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Dramatic fall in compensation for workplace age and race discrimination cases

4 Feb 2019 By Annie Makoff-Clark

Experts say downward trend driven by abolition of tribunal fees, but increase in cases shows employers are ‘ignoring’ changing environment



Compensation payouts awarded to claimants of workplace age and race discrimination fell significantly in 2018, new figures have revealed.

Employment law specialists Fox & Partners said the average amount of compensation awarded in age and race discrimination cases fell by 56 per cent and 14 per cent respectively.

The average compensation awarded to successful age discrimination claimants in 2017 was £15,200 compared to £6,180 in 2018. In race discrimination cases, the average compensation award was £13,140 in 2018, and £11,300 the year before.

Dean Fuller, partner at Fox & Partners, said the abolition of tribunal fees in July 2017 resulted in a “wave of low value claims” which led to the fall in the average amount of compensation awarded to successful claimants. In line with this, the number of race discrimination claims being heard at tribunal rose to 3,307 in 2018: a 43 per cent increase from 2,305 in 2017.

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While the abolition of tribunal fees means that every employee has access to an employment tribunal if they need to bring a case against their employer, Fuller warned that tribunals are rarely in the best interests of claimant and employer. Successful claimants will “not always receive large payouts” and the process can be a “serious drain” on both parties’ time and resources, he said.

The decline in compensation amounts could also be due to growing numbers of employers doing more to protect themselves from litigation by implementing more structured HR guidelines and programmes, helping them to deal with legal issues quicker and settle out of court and therefore bringing the total compensation cost down, Fuller added.

Kate Palmer, associate director of advisory at employment law consultancy Peninsula, said the decrease in compensation amounts could also be due to claims based on one-off instances of discrimination which were brought following the abolition of fees.

“Rules on compensation generally mean that the more a claimant has suffered at the hands of the employer, the higher the compensation for injury to feelings. One-off instances may therefore result in a lower injury to feelings payout,” she said.

But Dr Stefanos Nachmias, principal lecturer at Nottingham Business School, warned that the real issue was the increase in tribunal cases – which highlights that age and race discrimination still exists in the workplace.

“Evidence suggests that organisations’ formal practices have not been adapted to the changing environment and have the potential to foster discrimination. This is because organisations tend to ignore the important role of informal policies and practices which can help different groups to engage and interact,” he said.

His comments were echoed by Palmer, who told *People Management* that employment tribunals will “expect to see” equal opportunity policies which are put into practice, rather than employers simply paying lip service to the issue.

Fox & Partners' analysis of workplace discrimination compensation figures follows warnings from legal experts last year that a large number of employment tribunal claims [may not be heard until 2020 at the earliest](https://www.peoplemanagement.co.uk/news/articles/many-new-tribunal-claims-may-not-be-heard-until-2020) (<https://www.peoplemanagement.co.uk/news/articles/many-new-tribunal-claims-may-not-be-heard-until-2020>).

The government consultation into mandatory ethnicity pay gap reporting – which closed in January – suggests that workplace race discrimination is likely to move further up organisational agendas in the near future, although there is currently no requirement for companies to report on their ethnicity pay gap.

Sally-Ann Hall-Jones, CEO of Reality HR, urged employers to ensure they have “robust and fair policies” which begin in recruitment and continue with pay audits, and which are continually updated and referenced throughout the organisation.

She added: “Nobody can deny that discrimination of all kinds remains a problem in some businesses. Pay gap reporting can force companies to focus on the issue but it can be arduous, resulting in organisations focusing more on reporting than ensuring that discrimination is not an issue in the first place.”

Juliet Carp, consultant solicitor at Keystone Law said: “Good workplaces where people treat each other fairly and with respect regardless of race or other protected status can generally expect fewer claims and better commercial results.

“Happy employees are unlikely to make claims. In the current political climate there is a real need for HR to go the extra mile, not only to move things forward but to make sure we don’t slide back.”



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