

Employment tribunal fees deny workers access to justice

Professor Nicole Busby and Professor Morag McDermont

About the research

Since July 2013 workers with an employment dispute have had to pay fees to take their case to an Employment Tribunal. As a result many people can no longer afford to use the Tribunal to seek justice in employment-related disputes. Between January and March 2014, the number of Employment Tribunal cases lodged fell by 81% compared to the same period in 2013, clearly demonstrating the prohibitive impact that fees are having. A fee waiver scheme for those on low incomes has so far been of little help due to the complexity of the scheme and stringent qualifying conditions.

When workers cannot afford the services of a solicitor to deal with a problem they are facing at work, they will often turn to Citizens Advice Bureaux for assistance. The research project 'Citizens Advice Bureaux (CAB) and Employment Disputes' has examined how CAB clients, who often have limited financial, cultural and social resources, pursue their employment problems. The research has uncovered personal stories that reveal the often devastating effects of employment tribunal fees on individuals' lives.

This research examines the effects of employment tribunal fees on workers' lives and livelihoods.

Co-authored by:



Funded by:

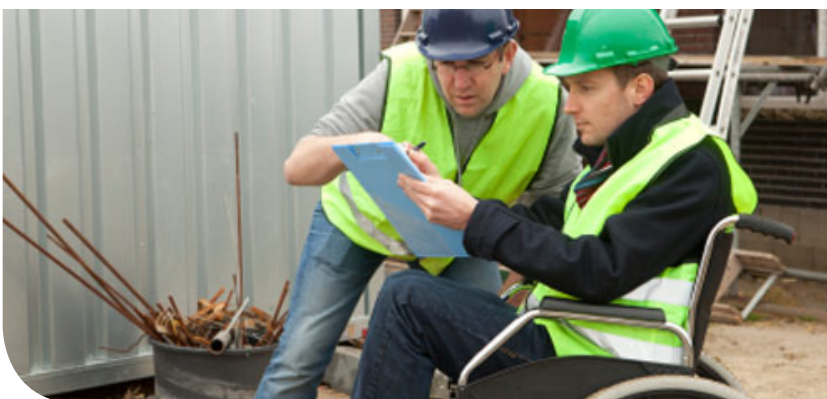


Policy implications

- Workers' access to justice must be reinstated. In order to do this, employment tribunal fees should be abolished.
- Failure to take action is likely to lead to greater disharmony at work as disputes go unresolved and a culture of bad practice by some employers in the management of employment relations. This should be avoided at all costs.
- Current fee levels are out of step with those payable in other civil courts, such as small claims procedures or the Court of Appeal. At the very least, fee levels must be reviewed as a matter of urgency.
- Although claimants are required to pay fees for bringing a claim, employers who defend claims are not required to pay. This seems anomalous and the balance should be redressed.
- The remission system, intended to assist those on low incomes by reducing or waiving fees, is not working effectively for those most in need. Changes introduced from 30th June 2014 are an improvement but more needs to be done.
- Extra support is required for some clients in accessing information about fees and fee waiver/reduction. This should be provided free of charge by advice agencies such as the CAB which will need to be better resourced through public funding.

Key findings

- Fees for employment tribunal claimants were introduced in response to press reports that a high number of unfounded cases were causing backlogs in the system, costing employers money and preventing job creation. This research has found no evidence to support these claims.
- Fees have reduced access to justice for workers with legitimate complaints across all areas of employment law including dismissal, discrimination and non-payment of wages.
- Employers' non-payment of awards made by tribunals and the lack of effective enforcement measures contribute further to the loss of access to justice for workers.
- The imposition of fees and the complex fee waiver claim system lead to a shift of attention away from dispute resolution, as claimants necessarily focus on finding ways to finance their cases and gather information to support their claim.
- Advice agencies offering support and, in some cases, representation to those who cannot afford to pay a solicitor are already severely stretched; finding extra resources to assist with complex fee waiver claims threatens to overwhelm them.
- Even before fees were introduced, workers without representation found Employment Tribunals to be intimidating and legalistic. The Employment Tribunal system needs overhaul to offer accessible justice.



Further information

You can read case studies of real lives affected by employment tribunal fees: bris.ac.uk/policybristol/casestudies.pdf

Employment tribunal fees were introduced at two levels depending on the nature of the claim and are payable at two stages: on lodging the claim and before the hearing. The total costs for going to full hearing are: £390 for type A claims (including unpaid wages) and £1200 for type B claims (including unfair dismissal and discrimination claims).

Two legal challenges to the introduction of fees have been mounted using the process of judicial review; one in Scotland and one in England. In Scotland a hearing is pending and in England the union Unison has had its claim rejected by the High Court. Unison has been given leave to appeal against the original decision.

For further information about the research, visit the website: bristol.ac.uk/adviceagencyresearch/cab-project/

Contact the researchers

Professor Morag McDermont, School of Law, University of Bristol:
morag.mcdermont@bristol.ac.uk

Professor Nicole Busby, University of Strathclyde Law School:
nicole.busby@strath.ac.uk