

Important Information for Employment Tribunal Claims

The following is a summary of the steps and processes in a typical Employment Tribunal claim. I will keep you fully informed of progress of your case as it proceeds, and of course, if you have any queries at any stage please do contact me.

If you are a user of social media (Facebook, Twitter, LinkedIn etc) I recommend clients, for the entire duration of the case, to stop making any postings at all. The reason for this is previous clients have come unstuck with their old employer using some material against them in the case.

1. ACAS Early Conciliation and Commencement of claim.

1.1 Once we have identified the claims that we will be bringing to the Employment Tribunal, I will firstly need to give notice of the claim(s) to ACAS under the ACAS Early Conciliation procedures within three months less a day from your Effective Date of Termination.

1.2 If the Early Conciliation with ACAS does not succeed they will issue an Early Conciliation Certificate and the Claim must then be validly submitted to the Tribunal (generally within 1 month of the date of that Certificate although there may be more time depending on when the EC process started).

1.3 In that event, I will prepare the wording for the "Case Summary" and ask that you review/amend/approve it.

1.4 I will then go "online" at the Employment Tribunal website to lodge your claim. The Employment Tribunal will then acknowledge and process the papers and post a copy of the Claim Form (ET1) to your former employer.

1.5 In most Unfair and Wrongful dismissal cases the Tribunal will at this stage give us a Hearing Date. Because of the current delays in the Tribunal system due to the COVID-19 pandemic, this is likely to be *at least* 9 months away, sometimes longer if the case is complicated. In Discrimination cases an initial 'Directions' hearing is listed, usually within 6 months or so, at which the case will be initially reviewed by an Employment Judge and date for the full hearing then fixed.

2. The Employer's Response (ET3)

2.1 Your former employer's response has to be lodged at the Employment Tribunal within 28 days' of it receiving the claim form from the Tribunal. The response document is then processed by the Employment Tribunal, and a copy is then sent out to me.

2.2 As soon as I receive the response document I will send you a copy, and ask you for any comments.

- Please write/e-mail me your comments on your former employer's ET3

3. Exchange of documents

3.1 Normally within a month or so after receiving the employer's response document, we will need to prepare a "list of documents" and send it to your former employer (or their representative). This list will comprise all the documents that you have relevant to the issues in the case, including issues relevant to your financial losses.

3.2 For instance, this will include items such as your contract of employment, any relevant company policy/ handbook, letters, emails and other internal documents, your payslips with your former employer, and all documents relating to your efforts to show you have tried to "mitigate your losses" by trying to find a new job since dismissal (job adverts, job applications, letters/emails/website activities, job centre documents etc.)

3.3 I strongly recommend that you print off copies of each job application document at the time it is made/received, rather than wait until I request them from you.

3.4 If you have found a new job since being dismissed, copies of your new contract of employment and payslips should also be disclosed.

3.5 I will already have some of these documents from when we first met, but please arrange for copies of all other documents to be sent to me at our Reading office.

3.6 I will then receive from your former employer their list of documents, again setting out what documents they hold relevant to the issues of the case. We then exchange copies of the documents with each other, and as soon as I receive copies from your former employer I will send these on to you. Any copies of documents that you receive from them are strictly confidential, and can only be used by you in relation to the Tribunal case.

3.7 We will usually then meet with you to generally 'take stock' of the case. Our first assessment of the strengths of the case made at our initial consultation was obviously based on a relatively short time to consider the case and the documents then available. But by this stage we will have been able to see all of the case documentation, and also the arguments raised by the Employer against the claim. Sometimes we review our assessment of the chances of success in the case (either down or up) based upon this further information.

3.8 Sometimes Clients have tape-recordings of conversations that they think are relevant to the claim. Please note that before I am able to listen to any such tape recording I will need you to prepare and send me a full typed transcript of the full recording.

- Please forward me copies of all documents (good or bad!) that I have not already got copies of from you.
- Please keep all copy documents you see from your former employer confidential.

4. Witness Statements

4.1 Although practices vary between Employment Tribunals, generally speaking we will need to exchange Witness Statements with your former employer approximately 14 days before the hearing date listed for your claim. I will prepare your Witness Statement, and send you a copy of the draft statement, which we can amend between us so that by the time we send a copy to your former employer, it will need to be totally accurate, as it needs to comprise all the evidence that you wish to give to the Tribunal in support of your case.

4.2 The Witness Statement will then be exchanged with the other side approximately 14 days before the hearing, and we will then see their Witness Statements, a copy of which I will send to you, and I would like you to then prepare and send me a document on anything you wish to comment upon in their statement(s).

5. Preparations for the Hearing

Social distancing and shielding issues permitting, I will meet up with you, usually in the week before the hearing, to discuss your former employer's Witness Statements, explain to you more details about the hearing, discuss

tactics etc. and also take you through the likely questions you will be asked by your former employer's lawyers in "cross examination" of you.

6. The Hearing

6.1 If the case gets this far I will provide you with a separate details of what happens at the hearing, including procedures etc. For most cases 1 day is normally allotted by the Tribunal, but for longer cases 2+ days will normally be required.

6.2 Due to the COVID-19, most hearings are at present taking place via Video Hearings, and you will need to 'attend' via a good broadband connection at your home. I will send you full details of this well in advance of the hearing date, and you will have a chance to 'test' your IT equipment beforehand.

6.3 The Tribunal normally starts hearing the case at 10.00am, has a break for 1 hour for lunch, and ends at approximately 4.30pm.

