

Confidentiality in Discrimination Cases: Employment Tribunals and County Courts

Employment Tribunals

The two confidentiality options in employment tribunals are **restricted reporting orders** and **private hearings**.

Restricted reporting orders (RROs) can be applied for when taking a case to employment tribunal under the Disability Discrimination Act.

RROs prohibit published reporting of a case's details, but do not prevent any word-of-mouth discussion of the case. An RRO may be 'temporary' or 'full'. Even with a full RRO, all restrictions are lifted at the end of the hearing and any details may be published. Temporary RROs only last for 14 days, but in some cases are extended to cover the duration of the hearing.

RROs are rarely applied for, so the process of granting one can take months.

Private hearings may be held when the information that is to be given is:

- confidential; or
- disclosure could "cause substantial injury to any undertaking of [the party's] or any undertaking in which [the party] works".

For people living with HIV, it could be claimed that the potential for future stigma and discrimination may represent such an 'injury'. However, this avenue has not yet been successfully attempted to protect the identity of an applicant living with HIV. It is only a speculative interpretation of the use of a private hearing. There is also a real chance that an application for a private hearing would be opposed based on principles of 'open justice', which generally favour a public hearing.

County Courts

County court judges have a lot more discretion in offering confidentiality, in the form of **private hearings** or **concealing/anonymising identity** in reporting.

Private hearings may be held when

- "publicity would defeat the object of the hearing"
- "it involves confidential information...and publicity would damage that confidentiality"
- "the court considers this to be necessary, in the interests of justice"

Judges are also guided by Article 6(1) of the European Convention on Human Rights, which notes that the public may be excluded from all or part of a hearing "where...the protection of the private life of the parties so require."

Even if a hearing is in public, it may be possible to have your **identity concealed**. Again, there has not yet been a case brought where someone living with HIV has successfully applied for concealment.

The stigma and discrimination experienced by those living with HIV could be presented as cause to have a name anonymised ('Person X' or 'Y'). If granted, this anonymity would extend to any other names and which could reveal identity (e.g.

place names). It is likely that concealment of identity would continue to apply to reporting even after the hearing had ended.

Keep in mind that anyone would still be able to come and hear the case, but they would be unable to report it in any way that breaches anonymity.

If you have any questions about confidentiality in employment tribunals or county courts please email policyandcampaigns@nat.org.uk,

LINKS

Rules and regulations for employment tribunals can be found on the Tribunals Service website (<http://www.employmenttribunals.gov.uk/>).

Rules and practice regulations for county courts are on the courts services website (<http://www.hmcourts-service.gov.uk/>).