

A photograph of three business professionals (two men and one woman) sitting at a table in a modern office or cafe at night. They are working on laptops and looking at each other, appearing to be in a collaborative meeting. The background is dark with some blurred lights from the city.

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Avoiding and Preparing for an Employment Tribunal

15th February 2023

A Guide to Employment Tribunals (Part 1)

Overview

- Two part webinar
 - **Part 1:** Avoiding and Preparing for an Employment Tribunal
 - **Part 2:** Managing the Employment Tribunal Process



Why do I need to know this?



- Present a risk to any employer
- Time-consuming, costly and challenging
- Last quarter, 18,000 ET receipts, 13,000 disposed of and 493,000 cases outstanding

Employment Tribunal system

- Primary responsibility for workplace justice
- Main forum for deciding disputes

Types of Cases

Unpaid wages or
holiday pay

Unlawful
discrimination,
harassment and/or
victimisation

Unfair dismissal and
redundancy claims

Claims of detrimental
treatment following
protected disclosures
("whistleblowing")

How can we avoid an Employment
Tribunal claim?

Mitigate the risk of Employment Tribunal claims

- Clear terms and conditions in Employment Contracts
- Regularly reviewing policies and procedures
- Training all employees at regular intervals on standards and behaviours
- Bespoke training to managers on effective management and dealing with workplace issues
- Managing capability and poor performance issues proactively
- Being mindful of making reasonable adjustments for employees with disabilities
- Clear disciplinary and grievance procedures
- Redundancy process is followed, fair and objective selection criteria are used
- Taking HR and/or Legal advice

What is the Early ACAS Conciliation process?

Advisory Conciliation and Arbitration Service

- Independent, impartial organisation
- Liaise with both parties with regard to possible settlement
- Extend the limitation period for the claimant to bring a claim



acas working
for everyone

Benefits of Acas Conciliation

Simplicity

Neutrality

Speed

Cost

Confidentiality

Non-disclosure

Procedure

Step 1: prospective claimant submits EC form or telephones Acas

Step 2: Acas contacts the prospective claimant

Step 3: Acas contacts the prospective respondent

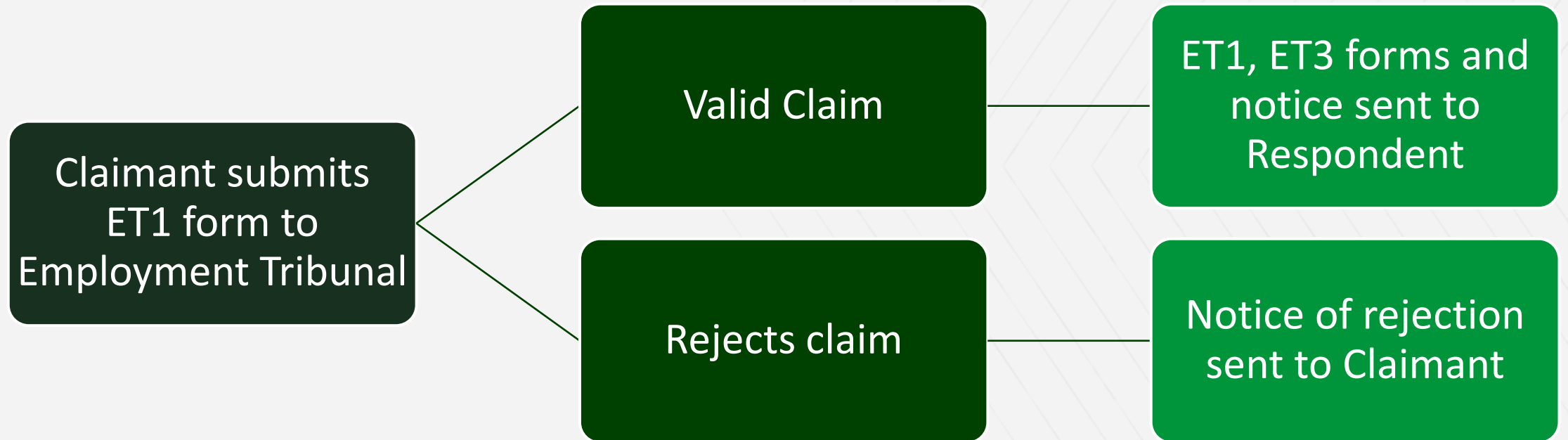
Step 4: where both parties wish to conciliate: the EC period

Does a Claimant have to pay to lodge
an Employment Tribunal claim?

Employment Tribunal Fees

- *R. (on the application of Unison) v Lord Chancellor [2017] UKSC 51* - the Supreme Court unanimously declared that employment tribunal and EAT fees are unlawful, under both domestic and EU Law, and quashed the Fees Order 2013.

How will we know a claim has been brought against us?



Responding to a claim

- Must comply with the deadline.
- Present response within 28 days.



Applying for an extension of time to present a response

- Rule 20 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
- Before the original 28-day deadline has expired.
- After the 28-day deadline has been missed.

When can an application for an extension of time be granted?

- Key principles established in [Kwik Save Stores Limited v Swain and others \[1997\] ICR 49](#)
 - EAT held - *"the process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice."*

ET3 Form

When preparing to submit a response, the respondent should ensure they:

- use the prescribed ET3 form (Rule 17(1)(a));
- provide the required information;
- consider the limitation periods; and
- submit it completed within 28-day time limit.

Grounds of Resistance

Considerations:

1. Jurisdiction
2. Preliminary issues
3. Response to each allegation
4. Discrepancies
5. Cover gaps



How long will an Employment Tribunal claim take to get to hearing?

- Can vary considerably from tribunal to tribunal
- Depends upon:
 - the caseload and resource of the tribunal
 - complexity of the claim
 - days required for final hearing
 - number of witnesses

What is Disclosure?

Disclosure

Standard Disclosure

- Documents relevant to the issues in the case
- Documents which:
 - a) adversely affect your own case
 - b) adversely affect another party's case
 - c) support another party's case
 - d) documents which support your case
- Any other document that the tribunal orders to be disclosed.



Duty to Disclose



Duty to make a
reasonable search



Continuing obligation to
disclose



Must disclose
documents within your
control



Documents should not
be lost or disposed of
under **any** circumstances

Questions



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Thank You

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