

In This Edition

- An ET orders a Claimant to pay £3,000 in costs after finding he had acted unreasonably in pursuing a lawyer-derived race discrimination claim, which was an afterthought and which he himself did not believe.
- The Government is still working on 'detailed arrangements' to refund employment tribunal fees and there will be no further announcement until September.
- The BEIS have named around 230 employers for underpaying their workers the National Minimum or Living Wage, with one underpaying just over £1.4m to 12,000+ workers.
- The Home Office has published updated guidance on how to carry out right to work checks, why they need to be done and which documents can be used.

£3,000 costs ordered for unreasonably pursuing a lawyer-derived claim

In [Khan v Laker Mechanical Limited](#), the ET could make no criticism of K for bringing and persisting in a claim for unfair dismissal, which he won. But his race discrimination case was always unlikely to succeed and which the ET described as a "lawyer-derived complaint and an afterthought which was never owned by the claimant". Although K was contending originally that his redundancy was a sham, "a well know lawyer's cliché", this was not made out in any way. In his evidence K did not impute any racial motivation or bias to any of the decision-makers in this case. The ET stated: "We do not know what the claimant was thinking when he put his name to that claim, and we never shall". K had acted unreasonably in pursuing a lawyer-derived claim which he himself did not believe and was ordered to pay £3,000 costs.

No announcement on tribunal fee refunds until September

The Government is still working on 'detailed arrangements' to refund employment tribunal fees and there will be no further announcement until September. The Law Society Gazette [report](#) that this follows July's landmark decision by the Supreme Court that the fees were unlawful. The update comes in a statement from a senior member of the employment tribunals (England and Wales, circulated on social media by employment law barrister Daniel Barnett of London's Outer Temple Chambers. The statement confirms that a scheme is being devised to ensure that the fee refund process is as simple and unobtrusive as possible for those who make an application, while ensuring that refunds are only paid to those who are entitled. It is hoped that an announcement on the details of the refund scheme will be made during September.

Argos named for underpaying £1.4m NMW/NLW to 12,176 workers

The BEIS have named around 230 employers for underpaying their workers the National Minimum or Living Wage, with one underpaying just over £1.4m to 12,000+ workers. The Department for Business, Energy and Industrial Strategy has [published](#) a list of 233 businesses that underpaid the NMW/NLW to workers. As well as paying back staff the money owed, employers on the list have been fined a record £1.9m by the Government. Retail, hairdressing and hospitality businesses were among the most prolific offenders. Top of the list of employers named is Argos Limited, who failed to pay £1,461,881.78 to 12,176 workers.

Updated guidance on right to work checks

The Home Office has published updated guidance on how to carry out right to work checks, why they need to be done and which documents can be used. The guidance, '[An employer's guide to right to work checks: 16 August 2017](#)' has been updated to include the changes set out on page 4 which include: (i) advice in respect of those who claim to have a right to work as a non-European Economic Area (EEA) family member of an EEA national; (ii) illegal working measures introduced by the Immigration Act 2016, including closure notices and compliance orders; and (iii) the employment of international students.

Content

This update provides summary information and comment on the subject areas covered. Where employment tribunal and appellate court cases are reported, the information does not set out all of the facts, the legal arguments presented and the judgments made in every aspect of the case. Click on the links to access full details. If no link is provided, contact us for more information. Employment law is subject to constant change either by statute or by interpretation by the courts. While every care has been taken in compiling this information, SM&B cannot be held responsible for any errors or omissions. Specialist legal advice must be taken on any legal issues that may arise before embarking upon any formal course of action.