



□ DMH Stallard

How (not) to lose an employment tribunal claim

Part 2: The early stages of a tribunal claim

Have you ever settled a claim via the ACAS Early Conciliation process?

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Overview of the EC process

- Mandatory first step for almost all Tribunal claims
- Tribunal time limit frozen at point that claimant starts process
- ACAS available to assist with resolution
- EC process continues for up to one month
- Can be extended by 14 days
- From 1 December 2020, six weeks and no extension
- If not successful, Tribunal time limits start running again, extended by length of conciliation period/by one month

How does the process work?

- Claimant submits EC form online, by post or telephones ACAS and gives basic details
- ACAS contacts the claimant to ask if they wish to conciliate
- ACAS contacts the respondent to ask if they wish to participate
- Who does ACAS contact?
 - ACAS database of contacts for large employers
 - Eccontactslist@acas.org.uk
- Conciliation period follows
- ACAS issues EC certificate if not fully resolved

What percentage of tribunal claims get settled via ACAS?

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Potential benefits of Early Conciliation

- Effectiveness
 - 73% of EC notifications did not progress to Tribunal
 - ACAS settled 51% of cases
- Simplicity
 - COT3 Agreement can settle wide range of claims
 - No need for independent legal advice
 - Cost
 - Speed
- Neutrality
- Confidentiality

Should you use the EC process?

- How strong is your case?
- What is the claim worth?
- Process can be used to extract further details
- Process can be used to buy time
- How much time and cost will the case involve?
- How committed does the claimant seem?
- Can an offer at this stage look “too keen”?
- Positions tend to harden once a case progresses
- Do stronger tactics work as well?

Questions...

Responding to a claim

- Overview of process
 - 28 days to file a response (ET3)
 - Strict time limit
 - Extensions
 - Form of response

Responding to claim (2)

- Drafting the response
 - What should go in it
 - The level of detail
 - How you can help

Requests for further information

- When should these be made?
- What are the risks?

Putting pressure on Claimant

- Applications for strike out
- Applications for deposit order
- Costs warnings

How long does it typically take between a claim being submitted to tribunal and a claim reaching a full hearing?

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Gathering information

- What are the factual allegations made by the Claimant?
- What is our position in relation to those allegations?
- What documentary evidence exists?
- Who will be our witnesses to cover each issue?
- Prepare a table

Preserving documentary evidence

- E mails
- Correspondence
- Minutes/notes/recordings
- The importance of originals

Witnesses

- Who are the witnesses?
- Securing their cooperation
- Dealing with witnesses who might be leaving the organisation
 - Witness statements
 - Agreement to cooperate
 - Witness orders

What else can be done?

- Gather evidence on mitigation
- Tune into the grapevine/social media to see what Claimant is doing

Protecting the organisation

- What is the employee saying about the claim
- What do you tell staff
- What messages might you be sending to staff and how might these impact on future claims

COVID 19 - The impact

- Pressure on Tribunal administration
- Virtual hearings
- The implications of long delays
 - Withdrawal of cases/fewer cases?
 - Challenges for Respondent
- Negative impact on re-employment prospects

Speakers



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