

TRIBUNAL PROCESS

ACAS Early Conciliation

The first step to issuing a claim before an Employment Tribunal is to notify ACAS of your intention to lodge an employment tribunal claim, and they will offer the employee the opportunity to use Early Conciliation with a view to trying to settle their workplace dispute without going to tribunal. Whilst there are limited exemptions to this process, you should seek independent legal advice or contact ACAS if you are unsure how this process operates. Further information can be found [here](#).

The Employee should notify ACAS and initiate the ACAS Early Conciliation process within 3 months minus a day of their termination date.

The Employee can choose whether their employer is approached for conciliation purposes. If they choose not to do so, ACAS will issue a certificate to the employee which can be used to lodge their claim before an Employment Tribunal. If the employee is happy for their employer to be contacted, ACAS will contact the employer to try to conciliate and reach settlement of the dispute.

The Early Conciliation process can last for up to four weeks and may be extended by a further two weeks if parties are close to reaching settlement.

Employee to submit their claim

Once an ACAS Early Conciliation Certificate has been issued to the employee, the employee must submit their claim on form ET1 to the employment tribunal. The timescale for this will vary depending on the date of contact with ACAS.

While there are limited circumstances in which an employee can ask for this deadline to be extended, every effort should be made for the ET1 to be submitted within this time frame.

The government no longer charges fees to bring a claim in the employment tribunal.

Employer to submit their defence

Provided a tribunal accepts the employee's claim form, the Employer will be issued with the Notice of Claimant and will be asked to submit a defence (on form ET3) which needs to be received by the tribunal within 28 days of the date on which the employee / claimant's claim form (the ET1 form) was sent to the employer. The due date of the defence will be set out on the Notice of Claim issued to the employer.

The ET3 should set out the employer's version of events and provide an explanation for any facts or circumstances that the employee has relied on as supporting their claim. There may be additional considerations such as whether the tribunal has jurisdiction to hear the claim which should be addressed in an ET3 but we recommend that you seek independent legal advice or contact ACAS in this regard.

While there are limited circumstances in which an employer can ask for the time limit to be extended, every effort should be made for the ET3 to be submitted within this time frame due to the risk of a default judgment being brought against them.

Case Management Orders or Preliminary Hearing

An employment judge will review both the ET1 and the ET3 and either send both parties a written "case

management order”, setting out a timetable of things to be done to prepare the case for final hearing, or set a date for a “preliminary hearing” to take place, either by telephone or at the tribunal itself, to decide the appropriate timetable after hearing from the parties’ representatives.

In most cases, the case management order will set a timetable for the parties to do the following:

- Prepare and exchange with the other party a list and copies of all documents that they have that are relevant to the issues in the proceedings.
- Obtain and exchange any expert reports required.
- The employee to prepare and serve on the employer a schedule of loss setting out details of the financial compensation claimed.
- Exchange written witness statements.
- Agree the contents of and prepare an indexed and paginated documents bundle. Tribunals tend to make employers responsible for the preparation of several copies of the bundle for use at the tribunal hearing.

The directions order will usually give the dates the case will be heard by the tribunal. The number of days set aside for the hearing will depend on the complexity of the case and the number of witnesses each side intends to call.

Once the timetable has been fixed, either party can consider whether to book a barrister to represent them at the final hearing.

Both parties will then be required to comply with the case management orders given, specifically exchange of documents and preparation of a bundle, and preparation of witness statements.

Current pressures within the tribunal system mean that it takes in the region of 12 months for a final hearing to be heard.

Witness Evidence

Consideration will need to be given to witness evidence to support either party’s case. Both parties will be required to submit written witness statements in support of the claim or defence. Witness statements are then generally exchanged simultaneously with each other.

Mitigation Evidence by the Employee

Despite issuing a claim before an Employment Tribunal, an employee is under an obligation to take active steps to find suitable new employment whilst they remain unemployed. This is known as attempting to “mitigate their loss”. Evidence to demonstrate that the employee has mitigated their loss will need to be produced by the Employee.

Tribunal attendance

The duration of a tribunal hearing, including the date of the hearing and its location will be communicated to both parties by the tribunal service. Length of the hearing will depend on the complexity of the case, the nature of the claim and the number of witnesses or evidence to be considered.

The tribunal may issue their decision on the same day as the hearing but they are also able to “reserve” their decision, with a further date arranged for the decision to be communicated or a written decision to

be issued. It can be several weeks or months before a decision is issued.

Once the written reasons for the tribunal's decision are sent to the parties, the unsuccessful party has 14 days to apply for the tribunal to reconsider its decision and 42 days to appeal. Appeals are only allowed on points of law (and not because a party disagrees with the tribunal's decision) and are made to the Employment Appeal Tribunal (EAT).

Legal Costs

Even if you a party is successful in their claims, it is very unlikely that the tribunal will make an order requiring the other party to pay their legal costs.

The employment tribunal will only order that one party pay the other party's costs in limited circumstances, usually where it considers that a party or their representative has acted "vexatiously, abusively, disruptively, or otherwise unreasonably", or that they have been "misconceived" in bringing or defending the proceedings.

It is rare for the tribunal to make any costs order but independent legal advice should be sought to discuss this further.