

## **An Employment Tribunal Claim**

Please note that the solicitor who will have conduct of this case is Gareth Edmondson who has over 25 years' experience in dealing with employment matters.

Employment Tribunals can seem a daunting experience to most people.

As a Guide we have set out below the basic key steps seen in most employment tribunal claims, which I hope should help you understand the process involved in making a claim.

This list is not exhaustive and may vary for each claim,

### **Early Acas Conciliation (EAC)**

Subject to a few unique exceptions, it is compulsory to go through Early Acas Conciliation before you are eligible to bring a claim in the employment tribunal. During Early Acas Conciliation the parties are designated with a conciliator from ACAS and attempts are made to settle the dispute before a claim is made. Some key points:

1. Early Acas Conciliation usually lasts for 4 weeks but can be extended by a further 2 weeks if the parties agree.
2. Early Acas Conciliation does not have to last 4 weeks and can end much sooner. For example, if it is obvious that settlement will not be reached.
3. It affects the time limits to make claims (this can be a little tricky).
4. When conciliation ends Acas produces a certificate to evidence that Early Acas Conciliation was completed, and the certificate contains a reference number needed to bring a claim in the employment tribunal.

### **Bringing a Claim**

A claim is started when a Claimant submits an ET1, (The claim form outlining your case and the nature of the dispute) which is essentially the claim form. This can be done by post, online or in person. There is a section on the ET1 (The claim form outlining your case and the nature of the dispute) for the Early Acas Conciliation reference number.

It is usual for the ET1 (The claim form outlining your case and the nature of the dispute) to be accompanied by a document that sets out the basis of the claim (although there is a box for this on the ET1 (The claim form outlining your case and the nature of the dispute)). This document is usually referred to as the "particulars of claim" or "grounds of complaint."

## **The Response**

If the claim is accepted by the Tribunal, it will notify the Respondent that a claim has been made and provide 28 days to file its "response." The Respondent must submit an ET3 (The response form when a claim has been made against you) which sets out what it says in response to the claims. It is also common for Respondent's to submit (attached to the ET3 (The response form when a claim has been made against you) a document called the "grounds of response" which sets out its version of events and response to the claims made.

## **The Sift**

After the response, has been accepted the case will be refereed to an employment judge to consider. next steps from the papers. The Judge will consider:

- \* Whether any parts of the claim or response should be struck out for having no reasonable prospects of success / the tribunal does not have jurisdiction.
- \* The Tribunal may write to the parties expressing this intention, but request comment before making a final decision.
- \* What case management directions are required to get the case ready for final hearing.

## **Response from Tribunal – Directions**

After going through the sift the Tribunal will usually write to the parties setting out what happens next. This depends on the contents of the ET1 (The claim form outlining your case and the nature of the dispute) and ET3 (The response form when a claim has been made against you) and what type of claims have been made. If it is a straightforward claim, the Tribunal will send out a hearing date with a timetable of directions, which will set out what needs to be done and by when. These will be the steps covered below (disclosure, witness statements etc.).

If it is a more complicated case (i.e., involving discrimination / whistleblowing) then the Tribunal will list a preliminary hearing to discuss case management. The Tribunal may also list a preliminary hearing to decide a point of law.

The parties can also apply for a preliminary hearing to be listed.

## **Preliminary Hearing**

At a preliminary hearing (case management) the parties will attend with a judge sitting alone. This is often attended by the lawyers only if instructed. The purpose is to:

- \* Clarify the issues. This is usually led by the Claimant to confirm exactly what is being claimed and on what basis.
- \* The parties will then seek to agree the appropriate directions with dates.
- \* The parties will also look to list the matter for Trial. There will be a discussion about the level of documentation and number of witnesses involved so a decision can be made about how long to list the hearing for. Even very basic hearings can last 1 day.
- \* If appropriate, the parties will also consider Judicial Mediation, which is usually offered by the Tribunal for cases lasting 4 days or more.
- \* If this has not been done already, the Tribunal will usually order the Claimant to produce a schedule of loss, which is a document setting out details of the compensation sought by the Claimant, such as the monetary value.

## **Disclosure and Inspection**

Disclosure is where both parties send to one another all documents that are relevant to the case whether it helps or hinders their position. This is often done by sending the other side a list of all the documents in your possession. The other side will then request copies of documents for inspection," which means they are asking for copies of documents they do not already have. The duty of disclosure is ongoing and includes documents that hurt your case. If the deadline for disclosure has gone, but then a document that damages your case comes into your possession, then you are still under a duty to send it to the other side.

## **Formation of Trial Bundle**

At the full hearing the parties (including the Tribunal) will work from the same "bundle" of documents. This is essentially a file(s) of documents, in chronological order, that relate to the dispute. The parties need not agree that documents are relevant for them to be included in the bundle. It is usually, but not always, the responsibility of the Respondent (or its representative) to produce the Trial bundle.

## **Witness Statement**

Each person that intends to give live evidence at the Tribunal must prepare a witness statement. It is usual that parties will mutually exchange their witness statements before the hearing (usually 2-4 weeks before it starts). The witness statement acts as the witnesses' evidence in chief and should include all the things that the witness wants to say, referring to the documents in the trial bundle. The parties will therefore read each other's witness statements before the hearing.

