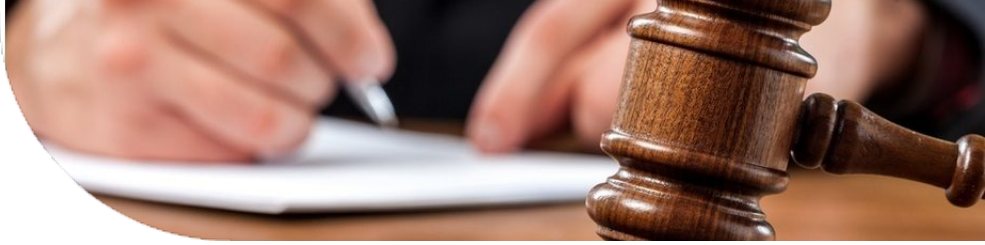

Limitation in the Employment Tribunals: How late is too late?

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A key ruling by the Court of Appeal in Adedeji v University Hospitals Birmingham NHS Foundation Trust has upheld a judge's refusal to extend the time for a race discrimination claim that had been filed three days late. The Claimant was twice given a clear warning about the time limit from solicitors that he was considering instructing and chose to ignore the advice.

The employment judge ruled that the Claimant's claims were out of time, as it had been reasonably practicable for him to present his unfair dismissal claim in time and it was not 'just and equitable' to extend the time for the race discrimination claim.

The Claimant had argued that the judge should have allowed the late filing of the claim because the three-day delay was not substantial and had been caused by his misunderstanding of the effect of the Early Conciliation period on limitation.

However, the Court of Appeal decided that the judge was entitled to take into account that the alleged discriminatory acts took place long before the Claimant's employment had ended and that he could have complained of them as soon as they occurred or immediately following his resignation. As for the Claimant's misunderstanding of the effect of the Early Conciliation rules, the judge had been entitled to decide that this did not justify granting an extension, given that the Claimant had left it until the last minute to take advice from solicitors, and then had chosen not to act on that advice because he thought that it was incorrect.

This ruling emphasises the need for Claimants to pay careful attention to limitation dates when issuing claims. Claimants are increasingly representing themselves in the employment tribunal, and a lack of legal advice means that time limits can be missed. The tribunal does have some leeway to allow claims when they are presented out of time, but there has to be a 'just and equitable' reason for doing so.

If you've had an employment claim presented against you, it's key to take early advice on it and any limitation issues that may have arisen. If a claim can be dismissed as having been presented out of time at an early stage, this can save you and your business a significant amount of time and money, and so such advice can be invaluable.

If you would like further information about a tribunal claim, or any other employment-related matters, please

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