Line Manager Guide

Settle or fight an employment claim

Introduction

Is it better to settle or to fight? (And how much should you be prepared to spend to ensure a win?)

Controlling legal costs

Extensive legal costs are not inevitable. Fees vary enormously, and it may not make financial sense to pay for top lawyers if the case itself is mundane and realistically could be handled just as well by a less high-profile legal team.

Another issue is time. The more preparation that is done and the longer the hearing, the more the case will cost. The Employer must take decisions about the amount of available legal and management resource.

To fight or settle?

An Employer's first instinct may be that a case should be fought rather than settled.

Feelings and emotions run high, and the Employer sets a premium on its reputation and the principle that an Employee should not be rewarded for an unmeritorious claim. As the tribunal date approaches, the inconvenience and expense associated with fighting looms larger.

The point of principle can give way to straightforward economics. By then, however, the Employer has thrown away a considerable amount in legal costs.

Is it better to explore the prospect of settlement from the outset.

Sizing the claim

It is impossible to make sensible decisions about resourcing or settling a claim without having a clear idea of its overall size. The three crucial factors to determine this are:

1. the chances of success;
2. the likely remedy; and
3. any wider impact a successful claim would have.
   in terms of reputation, precedent or Employee relations.

1. The chances of success

Nothing is certain and however confident the Employer may be that the claim is misplaced, allowance always has to be made for the unexpected.

Nevertheless, it is usually possible, with legal advice, for the Employer to make a reasonable prediction of the chances of success.

Where the claim is clearly weak, it should be possible to keep legal costs under control.

An Employer should not spend too much money in countering allegations that do not actually make out a proper claim or that are demonstrably untrue.

If making a settlement offer, the Employer should be in a strong position to offer a modest sum that is somewhat better than the claimant can hope to achieve at the tribunal.

2. Remedy

It is important not to focus exclusively on whether the claim will be won or lost. What matters just as much is how much will be awarded if the Employee wins.

The maximum compensatory award for unfair dismissal is £115, 115 (from April 2024), or 52 times the claimant's weekly pay if this is lower than £115,115. Therefore, the more highly paid the Employee, the higher the stakes in the employment tribunal.

Compensation for unfair dismissal is based on lost earnings and does not include payment for injury to feelings. In discrimination claims there is no cap on compensation and injury to feelings awards are made.

Whether the claim is for unfair dismissal or discrimination, the largest head of compensation is likely to be lost earnings. If the Employee has found work before the employment tribunal hearing, the compensation payable if the claim is successful will be greatly reduced. It is important for Employers not to neglect the scope the tribunal has for reducing compensation, particularly in unfair dismissal claims.

A dismissal may clearly be procedurally unfair, but the Employer may have cast-iron evidence that the Employee was guilty of gross misconduct. If so, the tribunal would inevitably make a substantial reduction in the compensation awarded, by as much as 100%.

It is vital that these factors are considered in any settlement negotiation.

Wider impact
A single tribunal case may have wider consequences. While an employment tribunal decision does not amount to a formal legal precedent, in practice it may establish rights that extend beyond the single case to other Employees and a case may have implications for working practices across entire industries.

The Employer should identify the wider implications of a claim as early as possible so that it can decide at an early stage if this is a case that it needs to fight, despite its low individual value, or if it should make an early settlement offer in an attempt to minimise risk of an adverse decision.

In making a decision to settle in these circumstances, the Employer will need to take account of whether or not the attempt to settle will prompt further similar claims from other Employees.

Many Employers worry about negative publicity, and this should be considered, although the prospects for it are sometimes exaggerated. Do the facts of the case really make a good news story and how badly can they reflect on the reputation of the organisation?

It is important to bear in mind that tribunal judgments are published online and therefore available to view by Employees as well as members of the public. The Employer's reputation could be affected if the case has gone against the Employer, or if the Employer has successfully defended the case, but the case reveals a negative aspect of the business.

Unrealistic expectations
Parties can start out with unrealistic expectations of what an employment tribunal can actually deliver.

Employees may seek a chance to clear their name or force the Employer to recognise and regret the error of its ways. Employers may seek vindication or to send a clear message to other Employees that it does not pay to take them to a tribunal. Both may be disappointed though as full vindication is rare from the tribunal - and winning a case can be a very expensive way of sending a message.

Crucially, the Employer should be in control of the strategy for fighting or settling a case and should be able to test and, if necessary, challenge the approach taken by the legal team.