



Fact Sheet on Employment Tribunals

Proceedings

- Generally all claims must be received by an employment tribunal within 3 months of the complaining act (ie 3 months less one day).
- The exceptions are claims for a redundancy payment, equal pay, unfair dismissal for taking part in official industrial action and unlawful exclusion/expulsion from a union which are all within 6 months and a claim for unlawful infringement of human rights by a public body, which is within 1 year.
- These time limits are strict and even if the claim is received by an employment tribunal a day late, the employment tribunal may decide that it cannot hear such a claim. The tribunal will decide whether it was either “reasonably practicable” for the claim to have been presented in time or whether it is “just and equitable” to extend time. Each test is based on the type of claim presented to the tribunal.
- Claims of unfair dismissal, wrongful dismissal and breach of contract cannot normally be brought until the employee's employment has actually ended. The date of dismissal to activate such claims is known as the effective date of termination. The exception to the rule is where an employee is employed during their notice period and in a redundancy situation where an employee's terms and conditions of employment have fundamentally changed.

Procedures

- The [Employment Tribunals \(Constitution and Rules of Procedure\) Regulations 2004](#) and the [Employment Tribunals \(Constitution and Rules of Procedure\) \(Amendment\) Regulations 2008](#) set out the rules and procedures, which govern employment tribunals.
- An individual who brings a claim against his/her employer will be called a "Claimant". The employer defending such a claim will continue to be called a "Respondent".
- In order to commence proceedings in an employment tribunal, a Claimant must complete a Claim Form. There are currently two types of Claim Form depending on whether the complaining act occurred before (and continued after) 6 April 2009. The Claim Form will set out the Claimant's complaint(s) against the Respondent. These forms can be obtained from the [Employment Tribunal Service website](#) and must be completed in full.
- Note: if a complaining act (other than dismissal) relates to matters before (and continuing after) 6 April 2009 the Claimant must have notified the Respondent in writing at least 28 days prior to presenting the Claim Form, in compliance with the rules relating to statutory grievance procedures under the [Employment Act 2002 \(Dispute Resolution\) Regulations 2004](#), although there are exceptions.
- Once an employment tribunal receives a Claim Form, a tribunal will formally acknowledge it and send a copy to the Respondent. A tribunal employment judge can reject a Claim Form if it does not provide the required information or if the tribunal does not have jurisdiction to determine the complaints, eg because a Claimant has not been employed by the Respondent continuously for one year.

- The Respondent will then have 28 days from receipt of the Claimant's Claim Form to defend the complaint(s). The Respondent must complete a Response Form if it wishes to contest the Claimant's claim. There are currently two types of Response Form depending on whether the complaining act occurred before (and continued after) 6 April 2009. The Response Form will set out the Respondent's defence to the Claimant's claim. These forms can be obtained from the [Employment Tribunal Service website](#) and must be completed in full.
- The Respondent may apply under for an extension of the time limit within which to enter a response explaining why they cannot comply with the time limit. An employment judge shall only extend the time within which a response may be entered if s/he is satisfied that it is just and equitable to do so.
- As with a Claim Form, an employment judge may decide not to accept a Respondent's Response Form if it does not provide the required information or that it has been received out of time.
- Where a Respondent does not contest a claim. An employment tribunal can make a default judgment in favour of a Claimant. This can be in respect of liability with an award to be assessed or a tribunal can actually make a money award in default based on the contents of the Claim Form itself.
- An employment tribunal will also send a copy of the Claim Form and Response Form to the Advisory, Conciliation and Arbitration Service ("ACAS"). ACAS usually contact the parties to see if there is a possibility of conciliating the claim. ACAS do not give legal advice.
- It is common practice that employment tribunals will give directions for the management of each case, together with time limits for compliance with those directions. This will normally involve disclosure of documents in the parties possession, details of the compensation which the Claimant is seeking with supporting documents, the preparation of a bundle of documents for the hearing and exchange of typed witness statements.
- An employment tribunal will notify parties of a hearing by way of a formal notice of hearing. The length of the hearing will be dependent on the complexity of the issues and the number of witnesses giving evidence.
- At the hearing, the case will normally be heard by employment judge (who is legally qualified and either a barrister or solicitor) and two wing members. One wing member will usually have a union background and the other member human resources background. Decisions are made between the employment judge and the two wing members. A decision does not have to be unanimous and indeed the employment judge can be outvoted.

Remedies

- If a Claimant is successful at the hearing, an employment tribunal can make financial awards (dependant on the complaint) as follows:
 - a compensatory award: loss of wages after dismissal, including pension contributions and/or unpaid wages and/or failure to pay notice money;
 - a basic award;
 - a statutory redundancy payment;
 - a protective award (in collective redundancy situations only); and
 - injury to feelings and interest (in discrimination cases only).
- There is a statutory maximum on compensatory awards for unfair dismissal, which is currently £66,200*. This is based on the employee's losses after the deduction of income tax and National Insurance contributions and can include loss of wages, pension contributions and benefits to the date of the hearing and future losses (based on the length of time the employment tribunal decides it would take for the employee to be in the same financial position that s/he was in before the dismissal. In an unfair dismissal case, an employment tribunal will also provide a basic award (based on the employee's age and length of service), unless s/he has received a redundancy payment, which is currently a maximum of £11,400**.

*(*As of 1 February 2009; **As of 1 October 2009. These figures increase from 1 February each year)*

- There is no upper limit on the compensation an employment tribunal can award in discrimination claims and in unfair dismissal claims where the Claimant has during his/her employment made a public interest disclosure or raised a health and safety issue.
- In a successful claim of unfair dismissal, in addition to compensation, the Claimant can request that the tribunal order reinstatement or re-engagement, ie the same job or similar job with the Respondent. If a Respondent fails to comply with such an order, a tribunal may make an additional award of between 26 and 52 weeks' pay.
- In relation to complaints of unfair dismissal, wrongful dismissal and breach of contract an employment tribunal will expect a Claimant to have "mitigated their loss". This means reducing their financial loss ie have taken steps to find alternative employment. This does not necessarily mean the same type of employment. At first, it may be reasonable for a Claimant to look for jobs on a similar salary and in a similar area to his/her old job. However, as time goes by, a Claimant will be expected to consider work, which may be less well paid, part-time or in a different area to the previous job.
- A Claimant must prove s/he has mitigated his/her loss and will be expected to provide the tribunal with evidence that s/he has claimed Income Support or Job Seekers Allowance from the Benefits Agency and kept all paperwork in support of finding new work, such as: newspaper adverts, copies of any applications for jobs and rejection letters.
- An employment tribunal can reduce awards for unfair dismissal if they consider that a Claimant has contributed towards his/her dismissal by his/her conduct. This reduction can be up to 100%.
- An employment can reduce an award where it finds the dismissal to procedurally unfair but determines that if the Respondent had followed a fair procedure the Claimant would have been dismissed in any event.
- An employment tribunal can also make an award of costs against either party and/or its representatives in certain circumstances to a maximum of £10,000. If a party is unrepresented then a tribunal can make an award for preparation time, which is currently £28 per hour again to a maximum of £10,000.

PLEASE NOTE

The material contained in this fact sheet is provided for general purposes only and does not constitute legal or other professional advice. Appropriate legal advice should be sought for specific circumstances and before action is taken.

FOR MORE INFORMATION

If you have any questions about anything in this Fact Sheet, or for advice about employment law generally, please contact **Marc Jones** on **01895 201719**, or email marc.jones@turbervilles.co.uk.

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