

A photograph of three business professionals (two men and one woman) sitting around a table in a modern office or cafe at night. They are engaged in a discussion, with laptops open in front of them. The scene is lit with warm, ambient lighting, and large windows in the background show a cityscape at night. The overall mood is professional and collaborative.

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Managing the Tribunal Process

28 March 2023

A guide to Employment Tribunals (Part 2)

Outline

- Preparing witnesses and witness statements
- The hearing (remote (CVP) and in person)
- Remedies
- Costs
- Settlement

Preparing witnesses and witness statements

Preparing a witness

- The tribunal will direct that witness statements are prepared and exchanged
- These need to be in first person and clearly set out the relevant events
- A lawyer may assist you but this must be in your own words

Attending as a witness

- There is no requirement to attend to give evidence
- However, without attendance, the evidence in a witness statement may not be permitted or little weight will be given to it
- Witnesses should prepare carefully for the hearing
- Witnesses will be asked to take the oath
- Remain under oath if the tribunal breaks or evidence spans multiple days



Answering questions as a witness

- Answer questions from the tribunal panel
- Refer to the Judge as 'Judge' and the panel members as 'sir' or 'ma'am'
- Answer questions honestly and say if you do not remember a particular event

The Hearing

Different types of hearing

Preliminary Hearing

- Case management orders
- Interim applications
- Deposit order
- Strike out

Final Hearing

- Judgment
- Remedy
- Costs

What goes into a hearing?

Preliminary Hearing

- “conduct a preliminary consideration of the claim with the parties and make a case management order”
- Any preliminary issue may be determined
- Consideration of striking out a claim or response
- Possibility of settlement or alternative dispute resolution

What goes into a hearing?

Final Hearing

- A hearing to decide the claim
- Various matters can be considered
- There may be separate hearings to determine liability and remedy

Remote or in-person hearing

- The hearing may be entirely remote, a hybrid-hearing or entirely in-person
- Factors considered include:
 - The personal circumstances of any participant
 - Whether the parties are legally represented
 - The ability to engage fully with a video hearing
- HMCTS Close Video Platform Link

Set up of the hearing



Is the claim successful?

- The employment tribunal will consider all the evidence and determine whether the claim is successful
- Tribunal panel will require a majority decision
- If the judge sits alone it will be the judge's decision



Providing judgment



- Orally or in writing at a later date
- Aim to provide written judgment within 30 days of the final hearing
- There is a current backlog in the tribunals
- ET online Judgment database

Remedies

Types of award

- Financial awards
 - Compensation
 - Compensation for personal injury
 - Compensation for injury to feelings
 - Aggravated damages
- Other awards
 - Reinstatement
 - Re-engagement
 - Declarations
 - Recommendations

If you win?

- Practical steps:
 - Note down the Claimant's appeal window (generally 42 days)
 - Consider making an application for costs
 - Debrief with those involved in the process



If you lose?

- May be ordered to pay compensation to the Claimant
- Potential for negative publicity
- Not usually ordered to pay for injury or upset unless it is proven that you discriminated on a protected ground e.g. race
- The tribunal will set limits on what can be awarded

Costs

- ‘Exception rather than the rule’
- You are rarely able to claim back costs in the employment tribunal
- There is the possibility of a costs order, preparation time order or a wasted costs order
- These are usually awarded in situations where parties have acted unreasonably or not complied with directions

Appealing the decision

- Decisions can be appealed to Employment Appeal Tribunal
- This can be complex and specialist advice may be required
- Basis of appeal must be that the tribunal erred on a point of law. It must not be a question of fact
 - Unless the treatment of facts led to an error in law
- Generally must do so within 42 days of the date of the decision

Settlement

Settlement



- Many employment disputes do not reach the employment tribunal
- Claims can settle at any time during the process
- Settlement discussions are often made 'Without Prejudice'

'Without prejudice' communications

- Communications simply need to be marked as **Without Prejudice**
- This ensures that this correspondence will not be shown to the tribunal
- This allows full and frank discussions

Settlement agreements

- Often standard agreements that will usually set out the termination payment to be made
- This will be in full and final settlement of the claim and any claims related to the dispute
- There may be other clauses in relation to the confidentiality of the settlement.



Questions





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