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Employment Tribunals - Schools



Employment Tribunals

- No court fees since July 2017
- Employment Judge or panel of 3 – Judge and 2 ‘wing’/lay members
- Governed by the Employment Tribunal Rules of Procedure 2013
- ‘Overriding Objective’
- Hearings are held in public and judgments are published online

ACAS Early Conciliation

- First stage of the Employment Tribunal process – ACAS explore whether a pre-claim settlement can be achieved
- With very limited exceptions, this is a mandatory requirement before bringing an ET claim. However, there is no obligation on a Claimant (or an employer) to actually engage in negotiations
- Discussions via ACAS are confidential and can't be referred to before the Tribunal
- Settlements are recorded on a COT3 form
- ACAS will facilitate settlement negotiations even after the Early Conciliation period ends

Types of claim

- ‘Statutory claims’ such as:
 - Unfair dismissal and redundancy
 - Discrimination
 - Whistleblowing
 - Unlawful deductions/arrears of pay/holiday and working time claims
 - Collective consultation and trade union-related claims
 - TUPE
- Breach of contract claims but:
 - Limited to £25,000
 - Not if the Claimant is still employed by the Respondent
- Employer’s counter claims
- Individuals can be Respondents to certain claims (discrimination and whistleblowing)

- Time limit for nearly all Tribunal claims is 3 months – subject to ACAS Early Conciliation extension
- Date from which time limit runs is obvious in most cases but can be complex in discrimination or whistleblowing claims
- When can the Tribunal allow claims to proceed ‘out of time’:
 - ‘Reasonably practicable’ test; or
 - ‘Just and equitable’ test

Initial assessment of claims

- Have we got a strong defence?
- How much is the claim worth?
- What will the legal fees be and have we got any form of insurance cover (such as HR Protect or the RPA)?
- Are they a current employee?
- Can we be confident that the witnesses who we need to give evidence will be available and willing to attend the hearing?
- Will paying a quick settlement set some sort of precedent and/or encourage more claims against us?
- Are there any confidential or sensitive issues which we want to avoid being discussed in a judgment which will be published online?

Responding to a Claim

- The response must be submitted within 28 days of the Tribunal sending it to the Respondent. Claim forms are sent by post.
- Strict deadline with potentially severe consequence of missing it.
- Respondents can apply for an extension to the deadline – but this may not be considered before the deadline expires.
- Response should set out the legal and key factual position on the claims brought – but the intricate detail is best addressed in witness statements later on in proceedings.
- Set out any ‘further particulars’ which are required in relation to the claims brought.

Preliminary hearings

- The Tribunal will not usually hold any preliminary hearing for more 'straightforward claims' e.g. unfair dismissal, unlawful deduction from wages.
- The Tribunal will arrange a 'private' preliminary hearing on more complex claims to consider 'case management'.
- The Tribunal may also arrange a 'public' preliminary hearing to deal with any substantive preliminary issue such as:
 - Is the Claimant disabled?
 - What is the Claimant's employment status?
 - Has the claim been brought in time, and if not should time be extended?
 - Deposit or strike out order applications

Disclosure and hearing bundle

- Both parties will be given a deadline by which to disclose any relevant documents
- This is wider than the documents which you would have to provide under a data subject access request by the individual
- This includes documents which may be unhelpful to your case – think about what potentially disclosable documents you are creating on a daily basis
- Includes handwritten notes, letters, e-mails, screenshots, audio recordings, video footage
- There are limited exceptions:
 - Without prejudice
 - Legally privileged
 - However, no general exception of ‘confidentiality’
- Applications for specific disclosure or third party disclosure
- Responsibility for preparing an indexed and paginated hearing bundle nearly always falls to the employer

Witness statements

- Deciding who to call to give evidence (e.g. investigating officer in an unfair dismissal case)
- Written witness statements are required for anybody giving evidence at the hearing
- Exchanged on a set date before the hearing
- ‘Taken as read’
- Cross-examination
- Witnesses who don’t attend

Final hearing procedure

- Preparing witnesses
- Who can / should attend?
- Formality
- Length of hearing
- Judge alone or with members?
- Order of play
- Reserving judgment
- Dealing with remedy

- Written reasons
- Judgments are enforced like county court judgments
- Either party can submit an application for the Tribunal to reconsider its judgment – limited scope and rarely successful
- Appeal to the Employment Appeal Tribunal (EAT):
 - Strict time limit to appeal within 42 days
 - Tribunal must have made an ‘error of law’ or reached perverse decision
 - EAT may send the case back to the same (or new) Tribunal to reconsider the issue

Remedies and Compensation

- Tribunals have a limited range of remedies and outcomes:
 - A declaration that a dismissal was unfair or that a person was discriminated against
 - Compensation
 - For unfair dismissal, reinstatement (the same job) or reengagement (a similar job)
 - For discrimination, a recommendation to tackle the possibility of discrimination in future
- Compensation for unfair dismissal
 - Basic Award – equivalent of statutory redundancy entitlement
 - Compensatory Award – capped at normal annual salary or £93,878 whichever is the lower (except for automatically unfair dismissals)
- Compensation for discrimination
 - Injury to Feelings
 - Compensation for the losses caused by the discrimination (uncapped)

- No rule that the losing party has to pay the winning party's legal costs
- Tribunals can make costs award but only in limited circumstances
- Tribunals are generally reluctant to exercise their costs powers
- Most common scenarios in which a costs order may be made
- Amount of a costs award

Questions and answers