



Employment Tribunal Process

Call
07375 097443

e-mail
enquiries@lbjconsultants.co.uk

FACTSHEET – Employment Tribunal Process

Employment Tribunals are public bodies in England, Wales, Northern Ireland and Scotland which have statutory jurisdiction to hear many kinds of disputes between employers and employees. Nearly all legal cases about employment are heard in Employment Tribunals. This includes cases about things such as unfair dismissal, redundancy and discrimination. There are also many other sorts of claim that can be brought.

The Employment Tribunal service plays a great role in upholding the rights of employees. The average time between starting a claim and receiving a decision is 27 weeks. Although, depending on the factors involved, it could be more than a year.

Employees, if possible, should always attempt to resolve any problem before they make a claim to an Employment Tribunal, such as using their company's Grievance Procedure.

What type of Employment Tribunal claim could be raised?

- An employee must have been employed for 2 years (1 year in Northern Ireland) to be able to lodge a claim at an Employment Tribunal if they think someone has treated them unlawfully, such as their employer, a potential employer, fellow employee or their trade union. There is no 2-year qualifying period for discrimination claims.

The most common disputes concerning unlawful treatment can include:

- Discrimination;
- Unfair Dismissal and Constructive dismissal;
- Breach of Contract - there is a maximum amount of compensation that can be claimed at an Employment Tribunal;
- Equal pay;
- Unlawful deductions of wages;
- Redundancy;
- Variation of contract terms;
- Whistleblowing;



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- T.U.P.E, which stands for the Transfer of Undertakings (Protection of Employment) Regulations. T.U.P.E. is relevant to any redundancy decisions where a business or part of it is transferred from one owner to another. There is no necessary qualifying period for bringing this claim;
- Right not to suffer detriment. A detriment is when the employer treats you unfairly in the workplace. For example: if you are being denied training opportunities; and
- Any other breach of employment law

Any claim to the tribunal must be made within 3 months of the employment ending or the problem happening. The period of 3 months is known as a time-bar. Applications to the tribunal to waive the time-bar can be made, but these requests are rarely granted. If it is granted, then this is usually done in the interests of justice.

Settlement Agreements

Reaching a settlement, before disagreements reach an Employment Tribunal, may well be in your best interests and can provide a degree of certainty. In which case, you could be better off with a settlement agreement.

A 'settlement agreement', under which the employee receives independent legal advice and can then waive his or her statutory employment rights, in return for an agreed settlement.

A settlement agreement can also be negotiated at Acas.

Acas settlements are legally binding contracts between the parties to settle actual or potential complaints to the Employment Tribunal. They are recorded on Acas form COT3.



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Initial steps

Registering with Acas

Before being able to issue a tribunal claim, it's a pre-requisite that the claim is registered with Acas under their **mandatory early conciliation scheme**.

The employee must submit an Early Conciliation (EC) form online, or by post, within 3 months less one day from the termination of the employment or other event giving rise to the claim.

Extra time is added to ensure everyone has at least one calendar month in which to present a tribunal claim after Early Conciliation ends.

If Early Conciliation fails, the employee is then free to lodge an Employment Tribunal claim

ET1 Form

This is done by submitting a form, ET1, which explains the basis of their complaint and states whether statutory workplace dispute resolution procedures have been followed. The ET1 form can be completed and sent online or it can be downloaded and sent by post to the appropriate Employment Tribunal Centre Office in England or Scotland, whichever is appropriate.

The Employment Tribunal Centre Office will then send a copy of the ET1 form to the employer to see if they want to defend themselves or respond to the claim.

ET3 Form

The employer usually has to reply to any claim in writing using an ET3 form which will usually set out their response to the complaint, and which, effectively, becomes a summary of their case. They can complete the ET3 form online, or they can download it and send it by post to the appropriate Employment Tribunal Centre Office.



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They must respond, on form ET3, within 28 days of the date the ET1 form was sent out. If they don't respond within the 28-days, they lose their right to contest the case and the Employment Tribunal might make a judgment on the case that is automatically in the employee's favour. This is called a default judgment.

