



Employment Tribunal ruling likely to trigger rush of claims

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A day and a half after the Supreme Court's ruling on Wednesday that the government acted unlawfully by charging claimants to bring employment tribunal cases lawyers were still analysing the implications.

There were wide extremes - one former lord chancellor, Lord Falconer of Thoroton, blamed another, Chris Grayling - while others described the "dramatic" ruling as being a "real headache" for the government with "enormous" ramifications.

Legal establishment bodies welcomed the ruling, with the Law Society, which represents solicitors in England and Wales, saying it "strikes a victory for access to justice". The Bar Council - the professional body for barristers in the jurisdiction - was also enthusiastic, saying the decision was "welcome to all who believe in the fundamental importance of the rule of law".

Awaiting the flood

More importantly, employment law practitioners were also celebrating. Paul McFarlane of the Employment Lawyers Association said the "dramatic ruling" would have "far-reaching implications". McFarlane argued that "by most measures" there had been between 60 to 70 percent reduction in tribunal claims since fees were introduced in 2013.

"Once fees are scrapped," he said, "it is likely that there will be a significant rise in the number of claims being brought. This will have knock-on implications for business, Acas and the Employment Tribunal system itself; all of whom will have to deal with the increased volume of claims."



Paul Quain, a partner at the London law firm GQ Employment Law, said the Supreme Court judges had created "a real headache for the government". He argued that the ruling would put "enormous pressure on the government to revisit what it does about tribunal fees. Either abolish them, which is less likely, or drastically modify the system so that its effects do not inhibit access to justice".

The consensus among lawyers was that the lord chancellor, David Lidington, has agreed to refund fees paid by claimants since 2013. "This will be a painful exercise," Quain said. "Many successful claims will have had fees ordered to be paid by the employer, and someone will need to go through all the decided cases since 2013."

Extended Limitation periods

Lawyers also argued that it could be possible that those who can demonstrate that they could have brought claims but did not because of the fees could argue that time limits should be extended.

Emma Bartlett, a partner at London firm Charles Russell Speechlys, described the ruling as "enormous - it will be a total game changer for employment law". She forecast that the ruling would trigger a rush of lower value claims over allegations such as unlawful deduction from wages, breach of contract and holiday pay claims. "Currently the cost of the fees as compared to the value of the claim discourages individuals from bringing these forward," she said.

Meanwhile Sarah Rushton, a partner at the London practice Moon Beever, proved that hyperbole was the ultimate watchword for the ruling. "The employment tribunal system has been thrown into chaos," she said.