim
  - **Level 1** - these consist of unlawful deduction of wages, statutory redundancy pay and payment in lieu of notice (GBP 160 issue; GBP 230 hearing)
  - **Level 2** - these include claims relating to unfair dismissal, discrimination, equal pay and whistleblowing (GBP 250 issue, GBP 950 hearing)
- There will also be a fee for several specified applications such as an application to dismiss following settlement (GBP 60) and judicial mediation (GBP 600)
- If fees are unpaid, the claim will not be allowed to proceed
- Fees can be paid online or by post
- Claimants lodging both level 1 and level 2 claims will be charged one fee at level 2
- There are higher fees for multiple claims e.g. where there are 2-10 claimants, the fee is x2 the single fee, and for over 200 claimants, the fee is x6 the single fee
- The Employment Tribunal may order the unsuccessful party to reimburse fees paid by the successful party

## Further information

If you would like further information on any issue raised in this update please contact:

### Chris Holme

E: [chris.holme@clydeco.com](mailto:chris.holme@clydeco.com)

### Ruth Bonino

E: [ruth.bonino@clydeco.com](mailto:ruth.bonino@clydeco.com)

Clyde & Co LLP  
The St Botolph Building  
138 Houndsditch  
London EC3A 7AR

T: +44 (0)20 7876 5000

F: +44 (0)20 7876 5111

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## Some thoughts on the impact of the new system

In all likelihood a fee of GBP 250 is bound to put off some claimants from bringing an unfair dismissal claim, particularly if they find they don't qualify under the waiver of fees scheme. It will almost certainly have a positive impact on the number of spurious claims (by which we mean they will reduce!).

The requirement to pay a hearing fee 4-6 weeks before the hearing might well encourage claimants to settle early enough for the employer to avoid incurring the usual legal fees in final preparations for the hearing. However, once paid, it might make claimants even more determined to have their day in Tribunal, unless of course any settlement offer takes account of the hearing fee already paid.

The fee may sometimes be payable by the employer. For example, to go to judicial mediation, it is the employer who will have to pay GBP 600, not the claimant. Furthermore, if the employer wishes to appeal a Tribunal judgement, it will cost GBP 400, as well as a further GBP 1,200 for the hearing.

Much might turn on the final outcome of the consultation on the waiving of fees, and the qualifying criteria for this. The current proposals are inevitably complex but basically mean that the fee will be waived for claimants with disposable capital (ie savings) of GBP 3,000 or less. Those with higher disposable capital may receive a partial reduction depending on their income level. This means a claimant with some savings but no income is going to have to be fairly sure of success to make it worth while risking GBP 250 issue fee and, if it comes to it, GBP 950 hearing fee.

Overall, the introduction of fees should be welcomed by employers. There is little doubt that the fees will act as deterrent to the high number of claimants we see who submit "nuisance claims" to the Tribunal with the hope of securing a settlement (albeit often at a nominal value), against a very low risk of being on the receiving end of a costs award. For some of these individuals, the requirement to pay some money up front will lead to them moving on without bringing a claim.

Of course, however, because of the relatively low level of the fees as compared to larger claims (and we have in mind, particularly, discrimination and whistleblowing complaints), the impact on such claims is likely to be immaterial.

## Links

[Letter to stakeholders](#)

[Stakeholder Q and A](#)

[New draft regulations](#)