The employer can ask for an extension beyond the 28-day period, if they have a good reason.

Time limits to raise a claim at an Employment Tribunal

The usual time limit for issuing a tribunal claim for unfair dismissal or constructive dismissal is 3 months less one day from the termination of the Claimant's employment (usually the last day they were paid), or other event giving rise to the claim (for example, the last act of discrimination).

If claims have not been registered with Acas within the period of 3 months less one day from the date of termination of the Claimant's employment, the clock will not be stopped, and the claim will remain out of time.

There are exceptions when employees may ask the tribunal to ignore the time limit this request is usually made under

- the "interests of justice"
- it was "not reasonably practicable" for the claim to be presented in time
- when it did become reasonably practicable to present the claim, it was presented within a reasonable amount of time after that.

No fee is required from the employee or the employer to make a claim to the Employment Tribunal, even if it says so on the ET1 form.



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Preparation

Preliminary hearing

Both parties may be asked to go to an initial hearing (called a preliminary hearing) with the employment judge to decide on things like:

Preparing for an Employment Tribunal

When both parties are preparing their Employment Tribunal cases, they should think about what they need the tribunal to know, effectively telling their story of what happened. They should produce a range of appropriate documents, known as a bundle, for use at the tribunal.

Organise witnesses

Both parties can bring witnesses to the hearing if they can give evidence directly relevant to the case.

If a witness is asked to attend and they don't want to, both parties can ask the tribunal to issue a witness order for them to come.

From the employer's perspective

When an application is made against an employer, there are a number of early checks that should be made.

First, check to see whether the application is technically flawed

If the employer thinks the claim is almost certain to fail, they should request a pre-hearing review.

Another action is to make sure you understand the costs and benefits of fighting the case at a hearing. Even a fairly straightforward case can drag on for months. The cost in disruption and management time can be considerable. A case can also damage the credibility of the business.

However, some cases are worth defending to signal the employer's resolve to other employees.



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The hearing begins

Initially, a date for the hearing will be sent by post to both parties. Any request for a postponement should ideally be made immediately

Going to a tribunal hearing

Cases are normally held at the Employment Tribunal Office closest to where the employee worked. Both parties must bring along their bundle of documents. 6 copies for a full tribunal hearing, 4 copies for a hearing where there's only a Judge sitting.

The starting point for tribunal decisions is statute law

Employers must have followed fair and transparent disciplinary and grievance procedures. If they've failed to do this, an Employment Tribunal may increase any award payment by 25%.

The Acas Code of Practice provides valuable guidelines, particularly in cases of unfair dismissal.

At the tribunal hearing

When the parties and their representatives arrive, a clerk will check them in at reception and they will be shown to the appropriate waiting room - either the employee-claimants room or the employers-respondent's room.

Both parties can bring friends or family with them for support.

The Employment Tribunal is a public, legal hearing, so all parties should try and dress as smartly as possible.

Who makes up the tribunal panel?

There can be three members of the tribunal who will decide on the case. Together they are called the tribunal panel.



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There is an employment judge who will run the proceedings, a person representing employer's organisations and a person representing employee's organisations. - these are referred to as lay people.

Some types of cases and some types of hearings can be heard by an employment judge sitting without the panel members.

The Employment Tribunal process is impartial

The mechanics of the tribunal

The judge will decide which side goes first.

In cases of unfair dismissal and discrimination, the claimant side usually goes first.

The decisions, appeals and costs

The decision, in writing, will arrive in the post a few days, or weeks, after the hearing. In certain cases, the parties may be given a verbal decision at the hearing, this is very unusual in Scotland. In some complex cases, the delay can stretch to many months.

If the Employment Tribunal decides the employee should get compensation, they will do the sums and make an order for how much their employer should pay them, and when this should be paid by.

