



## **CLIENT GUIDE TO EMPLOYMENT TRIBUNAL CLAIMS:**

### **1. WHAT CLAIMS CAN AN EMPLOYMENT TRIBUNAL HEAR?**

- 1.1 An employment tribunal can hear any claim involving a breach of an employee's or worker's statutory right or any freestanding breach of contract claim (where the contract claim has a value up to £25,000.00).

The full list of claims is [here](#).

### **2. WHAT ARE THE RULES FOR BRINGING OR RESPONDING TO A CLAIM?**

- 2.1 The time limits for the various claims vary. Most (but not all) claims (including a claim for unfair dismissal) must be brought within three months less a day from the day the incident happened. So if an employee's effective date of termination was 1 January 2014, any claim for unfair dismissal would need to be presented on or before 31 March 2014. Leaving it to the last possible moment is fraught with risk and not advised. Time limits for your specific claim(s) will be discussed with you.
- 2.2 An Employment Tribunal has very limited discretion to hear a claim that is outside the time limit.
- 2.3 Every Claimant needs to go through a period of Early Conciliation through ACAS before presenting a claim to a Tribunal. A claim cannot be presented unless an Early Conciliation notice and number has been issued by ACAS. The period of conciliation can extend the time limits. The rules are complex but if in doubt a Claimant should start the process sooner rather than later.
- 2.4 It costs £250 to bring a type A claim and £160.00 to bring a type B claim. This [list](#) details whether a claim is type A or type B. Remission can be sought if a Claimant has less than

£3,000.00 in savings and does not have anyone living in their household who earns more than £16,000.00.

- 2.5 Once a claim has been presented and the fee paid, the Employment Tribunal will confirm whether the claim has been accepted. The Employment Tribunal will write to the Employer, enclosing a response form, ET3. The ET3 form must be completed within 28 days. Failure to do so could result in a default judgment being entered.

### **3. WHAT HAPPENS NEXT?**

- 3.1 The Employment Tribunal then issues case management directions. In more complex cases the Employment Tribunal Judge may hold a Case Management Discussion to deal with how the claim will progress to hearing.

- 3.2 The directions are a series of steps to get the matter to hearing. The usual steps are:

3.2.1 The Claimant prepares a schedule of loss. The schedule of loss details the losses claimed and specifies any earnings since dismissal. Early production of the schedule of loss focusses minds on what is at stake and is useful when negotiating any settlement.

3.2.2 Both parties prepare a list of documents in their possession relevant to the issues. It is very important that parties disclose all relevant documents whether or not they are helpful. Failure to do so can lead to a criminal conviction and fine.

3.2.3 Both parties agree a bundle of documents for use at the hearing. The bundle usually has an index, is in chronological order and is paginated. The bundle of documents is usually prepared by the Respondent or their solicitors.

3.2.4 Both parties exchange witness statements from witnesses they intend to call. Witness statements should specifically state the page numbers of the bundle where a particular document is referred to in the statement. Witness statements should be brief and headed up. A useful guide to preparing a witness statement is [here](#). Why a witness statement is important is explained [here](#).

3.2.5 Both parties may be asked to prepare and agree a list of legal issues to be determined, a list of relevant authorities, and agree a timetable for witness evidence.

3.2.6 Both parties may also be asked to prepare a skeleton argument and submissions. Sometimes parties are asked to agree a chronology of events. Where the issue at stake is purely legal, i.e. the interpretation of a document, then the parties may be ordered to prepare a statement of agreed facts.

#### **4. WHAT HAPPENS AT THE HEARING?**

4.1 Almost all claims are heard by an Employment Judge alone. Discrimination claims are heard by a panel of three, consisting of an Employment Judge, and someone from either side of industry i.e. HR and the Trade Unions.

4.2 In most claims the employer gives its evidence first, in constructive dismissal and discrimination claims the employee goes first.

4.3 Each witness takes the stand and swears an oath or affirms that they will tell the truth.

4.4 The witness gives their evidence in chief, traditionally by reading out their witness statement but more recently Tribunals have started taking statements as read to save the time involved with witnesses having to read them aloud. The witness is then cross examined by the other side's representative, then re-examined by their own.

4.5 After both sides have given their evidence, they then sum up the evidence and make submissions.

4.6 The Employment Judge or Tribunal retire and consider their decision. Decisions are not always straight forward in that if an Employment Tribunal finds the dismissal unfair they can consider issues that can affect compensation:

4.6.1 Whether the Claimant contributed to their dismissal by blameworthy conduct, if so, by what percentage should their award be reduced?

- 4.6.2 If the dismissal is procedurally unfair was there a percentage chance that had a fair procedure been followed, the Claimant would still have been dismissed? If so what is the appropriate percentage?
- 4.6.3 If the employer has failed to follow the ACAS code of practice should the compensation be uplifted by up to 25% to reflect that fact?
- 4.7 If the claim is dismissed then that usually ends the matter.
- 4.8 If the claim is upheld there could be a remedy hearing at which compensation is awarded. If there is a remedy hearing and the Claimant has received state benefits for the period in which compensation is awarded, the Employment Tribunal will also issue a recoupment notice. That is a mechanism whereby the Tribunal make a financial award and a portion of it goes to re-paying any benefit the Claimant has received. Any award for compensation has to be paid within 42 days of the award being made.

## **5. COSTS AND REVIEWS OR APPEALS:**

- 5.1 Tribunals are non – contentious proceedings. Both parties bear their own legal costs, win lose or draw. An Employment Tribunal can award costs if a party has behaved unreasonably, or their case is misconceived. Costs awards are exceptional but can be awarded where someone is found to have been dishonest or vexatious in bringing a claim. From April 2014, Tribunals also have the power to impose a financial penalty against employers that are in breach of employment rights where the breach has one or more aggravating features (for example, where there has been malicious behaviour).
- 5.2 An Employment Tribunal judgment can be reconsidered by applying within 14 days of the judgment and reasons being sent out. Grounds for a re-consideration are if such a re-consideration is in the interests of justice.
- 5.3 An Employment Tribunal judgment can be appealed. Any appeal must be lodged within 42 days of receiving the judgment and reasons. If no reasons are attached to the judgment then these should be requested within 14 days of the date of the judgment being sent out. It is not possible to appeal without written reasons.

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