

REVIEW



Employment Tribunal Claims: Free or Fee?



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Advocate John Aycock looks at a less heralded aspect of the pending Manx equality legislation that could in time have significant consequences.

Few would argue against the extension of the discrimination laws that the forthcoming equality legislation will afford. But amongst the Equality Bill's 171 sections and 25 schedules are some lesser known but potentially contentious new provisions.

The Isle of Man Equality Bill 2016 finished its passage through the Legislative Branches of Tynwald on 28 March and is now awaiting Royal Assent. Since going out to consultation in 2014, the Bill has included an enabling power for the Employment Tribunal to charge a filing fee for claimants. At present, unlike the High Court, there is no filing fee to lodge an Employment Tribunal claim form. The probable genesis of the Manx enabling clause is the UK legislation introduced in 2013 which for the first time imposed hefty fees on Tribunal claimants. Since then, there has been a considerable drop in UK Tribunal applications; the concept of filing and hearing fees has survived two union challenges in court, but a further judgment of the UK Supreme Court on a Unison challenge is awaited.

The Westminster Government has just published a review of fees in Employment Tribunals and concluded, in broad terms, that the fee regime is working well and is meeting its original objectives.

At paragraph 5 of schedule 17 to the Manx Equality Bill is a provision that Rules made for the Employment and Equality Tribunal (as it will be known) may include provision to require a fee to be paid on the making of a complaint and for refund in specified cases. The Department of Economic Development says that consultation on whether to charge fees, and if so the level, would likely follow in the future and no decision has yet been taken on the principle of fees. There were mixed views on the subject in the House of Keys.

What will happen then if EET Rules enable fees to be charged and this is followed through? The UK rationale for fees was to increase revenue and tackle behaviour of some claimants while maintaining access to justice. The recent review has proposed two changes, namely to waive the fee in claims to the National Insurance Fund in respect of statutory payments due when the employer is insolvent and a proposal to increase the earnings threshold for the fee remissions scheme.

In the UK, Tribunal applications dropped by some 70% after fees were introduced. In the Isle of Man the latest available figures show that there were forty seven Employment Tribunal applications in 2015 and sixty seven such applications in 2014. The 179 spike for 2013 was skewed by the mass applications consolidated in the bus driver change of contract terms dispute (the ruling from which mentioned the lack of Tribunal fees in the Isle of Man).

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The introduction of a Tribunal fee regime would probably reduce what are already fairly small numbers. Whether that is viewed as a good thing might depend on your political colour. What will remain free, however, is access to the excellent conciliation services provided by the Manx Industrial Relations Service (“MIRS”) which currently attempts to resolve disputes between employees and other workers and their employers. It is not necessary to issue a Tribunal claim to invoke the jurisdiction of MIRS and many such disputes are conciliated without troubling the Tribunal.

In a substantial piece of legislation that seeks to level the playing field, it will be interesting to see whether a fee regime that some may allege goes against the grain of equality will be enabled.

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