

Court of Appeal confirms all employment tribunal judgments must be published on the register, except in national security cases

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On 9 August 2019, the Court of Appeal held that neither the employment tribunal (“ET”) nor the employment appeal tribunal (“EAT”) had explicit power to prevent employment judgments from being published on the Register, except in cases concerning national security.

Under the ET Rules, all judgments and accompanying written reasons must be published on a public register which the general public can access online. Whilst there are certain qualifications to this rule (for example national security issues or protection of an individual's human rights), the main reason for publication is to promote open justice. The Court of Appeal held that an order redacting a judgment further would be contrary to the principles of open justice and would also present practical difficulties.

In *L v Q Ltd* [2019] EWCA Civ 1417, the Claimant brought disability discrimination, harassment and victimisation claims against his employer. At the Claimant's request, the ET granted permission for a private hearing and for party names to be anonymised. However, the ET also ordered that the judgment should not be placed on the register. The EAT set aside the ET's order regarding publication and confirmed that the judgment should be published on the register, subject to redactions that were reasonably necessary to protect the parties' identity.

The Claimant applied for permission to appeal the EAT's decision and the following orders were sought on the basis they would be reasonable adjustments for the EAT to make:

1. The judgment should not contain the nature and effect of the Claimant's disabilities and two disturbing matters related to his disabilities; and
2. The Claimant should be given the option of withdrawing his claim rather than having the judgment published on the register.

Clients should be aware, before a claim is presented, that on the determination of the case, the judgment and written reasons will be easily accessible to the general public to read in all but a very limited number of cases, although some redactions may be possible. The Court of Appeal has made clear that whilst redactions can be made to protect the parties and witnesses' identity in some instances, judgments and written reasons will not be redacted to the extent that the documents become unclear to the general reader.

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