Where's there's blame, there's a claim...

How often have we heard that phrase? Some have suggested that the introduction of fees in the Employment Tribunal and the consequent reduction in the number of Employment Tribunal claims raised in the Employment Tribunal has resulted in employment law creating little risk for business, thereby avoiding the need for proper employment law advice and support. But is this right?

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What's the risk?

We all know that staff are often our biggest asset but care is needed given the increased complexity of employment law. Failure to comply with employment law can create considerable liabilities and risks for an organisation. While employees do still need at least 2 years' continuous service to claim unfair dismissal (or to be eligible for a redundancy payment), all workers have the right to claim unlawful discrimination.

Indeed unlawful discrimination claims can arise before the employment relationship has even started – from applicants – and can arise after the employment relationship has ended – from former workers. Further, such claims can be made by "workers" (a wider subset of individual compared to "employees").

Except for claims for direct age discrimination, claims for direct discrimination for any other reason cannot be justified (and so the employer's motive for the treatment is irrelevant). And claims for indirect discrimination can arise in cases where a seemingly neutral provision, criterion or practice has been applied to all staff but adversely affects a larger proportion of staff with a particular protected characteristic (such as those with a particular religion or of a particular age or gender). It is also not difficult to find conduct in the workplace that satisfies the very wide legal definition of harassment.

There are also a number of other areas of employment law where claims can arise, including in relation to Working Time Regulations (such as holiday pay), the National Minimum Wage Regulations, whistleblowing etc. The recent increasing of the penalty for failure to comply with the National Minimum Wage Regulations to £20,000 per worker gives an indication of the risks (and possible costs) in this area.

There are also a large number of grounds (in excess of 27) where a dismissal can be automatically unfair. Such claims can arise where the reason for the dismissal was related to health and safety, trade union reasons, political beliefs and many more. Many of these claims do not require a minimum level of continuous service and many have the cap on compensation removed. There is of course no limit on compensation that can be awarded following a successful discrimination claim.

The need to take care

But what does all this mean for employers? It is clear that the introduction of fees within the Employment Tribunal system has made raising a claim more difficult for a large proportion of the working population (many of whom may not be prepared to risk paying the Tribunal fees). Nevertheless the increase in employment related insurance products (which can often be part of the home insurance premium) and the involvement of a trade union can mitigate against the costs of raising a claim.

Keeping on the right side of the law

Employment law is complex and changes almost on a daily basis. By keeping up to date with employment law, employers ensure that the risk is minimised. Compliance with the law also creates a positive culture. It is important not to underestimate the effect following good employment law/HR practice can have on an organisation, whether in terms of productivity, staff retention or recruitment.

Compliance with employment law is an important part of day to day business. Having an employment law specialist to help you keep up with such a fast paced fascinating area of law and to support your organisation is a must. Perhaps the slogan should be "Without advice, you're skating on thin ice"...