

Financial Penalties in the Employment Tribunals

Employment Law Changes



On 6th April Section 16 of the Enterprise and Regulatory Reform Act 2013 was brought into force.

This adds a new section 12A to the Employment Rights Act 1996 which gives Employment Tribunals the power to order employers to pay a penalty if the employer has breached any of the worker's rights to which the claim relates and has one or more aggravating features.

The amount of the penalty is 50% of the amount awarded to the employee subject to a minimum of £100 and a maximum of £5,000.

The Tribunal must have regard to an employer's ability to pay in deciding whether to order the employer to pay a penalty.

There is nothing in the Act which says what would amount to an aggravating features, but the guidance notes published by the government suggest that relevant factors might include the size of the employer, the duration of the breach of the employment right and the behaviour of the employer and of the employee, whether the action was deliberate or committed with malice rather than a genuine mistake, whether the employer had a dedicated human resources team, or where the employer had repeatedly breached the employment right concerned.

If the Tribunal makes a financial award, all these factors will only result in a "yes or no" decision by the Tribunal in

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deciding whether to impose a penalty.

In the situation where a Tribunal finds against the employer, but makes no award (e.g. where they allow the parties to agree compensation between themselves following a judgment that the Employer is liable) the Tribunal can use its discretion to set the amount of the penalty (subject to the £100 minimum and £5,000 maximum).

This represents just the latest in a series of changes which mean the employer who loses at an Employment Tribunal hearing could end up paying out far more than the employee has lost.

1. First of all, if the Employment Tribunal makes a compensatory award in an unfair dismissal case, the recoupment provisions apply. This means that if the Tribunal makes a compensatory award for unfair dismissal, the employer will pay part of that to the DWP in respect of benefits paid to the employee.

If the parties settle (even if it is after the Tribunal have found the employer liable), there is no need for anything to be paid to the DWP, but if the Tribunals give the parties the opportunity to do this in future, it will not necessarily avoid the Tribunal ordering the Employer to pay a financial penalty.

2. Secondly, if an employer is found liable and has not complied with section 1 of the Employment Rights Act (provision of written particulars of employment), the Tribunal can award 2 or 4 weeks gross pay to the employee.
3. Thirdly, if the Employee was dismissed in breach of the ACAS code of Practice, the Tribunal can award up to 25% more to the employee.
4. Now, the Tribunal can also impose a financial penalty.
5. The Tribunal can also order the employer to pay the Fee incurred by the employee in bringing the claim, which could be as much as £1,200.

To take a hypothetical example, suppose an employee on £400 per week who has worked for the employer for 5 years is awarded 15 weeks loss of earnings. They are out of pocket by £4,550, as they received £1,450 in Job Seekers Allowance.

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Suppose they had to pay the Employment Tribunal fees of £1,200 because of their partner's earnings.

If they win their unfair dismissal claim the Tribunal could make the following orders:

1. A basic award of £2,000
2. A compensatory award of £6,000
3. An extra £2,000 for breaching the ACAS Code of Practice
4. An order to refund the employee £1,200 Employment Tribunal fees
5. A further £1,600 for failure to provide written terms and conditions
6. A financial penalty of £5,000

TOTAL = £17,800

This shows how it can be extremely beneficial for an employer to attempt to negotiate in appropriate cases, and this example is a clear illustration of how the new legislation is encouraging the parties to settle or failing that securing up to £6,200 (including the Tribunal fees paid by the employee) for the public purse.

More information

- The legislative provision is at <http://www.legislation.gov.uk/ukpga/2013/24/part/2/crossheading/financial-penalties>
- The Guidance is at <http://www.legislation.gov.uk/ukpga/2013/24/notes>

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Contact us

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