## **Trial Preparation**

After witness statements are exchanged the parties will prepare for the Trial itself. What occurs during this period can vary, but some examples are:

- \* Preparing for the Trial itself, i.e., for cross examination etc.
- \* Pre-Trial Conference. It is often helpful for the witnesses to meet with the person representing them in advance.
- \* Ensuring all documentation is present in the bundle / updating the bundle. Often new material comes to light and must be added to the bundle.
- \* Negotiations. The parties may discuss settlement. These discussions can happen at any time, including during the Trial itself.

### **Trial**

The length of the Trial will already be known in advance. The Tribunal usually sit between 10am – 4pm with an hour for lunch (1 – 2pm.)

## **Some key things to know in advance:**

- \* You are not guaranteed to have a Judge / Panel. These are allocated shortly before the hearing and there are usually more cases than Judges.
- \* If your case has no Judge you go onto a "floating list." Essentially you wait until a Judge is available. The worst-case scenario is that you are sent away and told to come back another day. If this happens, you are usually prioritised on the second visit.
- \* The Judge / Panel do not read the documents in advance. They usually arrive at 9am and read the Tribunal file, which includes the pleadings ET1 (The claim form outlining your case and the nature of the dispute) and ET3, (The response form when a claim has been made against) you any orders and correspondence involving the parties and Tribunal).

\* When you first see the Judge / Panel on the first day, you deal with “housekeeping,” which usually involves agreeing what documents should be there and exactly what the case is about and how long it will take to be heard.

\* The Tribunal is then given time to read the key documents, which depends on the volume. It is not unusual for the morning to be spent waiting for the Tribunal to read the documents in even fairly simple cases and several days in more complex.

## **Other**

The above are the key steps that are likely to occur as the claim progresses to trial. However, the following may also take place, but this will depend on the case.

\* Settlement discussions. This is briefly mentioned above, but these can happen all the way through.

\* Judicial Mediation.

\* Applications. The parties can make a host of applications, which is asking the Tribunal to do something. The side that has not made the application will get to comment before the Tribunal decide how to respond. The Tribunal may hold a hearing to reach a decision upon the application.

Based on the details an indication of the costs that you could incur are detailed below

A detailed estimate will be given before we commence work.

As mentioned above all work is undertaken by a fully qualified solicitor.

## **Our pricing for bringing and defending claims for unfair or wrongful dismissal.**

**Please note where VAT is chargeable the current rate is 20%**

A straightforward case: £1500.00 -£3000.00 plus VAT

Medium complexity case: £3000.00 – £6000.00 plus VAT

High complexity case: £6,000.00 upwards (excluding VAT)

## **Factors that could make a case more complex:**

- If it is necessary to make or defend applications to amend claims or to provide further information about an existing claim
- Defending claims that are brought by litigants in person
- Making or defending a costs application

- Complex preliminary issues such as whether the claimant is disabled (if this is not agreed by the parties)
- The number of witnesses and documents
- If it is an automatic unfair dismissal claim e.g., if you are dismissed after blowing the whistle on your employer
- Allegations of discrimination which are linked to the dismissal. There will be an additional charge for attending a Tribunal Hearing of £500 – £1000.00 per day (excluding VAT).  
Generally, we would allow 1 - 2 days depending on the complexity of your case.

### **Expenses/Disbursements**

Expenses/Disbursements are costs related to your matter that are payable to third parties, such as experts' fees. We handle the payment of the disbursements on your behalf to ensure a smoother process. If VAT is payable, it will be in addition to the actual expense. We will discuss the need to incur expenses and obtain your permission before incurring them.

If a Barrister is required, their fees estimated between £2,500.00 to £4500.00 plus VAT per day (depending on experience of the advocate) for attending a Tribunal Hearing (including preparation)

### **Key stages**

The fees set out above cover all of the work in relation to the following key stages of a claim:

- Taking your initial instructions, reviewing the papers and advising you on merits and likely compensation (this is likely to be revisited throughout the matter and subject to change)
- Entering into pre-claim conciliation where this is mandatory to explore whether a settlement can be reached
- Preparing claim or response
- Reviewing and advising on claim or response from other party
- Exploring settlement and negotiating settlement throughout the process
- preparing or considering a schedule of loss
- Preparing for (and attending) a Preliminary Hearing
- Exchanging documents with the other party and agreeing a bundle of documents
- Taking witness statements, drafting statements and agreeing their content with witnesses
- preparing bundle of documents
- Reviewing and advising on the other party's witness statements
- agreeing a list of issues, a chronology and/or cast list

- Preparation and attendance at Final Hearing, including instructions to Counsel

The stages set out above are an indication and if some of stages, although not all above may be required, the fee will be reduced. You may wish to handle the claim yourself and only have our advice in relation to some of the stages. This can also be arranged on your individual needs.

### **How long will my matter take?**

The time that it takes from taking your initial instructions to the final resolution of your matter depends largely on the stage at which your case is resolved. If a settlement is reached during pre-claim conciliation, your case is likely to take 2 -4 weeks. If your claim proceeds to a Final Hearing, your case is likely to take 12 – 26 weeks. This is just an estimate, and we will of course be able to give you a more accurate timescale once we have more information and as the matter progresses.