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## **FIRE & RESCUE SERVICES National Employers**

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**To: Chief Fire Officers  
Chief Executives/Clerks to Fire Authorities  
Chairs of Fire Authorities  
Directors of Human Resources**

**Members of the Employers' Side of the NJC**

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19 November 2007

CIRCULAR EMP/11/07

Dear Sir/Madam

### **RETAINED FIREFIGHTERS AND THE PART-TIME WORKERS (PREVENTION OF LESS FAVOURABLE TREATMENT) REGULATIONS: EMPLOYMENT TRIBUNAL 2007**

1. I write further to Employers circular EMP/3/07 dated 13 March 2007 which gave details of the position at that time and advised that these cases would return to the Employment Tribunal for a five day hearing on 12 November 2007.

#### Background

2. This was the first case to consider the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ("the Regulations"). Retained Duty System firefighters were selected from two fire authorities (Kent & Medway Towns and Royal Berkshire) who, supported by the FBU, argued that the Employment Tribunal had wrongly decided that:
  - Whole time and retained fire-fighters were employed under different types of employment contract;
  - Whole time and retained firefighters were not engaged to carry out the same or broadly similar work.
3. Authorities will recall that in a majority decision the House of Lords found for the Retained Duty System firefighters on the first point. Further, on the second point, the majority of the House of Lords allowed the Retained Duty System firefighter appeal. However, rather than make a factual ruling on the second issue, the

House of Lords decided that the claim should return to the Employment Tribunal to further consider the issues, based on guidance given by the House of Lords.

4. The London South Employment Tribunal met on 7-9 March 2007 to reconsider its decision. The case was not concluded. The Tribunal granted a review application by the Claimants concerning certain findings of fact. These findings revolved around statutory and community fire safety activities under the heading of "non-occurrence activities". In granting this review application the Tribunal allowed all parties to submit further evidence about the degree to which whole time and firefighters on the retained duty system carried out these activities, when the claims were originally brought in December 2000.

#### November 2007 Employment Tribunal

5. The Tribunal met last week and heard the further evidence referred to in paragraph 4 above.
6. The Tribunal will meet again during the 7- 9 January 2008 to hear legal arguments on the following outstanding issues:
  - Arguments on whether retained duty system and whole time firefighters are engaged on the same or broadly similar work under the Part Time Workers Regulations;
  - Arguments on whether firefighters on the retained duty system are treated less favourably than whole timers under the Part Time Workers Regulations;
  - Whether any alleged less favourably treatment is objectively justifiable under the Part Time Workers Regulations.
7. These events will inevitably mean a delay and further legal costs as part of the cost-sharing agreement before the cases can be resolved. Authorities will be invoiced as part of that cost-sharing agreement before the cases can be resolved.
8. We estimate that the decision will be communicated by the Tribunal during the period March - May 2008.
9. Authorities will be kept informed of any further developments.

Yours faithfully,

**Jacky Teasell**  
**Negotiating Officer**