- Either party can ask for a review of the decision or for costs to be awarded.
- Either party can appeal the decision if there was a problem with a point of law in the case. But it must be said that few succeed.
- Both sides are sent a written decision, with summary and reasoning.
- If an appeal is not possible, they can ask for full reasons.
- If either party does not like the tribunal's decision, they can ask for the case to be reviewed. This must be done within 14 days of the decision.



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- Either party may want to appeal to an Employment Appeal Tribunal, in which case appeals must be made within six weeks and be based on a point of law.

Employee wins

If the employee wins the case, the Tribunal can order the Employer to do certain things depending on the type of case. Here are some examples-

- Make a basic award for unfair dismissal calculated on a fixed formula taking into account the age and service of the employee
- Make a compensatory award, based on the loss of earnings and how unfair the dismissal was.

Whatever the issue, compensatory awards are capped at the lower of one year's gross wages...

Although they can be higher than that figure in certain cases, for example, in whistleblowing or health and safety claims.

Breach of contract awards

Breach of contract awards in tribunals are capped

Alternatively, an employee can make an unlimited claim in the ordinary courts. Typically, this might happen if a director claims substantial compensation under the terms of an employment contract.

Discrimination case awards

Discrimination case awards are unlimited. As well as loss of earnings, employees can claim damages for injury to feelings.



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Employer wins

If the employer wins the case, the Employment Tribunal can order the employee to do certain things depending on the type of case, for example, the employer can ask the Tribunal to award expenses against the employee if they believe the claim was vexatious.

Non-payment of the award

If the employer does not pay the award, the employee should contact them to find out why. If they still don't pay, the employee can ask to have them fined, or ask a court to force them to pay.

The employee can't do either of these things if the employer has appealed or is about to appeal.

Reconsideration/Appeal

As we've already indicated, either party can ask the Employment Tribunal to reconsider the decision (or 'judgment') if they lose the case.

The party must write to the tribunal office that dealt with the case within 14 days of getting the decision, stating clearly why they want it to be reconsidered.

They also need to give good reasons, for example:

- the tribunal made a mistake in the way it reached its decision
- they weren't told about the hearing, or weren't at the hearing
- there's new evidence

The losing party can also appeal to the Employment Appeal Tribunal if they think the Employment Tribunal made a legal mistake.

The Loser has 42 days to appeal from the date the decision was issued.



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Employment Tribunal Legal costs

Each side, generally, pays its own legal costs, regardless of who wins the case.

A party warned at a pre-hearing review that the claim had little prospect of success might have to contribute to the other side's legal costs.

If either party (or its representatives) behaves abusively, disruptively or unreasonably during the case, it can be ordered to pay costs of up to £10,000.

This is the limit of the cost award at an Employment Tribunal. If the amount is higher it needs to go to the civil court, County Court in England or Sheriff in Scotland.

Compared with going to court, the legal costs of going to tribunal are low.

No submission fees

Employees are no longer required to pay a fee when they submit their claim

Reducing risks

Having commercial awareness will help you deal with any difficult cases. For example, if you have an employee who is off work on a long-term absence, then it's likely that you will become more involved in decisions which directly affect your company or organisation over when and how this issue should be resolved with the least risk to your company.

Since this area of employment law sometimes involves dealing with the good, the bad and ugly aspects of human nature, the HR person (where applicable) will need to be friendly, empathetic and professional when dealing with these issues. Plainly this gives you an opportunity to develop and present creative solutions that address your business's priorities.

A favourite quote from the Canadian ice hockey player Wayne Gretzky is pertinent:

"A good hockey player plays where the puck is. A great hockey player plays where the puck is going to be."



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Therefore, you should be, at the beginning of each case, thinking of where this case could end up.

Contentious areas

To prevent problems, it helps to know what the most common allegations are, the most common are unfair dismissal claims. Cases involving redundancy usually revolve around unfair selection or failure to consult with employees. Discrimination generates growing numbers of claims.

Good HR support = Good Management Practice = Good Employees = Successful Business

Preventing disputes

The law requires you to comply with minimum workplace dispute resolution standards.