

EMPLOYMENT LAW - PRACTICE AND PROCEDURE

(1) Starting Tribunal Proceedings

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Agenda for Session

- Time limits
- Acas early conciliation
- Drafting the claim form (ET1)
- Reviewing the employer's defence (ET3)
- Questions

Time limits (1)

- For unfair dismissal, wages claims and various others: within three months
- Statutory redundancy pay six months but more complex than that
- What does that mean in practice? less a day
- For some claims (H&S dismissals, whistleblowing) interim relief can be claimed within seven days
- Unlawful deduction from wages - “a series”
- Impact of Acas early conciliation upon time limits
- What happens if you do not meet the deadline?
- Tribunal discretion: “not reasonably practicable” and “within a reasonable time thereafter”

Time limits (2)

- For discrimination, the limit is also within three months (less a day)
- Equal pay: six months (less a day) in ET
- Again, Acas early conciliation comes into play in adjusting the time limit
- The main difference is that there is a different regime governing late submission
- The tribunal should consider what is just and equitable, rather than the “reasonably practicable” rule
- What arguments are relevant to the “just and equitable” test?

Acas early conciliation

- It is a necessary step which the claimant (C) must take before bringing a claim
- The form is a simple one
- Make sure the employer's name is right (Companies House for Ltd etc)
- Potential TUPE cases - both transferor and transferee may be liable
- Discrimination: should individual discriminator be joined?
- Consider to what extent the representative rather than the client should be involved in the process
- Remember: Acas mission is to settle cases, not provide advice
- There is no need to accept conciliation
- Effect on time limit: need to initiate early conciliation before the primary time limit expires
- Clock then stops until Acas issues certificate ; time extended to at least one calendar month after Acas certifies early conciliation is complete

Drafting the claim form (1)

- Ensuring the employer is correctly named, in accordance with early conciliation
- Set out the details of the claim: probably the first document the employment judge (EJ) will read
- Set out the legal basis for the claim eg deduction from wages, unfair dismissal
- State any acts/omissions complained of
- State who carried out those acts (or should have)
- Dates when they occurred
- Why C complains about them

Drafting the claim form (2)

- Describe events in chronological order unless good reason not to
- State all material facts but not the evidence backing them up
- Don't make it too long: for unfair dismissal, an A4 page is often sufficient
- Have in mind: what should the employer have done?
- Deal with any obvious weaknesses in your case and offer an explanation
- The representative should draft the claim in accordance with instructions and final consent from the client
- Consistency with the way in which the evidence will be presented in statements and cross-examination is likely to be crucial

The employer's defence (ET3)

Time limits and procedure

- Response must be presented to the tribunal within 28 days of the date on which the employer (R) was sent the form
- If outside that limit it will be rejected unless an application for extension is made
- In applying for an extension, R must give reasons and if out of time attach a draft ET3 or an explanation why that is impossible
- Application is copied to applicant, who has seven days to object
- EJ will decide on the papers
- If R has applied for an extension before the time limit is up, and gives a good reason, EJ will often give permission for late submission
- If no response received in time (inc. any extension) EJ may issue judgment if the ET1 gives sufficient credible details
- Otherwise, EJ will fix a 'Rule 21' hearing: R only participates to the extent which EJ allows eg in relation to remedy

The employer's defence

What should you do on receipt?

- Does the ET3 give you a clear idea of R's defence? eg what the "potentially fair reason" was for dismissal
- If not, seek additional information
- Take C's instructions on what R is saying
- Consider carefully the strengths and weaknesses of the case, now that you have a summary of each side's arguments
- Is there an argument for settlement?
- If you are going to trial, what evidence will you need, and what matters should it cover?
- Is there a need for you to request an amendment of the claim form? additional information? make an application to strike out? deposit order? warning as to costs? etc

ANY QUESTIONS ?