

Employment Tribunal Procedures – Advice to Schools

Potential Claims for Schools to be Aware of:

There are many different claims that can be brought in an Employment Tribunal that effect schools.

These are:

- Unfair Dismissal
- Wrongful Dismissal
- Discrimination on the following grounds: Sex, Race, Disability, Age, Pregnancy and Maternity, Marriage and Civil Partnership, Religion or Belief and Sexual Orientation
- Redundancy
- Equal Pay
- Unlawful Deduction of Wages
- Whistleblowing
- Victimisation
- Breach of Contract (up to £25,000)

Establishing a Claim

1. Establish their Employment Status

Some claims, such as unfair dismissal, can only be brought by employees and not workers. Practically, this is unlikely to be an issue for a staff member who works at a school as most members of staff will be an employee.

2. Jurisdiction

Not all employment claims are within the tribunal's jurisdiction. For example, claims for a declaration or injunctive relief, or breach of contract claims exceeding £25,000.

3. Length of Service

Certain tribunal claims require a minimum length of service known as the qualifying period. For example, a redundancy claim the employee must

have been employed for 2 years before they are entitled to a redundancy payment. This period must be continuous to satisfy the requirements – essentially meaning at least the minimum period of employment was unbroken.

However, note that not all claims require a qualifying period. A discrimination claim could be brought from the first day of employment, and so each individual claim must be scrutinised.

4. Time Limits

Most tribunal claims have a deadline. The time limit in most cases is 3 months which includes any dismissal or discrimination claim. Some claims such as redundancy have a 6 month time limit.

The time limit will start to run from the date of dismissal and so any appeal will eat into that. Any delays in hearing an appeal are at the employee's risk but that also explains why a claimant may seek to engage with ACAS before an appeal if heard in order tick off the automatic standstill period once ACAS are engaged.

Note an equal pay claim is an illustration of no time limit, and so each specific claim needs to be examined closely to ensure it is brought within the timeframe.

Furthermore, it is also important to recognise that the tribunal may still allow an application out of time, or elements of a claim if it is just and equitable to do so.

5. Excluded Class

This is genuinely very rare, but it should always be considered whether a potential claim has been excluded. An example of this may be when a

Settlement Agreement has already resolved the dispute, waiving the employees right to be bring any further claim to the tribunal over that dispute.

ACAS Early Conciliation

In general terms, the Early Conciliation process is a time for mediation between the parties to try and reach a settlement without the need for the parties to proceed to the Employment Tribunal. The notification to ACAS, in itself, is compulsory, although there is no requirement for the parties to engage in the process.

The potential claimant will notify ACAS of the claim either by calling them or by completing the form online. Once ACAS process the notification, a conciliator will be appointed. The conciliator will contact the potential claimant who will investigate whether they are considering or open to the idea of settlement.

If agreed by the potential claimant, the conciliator will then contact the potential respondent and will relay the claim alleged against them, as well as any offer of settlement proposed by the potential claimant.

If a settlement is reached, the parties will be asked to sign a COT3 agreement to verify the agreement.

If a settlement cannot be reached, or the parties do not want to engage in any settlement discussions, the conciliation officer will issue a certificate with a unique reference number, which will allow you to bring an employment tribunal claim.

From 1 December 2020, the Early Conciliation period was set automatically at 6 weeks overall and there will no longer be an option to extend. The law has been adjusted as previously the initial period was 1 month, but it could be extended by 14 days if both parties were engaging with the conciliator.

During this conciliation period, the time limit on applying to the Employment Tribunal is frozen. Therefore, the time limit will now be paused for 6 weeks.

On receipt of the formal confirmation that early conciliation has finished (the ACAS certificate), the claimant has one month to register their claim with the Employment Tribunal. This occurs even in instances where the claimant had less than a month of their time limit left, before initially contacting ACAS.

Schools and academies should consider notifying the RPA (or their insurer) as soon as an approach by ACAS is made. The RPA will typically cover legal costs incurred in advising on the potential merit of any claim at this stage (and any rationale for

settlement).

How does an Employee lodge a claim with the ET

In order to bring a claim to the Employment Tribunal, the Claimant must file an ET1. In order to satisfy the requirements and confirm to the Tribunal that Early Conciliation has been contemplated, the claimant must fill in the unique reference number that ACAS provides.

Employment Tribunal Response

Once the employment tribunal receives a claim, a tribunal will either accept it or reject it. An Employment Tribunal can reject a claim if:

- The Claimant does not use the prescribed ET1;
- The Claimant fails to provide the minimum information in the ET1;
- fail to provide the ACAS unique reference number;
- provide an ET1 but there are substantive defects e.g. the employee does not have the sufficient length of service.

If the Employment Tribunal accepts the claim, they will send a copy of the ET1 to the (School) Respondent.

How must the School react?

On receipt of the ET1 from the Tribunal, the Respondent will then have 28 days from receipt of the ET1 to defend the complaint. The School must complete a Response Form (ET3) if it wishes to contest the claim.

If the school is unable to submit its response within the 28-day deadline, it can apply to the tribunal for an extension of time. The applicant must be sent to the claimant and set out why the extension is necessary.

It is not unusual for Claimants to be unsure who the correct Respondent is, or indeed for Claimants to name a range of Respondents. We can advise on the implications for Respondents.

Further Information

We have advised a number of schools on Employment Tribunal Procedures and can guide you through the process. For further advice on Employment Tribunal Procedures, please contact Andrea Squires, Partner, on 020-7593-5039 or asquires@wslaw.co.uk. For more general advice, please contact a member of our Schools HR team on 0345-026-8690 or SchoolsHR@wslaw.co.uk.