

The Ministry of Justice and Her Majesty's Courts and Tribunals Service (HMCTS) have rolled out the details of the scheme to refund claimants and respondents who paid a fee at an employment tribunal or the Employment Appeal Tribunal between 29 July 2013 and 26 July 2017.

As an **employer**, you are eligible to seek a refund if:

- You paid a fee to an employment tribunal (e.g. to bring a counterclaim, for judicial mediation, etc.) and you have not been reimbursed by anyone pursuant to a tribunal order.
- Your representative paid a fee on your behalf and you then reimbursed them.
- You paid a fee to the Employment Appeal Tribunal (whether as an appellant or a respondent to the appeal).
- You were ordered by a tribunal to reimburse a claimant for the tribunal fee he/she incurred in bringing proceedings against you, and you have made that payment. In these circumstances you must provide a copy of any relevant tribunal order, together with evidence that you did in fact reimburse the claimant (e.g. copy of payment slip, receipt, bank statement, etc.) when submitting your application.

If you paid fees for more than one claim, you must provide details in the form of all of the cases.

You can apply by completing [Form 2-R](#) for respondents and returning it by post or email to HMCTS. There are different forms for the claimant in employment tribunal proceedings ([Form 1-C](#)) and for representatives/sponsors of a party to a claim (e.g. trade unions) or the lead claimant in multiple claims ([Form 3-S](#)).

If, as an employer, you reimbursed a claimant as part of a settlement agreement/COT3 agreement then on the face of it you are **not** eligible to obtain a refund under the scheme. This is because Form 2-R states that it only applies to employers that reimbursed claimants in accordance with a tribunal order. Having said that, the form does say: "*If you were the respondent to a claim, but your circumstances are different to those listed below, please check the guidance to make sure you are eligible, and then tell us why in question 2.7.*" So, if the settlement or COT3 agreement clearly sets out that you have reimbursed the claimant for the specific amount of any fees paid, (i.e. it was not just one of the considerations taken into account in arriving at a final lump sum number), it might be worth making a speculative application for a refund and seeing what happens. It would seem perverse that employers who had gone through the system and had an award made against them should get that money back while those who saved the system the cost of a full hearing by early settlement did not.

Successful applicants should obtain a full refund of any fees paid, as well as interest of 0.5%, calculated from the date of the original payment up to the refund date.

The government has estimated that the total cost of refunding fees, including interest, will be £33 million. It remains to be seen whether it is any more right about that than it has been on any other aspect of the fee regime!

If you have any questions about whether you may be eligible for a refund or how the refund scheme will work, please speak to your usual contact in the Labour & Employment team.

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