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Employment – 20:20 vision

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Employment Tribunal reforms

Following reports that the already stretched Employment Tribunals are facing a surge of new cases as a result of the Covid-19 pandemic, the government has introduced a host of changes intended to boost hearing capacity and give Tribunals more flexibility.

The reforms, most of which came into force on 8 October 2020, aim to provide a speedier resolution to disputes and should help to clear the backlog of cases in the system. This is welcome news for both employees and employers alike, many of whom will have seen hearings cancelled or listed far into the future due to a lack of Tribunal capacity.

New measures

The new measures include:

- Allowing greater use of virtual hearings. Now hearings may be conducted, in whole or part, by use of "electronic communications," such as video conferencing facilities, provided that the Tribunal considers that it would be just and equitable to do so:
  - Witness statements may now be made available to members of the public other than during the course of the hearing; and
  - Parties and members of the public need only be able to see witnesses "*so far as is reasonably practicable*", rather than it being a requirement that they can hear and see exactly what the tribunal hears.

  We know many hearings have been conducted via video conferencing since the start of the pandemic but this change to the rules provides a more permanent basis for hearings to proceed in the future. For cases with a large number of witnesses spread around the country or for parties seeking to reduce costs this change is welcome.
- A range of non-employment judges (including High Court, district and circuit judges) can be deployed into employment tribunals to hear cases, if certain criteria are satisfied. Some employment cases are already heard in the High Court so it makes sense that judges who have the relevant experience can move between the court and Tribunal systems.
- Some administrative tasks usually performed by Employment Judges will be delegated to appointed "Legal Officers". These include:
  - Extending time for filing responses or complying with case management orders;
  - Accepting agreed amendments to details of claim and responses;
  - Postponing hearings where both parties have agreed; and
  - Dismissing a claim following withdrawal by the claimant.

  Previously, these types of decisions were referred by administrative staff to Employment Judges, which caused delays in responding to the parties. This change should bring much needed efficiencies to the Tribunal system.
- Multiple claimants bringing cases on the same issues of fact or law will be able to use the same claim form, where reasonable, to avoid multiple forms and deadlines in what is

essentially the same dispute. This will streamline cases involving a large number of individuals (such as the recent equal pay cases against supermarket chains which involved thousands of claimants) meaning such cases can be heard more quickly.

- Provided the Judge forms the view that the Claimant made a mistake and it would not be in the interests of justice to reject the claim, Judges will be able to rule that a claim form should not be rejected where:
  - the ACAS Early Conciliation number on the form doesn't match the EC certificate, or
  - there is simply 'an error' in relation to a name or address (rather than the earlier rules permitting only a 'minor error').

Further measurers will come into force on 1 December 2020:

- The ACAS Early Conciliation default time period will be extended from one month to 6 weeks. This is the period where ACAS assists the parties to explore settling their dispute before the claimant proceeds with their Tribunal claim. We understand that recently some employers have not been contacted by ACAS until as late as week three of the one month conciliation period. Extending the conciliation period will enable the parties to explore settlement for longer and may reduce the number of cases which do end up in the Tribunal.
- The ACAS Early Conciliation process, and tribunal rules, will allow for greater flexibility in handling minor errors.

Will these changes be effective?

Whilst these changes are welcomed, it is not yet clear how effective they will be in practice at relieving the current pressure on the over-stretched and under-funded Employment Tribunal system. It is likely to be some time until hearing waiting times are reduced and the effectiveness of virtual hearings will continue to depend on the circumstances of each case. Parties should continue to be mindful of Tribunal deadlines and seek advice on best practice to ensure they comply with the rules.

If you require further information about anything covered in this alert, please contact Anne Pritam, Michèle Aubertin, Charlotte Varela or your usual Stephenson Harwood contact.

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