

FACT SHEET

Employment Tribunal Guidance for Employers

KEY CONTACT



Gary Smith

Partner

t: 01279 712576

e: gsmith@nockolds.co.uk

Employment tribunal claims are complex and can prove a lengthy and costly process for businesses. Claims can be brought against employers by current or former employees. If an employee brings a claim, and commences the employment tribunal process, there are strict timescales for an employer to respond and a formal procedure which must be followed.

An employee generally has three months less one day from the date of termination, or the event giving rise to the claim, to bring a claim in the employment tribunal.

Common Types of Employment Tribunal Claims

- » **Unfair dismissal** - where an employee claims they have been unfairly dismissed on the basis that there was no potentially fair reason for the dismissal and/or the employer acted unfairly in dismissing for that reason and failed to follow a proper process. An employee must have 'qualifying service' to bring such a claim, meaning they must have been continuously employed for two years or more, except in rare circumstances such as for automatic unfair dismissal.
- » **Wrongful dismissal** - where an employee claims that the manner of their dismissal was in breach of the terms of their contract of employment causing them loss, for example, if the employer has not given and/or paid the correct notice.
- » **Constructive dismissal** - where an employee resigns and claims that they had no option but to do so due to the conduct of the employer resulting in a serious breach of contract by the employer.
- » **Discrimination** - where an employee claims they have been dismissed or

treated unfavourably on the basis of a protected characteristic, including disability, age, race, marriage and civil partnership, religion or belief, sex, pregnancy or maternity, gender reassignment or sexual orientation. A claim can be for direct discrimination, indirect discrimination, harassment or victimisation.

Steps to Defending an Employment Tribunal Claim

- » **Early conciliation** - before an employee can bring a claim in the employment tribunal, they must first go through the early conciliation process with Acas (The Advisory, Conciliation and Arbitration Service). The early conciliation process is designed to explore whether there is an opportunity to settle the claim and avoid litigation. Acas early conciliation pauses the time limit for a claim to be submitted. The employer should check that Acas early conciliation requirements have been complied with and that the employee is eligible to bring the claim
- » **Receipt of claim form** - once the employer receives a copy of the claim form (known as the 'ET1') from the employment tribunal, they have 28 days to respond and defend the claim. This important date should be diarised immediately to ensure it is not missed. If the deadline is missed and the response not submitted in time, the tribunal may make a default judgment, meaning the claimant wins their claim automatically.
- » **Diarising dates** - the notice of claim will include a timetable of other important dates and deadlines that the parties need to comply with such as exchanging relevant documents and witness statements.
- » **Applications to the tribunal** - the employer should consider whether to make any applications to the employment tribunal or requests for further information from the employee, for example to provide further and better details of their claim, and whether there are grounds to apply for the claim to be struck out, for example, if the claim has no real prospects of success.
- » **Completing the response** - the response should be completed within 28 days of receipt of the claim, using the 'ET3' standard form and attaching detailed grounds of response, addressing each paragraph of the employee's claim. The response must be submitted to the employment tribunal within the 28-day deadline.
- » **Preliminary hearing** - in more complex cases, the judge may order that a preliminary hearing take place before the main tribunal hearing. This is a mini-hearing which helps the judge understand the case and make arrangements and agree a timetable of steps to take before the main, final hearing.
- » **Disclosure** - both parties will be obliged to disclose to the other party all the documents they have that are relevant and necessary to the issues of the case. The duty of disclosure applies to all documents that are in a parties' possession or control, whether or not the documents help or hinder that parties' case. For employers, the question of whether something is in their 'possession or control' applies across the organisation.
- » **Hearing bundle** - usually the employer will be ordered by the tribunal to prepare the bundle of documents for the final hearing. The parties must decide and agree with each other which documents are to be included in the bundle. The bundle must be indexed and

paginated and sufficient copies provided to the employment tribunal in advance of the final hearing.

- » **Witness statements** - witnesses need to be identified and witness statements drafted. The statements will be the witnesses' evidence-in-chief in the case and it is crucial that they are factually correct. A witness statement should set out the witness's own version of events in full and cross reference any relevant documents.
- » **Final hearing** - the case will be heard by a judge who sits alone or, in more complex cases, a panel consisting of the judge and two panel members.
- » **Outcome** - once the hearing has finished, the judge will adjourn to consider their decision on the outcome of the claim known as a 'judgment'. If the claimant is successful, the tribunal can make the following awards:
 - » Compensation - made up of a 'basic award' (equivalent to a statutory redundancy payment) and compensation for loss of earnings (for unfair dismissal claims the compensatory award is capped at the lower of the employee's annual salary or £89,493);
 - » Payment of wages or monies due to the employee;
 - » Reinstatement (the employee gets their job back);
 - » Re-engagement (the employee returns to the business in a new role).

How We Can Help

We can assist employers with this complex process as follows:

- » Ensure you follow the correct legal processes and deal with claims fairly and promptly;
- » Advise you on the prospects of the employee (claimant) succeeding with the claim;
- » Advise you on the likely value of the claim;
- » Advise you on the likely legal costs in defending the claim;
- » Ensure important deadline dates are not missed;
- » Prepare the response to the claim addressing the legal, factual and jurisdictional issues that the tribunal will need to determine;
- » Provide advice on disclosure obligations throughout the case;
- » Identify witnesses and draft witness statements;
- » Prepare the hearing bundle for the final hearing;
- » Instruct a barrister to represent you at the final hearing;
- » Assist with settlement negotiations, if applicable, throughout the process.



How Can We Help You?

For more information and to find out how we can help you, please contact us on 0345 646 0406 or email enquiries@nockolds.co.uk and a member of our Team will be in touch.