

# An employee's guide to Employment Tribunals



## What is an Employment Tribunal?

They were set up in the seventies to provide a fast, informal and inexpensive way to solve employment disputes in a way deemed equally accessible to employees and employers alike.

The most common disputes heard at an Employment Tribunal are relating to:

- Unfair dismissal
- Redundancy payments and discrimination
- Unpaid wages

## Will I have to pay a fee to take my case to an Employment Tribunal?

The answer is no. In July 2017, the fees that claimants had to pay since the coalition government introduced them four years earlier, were abolished after the highest court in the land ruled them unlawful.

Crucially, this means you will no longer have to pay a fee to the Employment Tribunal or Employment Appeals Tribunal to make a claim.

## Is there anything I need to do before starting a claim?

Before lodging an Employment Tribunal claim you must notify The Advisory, Conciliation and Arbitration Service (Acas) in a process known as early conciliation.

An independent, impartial Acas conciliator will then attempt to help you and your employer resolve your differences. Whilst these discussions are taking place, the time limit for making a tribunal claim is extended. The Early Conciliation period can be up to a month initially and up to 14 days shorter or longer according to need.

If this process does not resolve the dispute, Acas will bring things to a close and provide evidence that it was duly notified by supplying a unique Acas Early Conciliation Reference Number which you will need to take your claim on to a Tribunal.

Wards Solicitors will guide you through this process including meeting all the relevant timescales.

## How do I to start a claim?

You must lodge your claim (you are "the Claimant") on a specific form called an ET1 on which you set out in full the factual allegations and legal complaints.

The Tribunal will look at this and assuming your claim is accepted, it will send the form to your employer ("the Respondent") giving 28 days for it to submit its formal response to the claim, using a form called an ET3. The ET3 will state whether the claim is resisted (in whole or in part) together with the grounds.

## What happens next?

Both you and your employer will be given directions on how the case is to proceed, and the time periods for you to exchange evidence, including witness statements, and to agree the relevant papers to be used at the hearing. In some cases, there will be a specific directions hearing rather than it being dealt with in correspondence.

You and your employer will be given written notice of the hearing, which can only be changed if there is a good reason to do so for example on medical grounds or the unavailability of a relevant witness.

## What happens at the Employment Tribunal itself?

The tribunal may consist of an employment judge and two lay members but in some cases, including claims for unfair dismissal, the employment judge sits alone.

The atmosphere of an employment tribunal is more informal than a court and is set up in a way designed not to be off-putting or scary to you as an employee, particularly as many employees represent themselves.

At the hearing, you will usually be called to give your evidence first and call your witnesses, who will then be cross examined by your employer.

## Employment Tribunal hearing flowchart

- Opening speeches
- Witness evidence (the party with the burden of proof goes first)
- Examination-in-chief
- Cross-examination
- Questions by the tribunal
- Re-examination
- Additional witnesses
- Opponents' witnesses
- Closing speeches
- Tribunal decision (after adjournment or a reserved judgment)

Source: Citizens Advice

## What will the judgement cover?

At the end of the hearing, the tribunal will try to come to a unanimous decision and will give its decision in the form of a judgement.

In straightforward cases, the judgement – which must include its reasons - can be given orally on the same day or sometimes it is reserved and sent out in written form at a later date.

It might only deal with the question of liability with remedy, for example, compensation, sorted out at a later date. Sometimes it covers both liability and compensation.

If you've won, the tribunal might take a break to allow you and your employer to try to reach a settlement which is desirable, even at this stage.

But if you can't reach a settlement, you can go back to the tribunal for them to make the compensation award. This might happen on the same day as your hearing, or it might be a separate hearing.

If the Employment Tribunal thinks you should get compensation, they will work out how much and make an order for your employer to pay you and by when. Hopefully this will bring matters to a close for good.

## What happens with costs?

Employment tribunals are different to courts when it comes to costs – usually each party pays their own - and losing does not mean you will automatically have to pay your employer's costs.

In fact, the chances of you having to do this are extremely low - statistics show that costs orders are made in less than one per cent of cases.

There are a few situations where there is a risk that you might have to pay costs. The Tribunal has the discretion to order them to be paid when a party, or their representative, is deemed to have acted "vexatiously, abusively, disruptively, or otherwise unreasonably" in the bringing or conducting of the proceedings, or if the claim had "no reasonable prospect of success" in the first place.

## Can I appeal a tribunal judgement?

It is rare for cases to be appealed and you can't appeal just because you don't like the outcome. The only grounds are if there is a problem with a point of law in your case. Of the small number of cases that are appealed, very few are successful.

Your will need specific legal advice to help you decide if appealing is a viable way forward and to do so you must have the full written reasons for the tribunal's judgment.

If the judgment was given in person, you can ask for full written reasons to be sent to you at that time. If the judgment was sent to you in the post after the hearing and the reasons weren't attached, you must make sure you ask for them within 14 days. You must put in your appeal within 42 days of the date the written reasons for the judgment were sent out.

If you would like further information please contact one of our employment team on **0117 9292811**

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*Disclaimer: This guide is not intended to comprise legal advice and discusses Employment Tribunals in general terms.*