



Employees - Representing you in an Employment Tribunal Claim

If you believe your Employer has acted unfairly in dismissing you or making you redundant you may be forced to bring a claim against your Employer in order to secure appropriate redress and compensation. This type of claim will normally be heard by an Employment Tribunal.

Are there any time limits on making a claim?

There are strict time limits applicable to employment claims. You would first be expected to comply with the Early Conciliation Rules and these are also subject to strict time limits. If you do not commence your claim within these time limits you will face serious difficulties in bringing any claim and you may even lose your right to do so. You should therefore seek legal advice as soon as possible. We will advise you of the relevant time limits applicable to your case.

What happens during the Early Conciliation Process?

This process applies to most employment disputes. The employee or their legal representative must contact ACAS before issuing a claim in the Employment Tribunal. The Early Conciliation form will need to be completed and issued following which ACAS will contact the employee's representative to review the background. ACAS will then commence conciliation which lasts for a period of 1 month, and which can be extended by 14 days provided both parties agree. During this time ACAS will liaise between the employee and the employer to explore a settlement. If settlement is not reached then ACAS will issue a certificate to the employee to demonstrate compliance with the process, and the employee will then be free to pursue a formal claim at the Employment Tribunal.

What happens if matters are not resolved during the Early Conciliation process?

A formal claim must be submitted to the Employment Tribunal together with the appropriate Tribunal fee (unless you are entitled to an exemption due to your financial circumstances.) The claim will set out the grounds on which your claim is based. Once the claim is issued your Employer has a fixed time in which to respond. The Tribunal will then issue case management orders setting out a timetable for the claim and the steps to be taken by the parties prior to the hearing of the claim. In some cases there will be a preliminary hearing to discuss the overall management of your claim and the evidence required to be disclosed before the final hearing. The Tribunal will then sit to hear your claim. The process is complex and most people will require legal assistance and representation to pursue their claim.

How much will this cost, and how can I fund it?

We will provide an estimate of the legal costs at the outset. Our costs will vary depending on the complexity of your case, the type of evidence required and the likely number and length of any hearing(s).

You may be entitled to claim the benefit of funding from another source, for example legal expenses insurance funding, also known as 'before the event' legal expenses insurance. This would enable you to make a claim for legal costs under the terms of your policy. For this reason, you must tell us if you (or your spouse or partner living in the same household) have any credit cards, motor insurance, household insurance policies or if you (or your spouse or partner) is a member of a trade union. If so, you should send us copies of any such insurance policies or the relevant paperwork or information so that we can assess whether or not you may be entitled to make claims under the terms of that policy. This can have very important consequences for you – if we commence an action or claim on your behalf and later discover that you could have made a

claim under a legal expenses insurance policy then it may not be possible for us to seek recovery of any of your legal costs, in circumstances where you may be entitled to recover those costs from another party. We would strongly advise you to contact the provider of any policy of insurance you hold to check your position in relation to legal costs.

In the event that you do not have any benefit of legal expenses funding, then we will notify you of our estimated charges. Even if you are successful in your claim at Tribunal it is very rare for either party to be awarded their legal costs. Only in exceptional circumstances will the unsuccessful party be ordered to pay the other party's costs (eg where there is unreasonable or vexatious conduct by a party).

What information has to be disclosed in order to pursue my claim?

If you are making a claim before the Employment Tribunal you need to understand the procedure known as disclosure. The disclosure procedure requires that both you and the employer must at the appropriate time make a complete list setting out:

- All documents upon which you intend to rely;
- All documents which adversely affect your own case or support the other party's case.

In due course you will be required to sign a statement that you have made a reasonable search to identify and locate these documents. The process of disclosure is very important. It is essential that you collect and keep safe all documents in your possession that may be relevant to your case so that you can provide them to us when requested. Documents which are sometimes relevant include (but are not limited to) letters, invoices, order forms, contracts and notes made by any party including notes of telephone calls etc. Documents also include documents created or stored on computer - even notes on scraps of papers can be most useful to prove a case since often they are the only written evidence of what was said at the time. In any claim for compensation records relating to any expenses that have been incurred such as receipts etc. must be kept. Although documents have to be disclosed to the other side both sides must keep them confidential.

How long will my claim take?

It can take between 4-12 months from the issue of the claim to the final hearing date. It can take longer if the claim involves complex legal or technical issues (eg discrimination claims). We will advise you of the timetable once this is issued by the Tribunal, although this can be subject to change where further issues emerge during the case management stage.

The Process

If you instruct us to make an Employment Tribunal claim we will take certain steps on your behalf. The details of the process will vary depending on the nature of your claim and the approach taken by the other party but the following information is provided as a guide:

- We will meet with you to take your instructions and obtain the information required to proceed with your claim;
- We will advise you on the merits of your claim and provide an estimate of the legal costs;
- We will discuss with you the funding of these legal costs and if appropriate apply to any legal expenses insurer on your behalf;
- Comply with the early conciliation process if applicable; see above
- If conciliation does not resolve your claim we will prepare and submit a formal claim (ET1) to the Employment Tribunal with the required fee;
- Once the Tribunal receives the claim form, it will be issued as a live claim and a copy of the claim form will then be served upon the employer for them to file their response which is due within 28 days following their receipt of the ET1. There are likely to be adverse consequences on the employer if they fail to meet the deadline for the service of the response.
- Once the employer files their response with the Employment Tribunal, the Tribunal will then normally issue a timetable known as 'Case Management Orders'. This will set out the steps that each party needs to take and comply with in order to prepare the case for the final hearing.

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- In some cases involving more technical issues, the Tribunal will arrange for the legal representatives to attend a Preliminary Hearing. This is usually a hearing lasting around 1 – 2 hours at which time the Tribunal and the legal representatives will discuss the steps to be taken to prepare the claim for the final hearing. The Tribunal Judge will then issue a timetable for the parties to take various steps leading up to the final hearing. This might include:
 - Preparation and service of a list setting out all the documents that the parties hold in relation to the claim;
 - For one party (usually the employer) to prepare a bundle incorporating all relevant documents that the parties intend to rely on. This is usually a joint bundle and the parties' representatives will normally communicate with each other to agree the documents that will be comprised in the joint bundle;
 - Preparation and exchange of statements for all witnesses that will be called to the hearing;
 - Preparation of the legal arguments to be served on the opponent and the Tribunal Judge in advance of the hearing;
 - For the party's representative to brief the Barrister if they intend to be represented by a Barrister at the hearing;
 - Attend a conference with the Barrister if necessary which is advisable in technical claims;
 - Attendance at the final hearing.
 - The Tribunal will hear the witness evidence of all parties at the hearing and can make a decision immediately following the hearing of the evidence. In some cases, the decision may not be made at the time of the hearing and may be sent in writing to the parties at a later date. Once a decision is made, the Tribunal will then consider what remedy or award the employee should be awarded if they are successful in the claim. Again, this can be done on the same day or may be reserved to a later date depending on the time taken to hear all the evidence in the claim.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.