7. Settlement...?

7.1 The aim in the case, in common with all litigation, is to try to settle cases for a fair and reasonable sum of money. It is not to 'have your day in Court' nor to try to 'clear your name'. Approximately 75% of all cases that are started at the Tribunal settle at some point (some settling even at the hearing itself). If a settlement is reached then in the majority of cases it will be negotiated with the assistance of ACAS (www.acas.org.uk)

7.2 Settlements can often happen early on in the case, or sometimes near to the hearing date - and there may not be much time for you to decide on whether to accept a deal or not because of the deadlines imposed by the Tribunal itself and the need to prepare case properly if there is to be no settlement. I will try to "manage your expectations" on this, *but clients can still be surprised how quickly a settlement can come about...*

7.3 I will always endeavour to get your agreement to a settlement before it becomes binding. However, in exceptional cases (eg. when for some reason I can't get to speak to you, when technology isn't working, you are on holiday and uncontactable etc) I may agree to a settlement on your behalf. I will only do this if I genuinely believe that the settlement terms are better than the option of carrying on with the case. (In practice this has never arisen in the 35 years I have been undertaking Employment cases, but nevertheless I do need to tell you about this now).

7.4 Settlements often happen in the last few days before the Tribunal Hearing (or even during the Tribunal Hearing itself). It is vital that in those days you keep in constant contact with me, and respond to my e-mails promptly. Please also keep your phone switched on.

7.5 Typical terms of settlement are that your former employer will pay you a sum of money which will be in full and final settlement of **all claims** you have or may have against it now or in the future; that it will on the basis of no admission by your employer that they did anything wrong or your dismissal was unfair, and that both parties will agree to keep the fact and terms of the settlement confidential (apart from to your close family). Another common settlement term is that you and your former employer will not make any disparaging statements about the other in the future.

7.6 It is important to note that if/when settlement terms are agreed by me via ACAS with your former employer, it becomes binding on all parties without even the need for it being signed, and from that moment onwards the case will be over and the hearing will be automatically removed from the Tribunal's list of hearings.

7.7 The normal terms of settlement will require us to write or notify the Tribunal to withdraw the case, and it will then be formally dismissed upon that withdrawal. The fact that the case was withdrawn/dismissed will be identified on the Government Tribunal portal on the internet, but no further details of the case are mentioned.

7.8 If your employer fails you to pay the settlement sum by the date due for payment, then the case is not reinstated - rather you will need to take enforcement steps against your former employer to make them pay the settlement money, usually by registering the settlement with the Higher Courts Enforcement Officers, or the service of a Statutory Demand. However, the vast majority of employers do pay the settlement sums within the agreed time deadline.

- Please keep all settlement discussions confidential
- The case is over if settlement wording is agreed through ACAS

8. Universal Credit and Job-Seekers Allowance

If we win the case, and there is a Judgment in your favour from the Employment Tribunal, then the basic rules state that any Universal Credit (UC) or Job-Seekers Allowance (JSA) you have received as a result of being dismissed, up to the date of the Hearing, will be 'recouped' from the

compensation that the Tribunal orders that the Employer pays you, and paid by the Employer directly to the Government.

However, this rule does not apply to any settlement - when there is no 'recoupment' of UC or JSA.

For this, and also for other reasons (speed, certainty of outcome etc) it is obviously better therefore to reach a settlement on fair and reasonable terms, rather than go ahead and have a Tribunal Hearing/Judgment.

For any judgment or a settlement, then any money you receive will be taken into account by the Benefits Agency in terms of your eligibility for future Universal Credit eligibility (but there is currently a rule where you can have up to £6,000 in savings without it affecting your benefits).

9. How is Compensation Calculated?

If you ever win your case, the Tribunal will need to assess the compensation your former employer should pay you. These are the basic 'principles' that the Tribunal will follow, which we bear in mind when advising you any settlement proposals.

9.1 For Unfair Dismissal claims the award is comprised of 2 elements. Firstly, the 'Basic Award', which is calculated by reference to the number of years you worked for the employer, your age (you get more for service over 42 years of age) and your weekly pay.

Secondly, you can claim for 'loss of earnings', which includes the loss of benefits such as pension contributions, company car etc. The Tribunal will expect to see that you have made all possible efforts to find another job after being dismissed in order to 'mitigate your losses' - see Section 3.2 above.

The Tribunal is then entitled to make a number of reductions in any compensation - usually for something called 'contributory fault' (although there are some other types of reduction). If for example the Tribunal believes that you were 50% to 'blame' for being dismissed - because you committed some misconduct that wasn't however so serious to justify dismissal - it will reduce your compensation by 50%.

9.2 For separate Discrimination Claims you cannot claim any 'Basic Award', but you can claim for loss of earnings.

You can also claim for 'injury to feelings' - which is to reflect the hurt, trauma etc. that the discrimination has caused you.

10. Case Papers

Once the case is over please let me know in writing asap if you require any documents or copies to be returned to you. Otherwise we will keep the papers for a minimum of 6 years, but thereafter we reserve the right to confidentially destroy all of them without further notice to you.

11. Telephone Contact

If possible, I would like to contact you on a land-line number. This is usually clearer and less prone to interference than a mobile number.

I do not give out my mobile number to clients – there are several reasons, the most important of which is to ensure that my contact with, and advice to you, is always confidential.

If I am not in the office at any time please do leave a message on our Answerphone and I will call you back as soon as I return to the office.

Finally, if you have any queries at any stage please do contact me!

Jonathan West

Pearce West Employment Solicitors (January 2022 updated)