


Landmark preliminary decision

Employment Tribunal recognises foster carers' right to bring whistleblowing and discrimination claims

06 February 2025  Kelly Eddy

In a significant preliminary ruling, the Employment Tribunal (ET) has opened the door for foster carers to bring forward claims of whistleblowing and discrimination against local authorities.

This decision marks a pivotal moment in the ongoing discourse surrounding the employment rights of foster carers in the UK.

Foster carers have long occupied a distinct and somewhat precarious position within UK employment law. Stemming from the Court of Appeal's decision in *W v Essex County Council* [1999], the relationship between foster carers and local authorities has been defined more by statutory duties than by traditional employment contracts. This classification has typically excluded foster carers from the protections and rights usually available to workers and employees, such as those against workplace discrimination and unfair dismissal.

The claimants, current or former foster carers, brought claims of race and age discrimination against the local authority. The ET's decision addressed the exclusion of foster carers from pursuing claims under Sections 47B and 48 of the Employment Rights Act 1996, which relate to whistleblowing protections. The Tribunal held that this exclusion constitutes an unjustified interference with rights under Article 10 (freedom of expression) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

While this decision potentially could pave the way for other claimants to bring similar claims, it is important to recognise that it is a first instance decision and not therefore binding on other Employment Tribunals. It is also highly likely that the decision will be appealed. If the decision is upheld, local authorities could face an increased risk of whistleblowing and discrimination claims. Therefore, it would be good practice to ensure that decision making processes are clearly documented, in case of a future challenge.

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