

Insights

FROM TWENTY A YEAR TO TWENTY A MONTH: WHAT'S DRIVING THE INTERIM RELIEF BOOM AND HOW CAN EMPLOYERS STAY AHEAD

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Summary

Interim relief applications are on the rise at a staggering rate according to the Presidents of the Employment Tribunals for England & Wales, and Scotland, putting pressure on unwary employers.

Interim relief applications can be made by employees dismissed for whistleblowing, and a narrow band of other automatically unfair dismissals. Importantly, if successful, the remedy puts the employee in a strong position pending the hearing, given the Tribunal can order the employee be reinstated into their job, or at least continued to be paid, until the final hearing, which as we know can currently be anything from 1 to 4 years from the dismissal date.

For years, interim relief was a seldom-used litigation lever, pulled around 20 times a year across Great Britain. The bar for employees to succeed was and remains very high. That hasn't changed. In short, the claim has to look like a winner. And most applications fail. Despite this, the Presidential Guidance has been issued as a result of a sharp rise in applications, with the tactic now being deployed approximately that many times per month, per tribunal office. So what has changed to turn an obscure interim remedy into a litigation trend?

The answer to the historic lack of interim relief applications likely lies somewhere within a mix of ignorance, complexity, sheer volume of preparation, and the pace at which action must be taken (most claimants miss the boat).

AI is likely the key factor in this long-forgotten litigation tactic being dusted off and reintroduced into whistleblowing play-book. This corresponds with the other observed trend – an increase in the volume of accompanying documentation, often a red flag for the use of AI by claimants. However, any number of other evolving features of law and society could also be contributing to this trend, including an ongoing rise in whistleblowing claims. Whether this continues with the forthcoming change to the unfair dismissal cap remains to be seen.

What it means for employers

Whatever the cause for the surge in interim relief applications, the legal risk of a successful application remains the same, i.e. relatively low (for now). However, with applications soaring, just being on the receiving end may in and of itself be the real risk for employers given the time and costs associated with them. A claimant can force a hearing within days of dismissal, often before an internal appeal has concluded, and unwary employers can find themselves facing an interim relief hearing in the Employment Tribunal before they have had time to consider their wider strategy.

What then, strategically, should employers be doing to protect themselves in the event of an IR application?

- Be aware that any dismissed employee may assert that they have made a protected disclosure and that these claims are day one rights, so factor in this risk when taking disciplinary action.
- If you are subject to an IR application, take it seriously. Success rates for employees remain low, but this does require the employer to be ready to attend a hearing at short notice and to put forward an arguable defence to the claim.

To ensure you are able to do this, clear and contemporaneous records, particularly with regards to the reason for dismissal, will be the key. Ideally, those documents will be neatly organised in a case-ready format to allow for speedy preparation for the impending hearing.

If you have any questions about this development or its implications for your business, please contact a member of [BCLP's UK Employment team](#).

The authors would like to thank Trainee Solicitor Ifrah Hussein for her contribution to this article.

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Meet the team



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