

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Enforcement

Chapter 3: Employment tribunals

Section 120: Jurisdiction

Effect

392. This section sets out what types of claims under the Act the employment tribunals have jurisdiction to hear. These are cases involving discrimination in a work context (which includes contract workers, partners, office-holders and barristers and advocates). Their jurisdiction also includes cases about the terms of collective agreements (which can cover any of the terms of employment) and rules of undertakings which are unenforceable under section 145 because they provide for treatment which is prohibited by the Act. This is made clear in section 145 of the Act.
393. It also gives jurisdiction to employment tribunals to hear complaints relating to breaches of a non-discrimination rule. Jurisdiction for hearing a complaint regarding a breach of an equality clause or an equality rule is set out in section 127. An employment tribunal can also make a ruling on an application made by a responsible person in relation to an occupational pension scheme (as defined in section 61(4)) for a declaration about his or her rights and those of a worker or member or prospective member of the scheme.

Background

394. This section is designed to replicate the effect of provisions in the previous legislation.

Examples

- A worker is racially abused by a co-worker. She could bring a discrimination claim in the employment tribunal.
- A gay man has applied to become a partner in a firm of accountants but because he is gay he has not been invited for an interview despite being equally or better qualified than other candidates who were invited for an interview. He could bring a discrimination claim in the employment tribunal.

Section 121: Armed forces cases

Effect

395. This section establishes that, before bringing a claim under the work provisions of the Act to an employment tribunal, a member of the armed forces must raise his or her complaint through the armed services internal complaints procedure and not withdraw that complaint. If the complainant fails properly to progress his or her internal complaint then it may, in certain circumstances, be treated as if it had been withdrawn. The internal

service complaint procedures do not have to be concluded before the complainant brings a claim to an employment tribunal.

Background

396. This section is designed to replicate the effect of provisions in the previous legislation.

Example

- A black soldier who thinks he has been discriminated against by being passed over for promotion would have to make an internal service complaint before bringing his claim to an employment tribunal.

Section 122: References by court to tribunal, etc.

Effect

397. The Act does not prevent the civil courts from considering a claim that a pension scheme operates in a discriminatory manner. This section enables a court to strike out such a claim if it would be more convenient for an employment tribunal to deal with it, or to refer an issue relating to such a claim to an employment tribunal.

Background

398. Employment tribunals have the specialist knowledge and procedures to handle claims relating to discrimination in the work context and this section gives a court power to refer such issues to a tribunal. This section reflects similar provisions in previous legislation.

Example

- An employee who is a member of a pension scheme sues his employer in court alleging the employer operates the scheme in a discriminatory manner. The court decides to refer the issue to an employment tribunal and postpones the case until the tribunal's decision.

Section 123: Time limits

Effect

399. This section deals with time limits for cases in the employment tribunals. A person must bring a claim within three months of the alleged conduct taking place. The exception to that rule is a case involving an armed forces complaint, which must be brought within six months. If a person wants to make a claim after that period it is at the tribunals' discretion whether they grant permission to allow them to do so. The test applied by the tribunals is what is "just and equitable" in the circumstances.

400. Where the conduct in respect of which a claim under the Act might arise continues over a period of time, the time limit starts to run at the end of that period. Where it consists of a failure to do something, the time limit starts to run when the person decides not to do the thing in question. In the absence of evidence to the contrary, this is either when the person does something which conflicts with doing the act in question; or at the end of the time when it would have been reasonable for them to do the thing. This section does not apply to a breach of an equality clause or an equality rule, which is covered by section 129.

Background

401. This section is designed to replicate the effect of provisions in previous legislation.

Section 124: Remedies: general

Effect

402. This section sets out the remedies available to employment tribunals hearing cases under the Act. It does not however apply to a breach of an equality clause or an equality rule, which is dealt with in sections 132, 133 and 134.
403. An employment tribunal can make a declaration regarding the rights of the complainant and/or the respondent; order compensation to be paid, including damages for injury to feelings; and make an appropriate recommendation. The measure of compensation is that which applies in tort claims, for example claims of negligence, where the compensation puts the claimant in the same position, as far as possible, as he or she would have been in if the unlawful act had not taken place.
404. Where a tribunal makes a recommendation it does not have to be aimed only at reducing the negative impact on the individual claimant(s) of the respondent's actions which gave rise to the successful claim, but can be aimed at reducing that impact on the wider workforce. The recommendation must state that the respondent should take specific action within a specified period of time. A tribunal has the power in any case where a recommendation made for the benefit of the individual claimant only is not complied with, to award compensation or increase any award already made.
405. In a case of indirect discrimination where the respondent proves that there was no intention to treat the claimant unfavourably, a tribunal cannot award damages to a claimant unless it has first considered making either a declaration or recommendation.

Background

406. This section is designed generally to replicate the effect of provisions in previous legislation, under which employment tribunals could make a declaration, order compensation to be paid and make recommendations. However, under that legislation the recommendations that they could make could only be for the benefit of the individual claimant(s). The Act extends the recommendations power so that employment tribunals can make recommendations which benefit persons other than the claimant.

Example

- A tribunal could recommend that the respondent:
 - introduces an equal opportunities policy;
 - ensures its harassment policy is more effectively implemented;
 - sets up a review panel to deal with equal opportunities and harassment/grievance procedures;
 - re-trains staff; or
 - makes public the selection criteria used for transfer or promotion of staff.

Section 125: Remedies: national security

Effect

407. This section sets out the restrictions on the types of remedies available to an employment tribunal in cases which have been designated as "national security proceedings". National security proceedings are those where an order has been made under various provisions of the Employment Tribunals Act 1996 or regulations made under that Act.

408. In national security proceedings a recommendation must not be made for the benefit of the respondent's wider workforce, if the recommendation would affect anything done by the Security Service, the Secret Intelligence Service, the Government Communications Headquarters or a part of the armed forces which assists the Government Communications Headquarters. In such cases the tribunal is limited to making recommendations for the benefit of the individual claimant or claimants.

Background

409. Because the Act extends the recommendations power to benefit persons other than the claimant, this provision is necessary to ensure that such recommendations do not affect national security.

Section 126: Remedies: occupational pension schemes

Effect

410. This section sets out the additional remedies available to employment tribunals in cases involving occupational pension schemes. These are cases in which the respondent is an employer, or the trustee or manager of the pension scheme; and the complaint relates to the terms on which membership is offered to a pension scheme or how members of an existing scheme are treated. In these cases the tribunal can, in addition to the remedies of declaration, compensation and recommendation, also make a declaration about the terms on which a person should be admitted as a member to that scheme or a declaration about the rights of an existing member of that scheme not to be discriminated against.
411. However, a tribunal can award compensation only for injured feelings or for failure to comply with a recommendation; it cannot compensate the claimant for loss caused by the unlawful discrimination.

Background

412. This provision is designed to replicate the effect of provisions in previous legislation.