

GIVING EVIDENCE AT AN EMPLOYMENT TRIBUNAL WHEN YOU ARE BEING REPRESENTED

This fact sheet tells you what to expect when you are giving evidence at the Employment tribunal.

1. Your evidence (statement)

We will have prepared a witness statement for you to read out as your evidence in the tribunal. We will have sent you a copy of your finalised witness statement prior to the tribunal hearing and you should read it through the night before the hearing to refresh your memory. We will prepare sufficient copies of the statement for use at the hearing.

2. Arriving at the tribunal

You will go to the Claimants' Waiting Room. (Employers have a different waiting room called the Respondents room.)

Before you are called in to the tribunal, the clerk will come to ask you if you wish to swear evidence on oath (i.e. on the Bible, Koran, etc.) or whether you wish to affirm (promise to tell the truth).

Remember to go to the toilet just before the hearing is scheduled to start.

3. Who will be at the tribunal?

The tribunal itself usually consists of an Employment Judge, who is experienced in employment law, and two wing members. One wing member is nominated by a trade union organisation, the other by an employers' organisation. In some cases, the tribunal can sit without wing members.

When you go into the tribunal room, it will normally be empty. Once both sides are in, the Employment Judge and the tribunal members will come in and you will usually be asked to stand whilst they go to their seats. Once everyone is seated, the Employment Judge will introduce him/herself and explain how the hearing will be conducted.

Although an employment tribunal is a public court, it is rare for members of the public to attend: usually, the only people present are the parties to the case.

4. What order do the witnesses give their evidence in?

It is up to the tribunal to decide which side goes first. Usually the employer goes first in cases of unfair dismissal, and the employee will go first in cases of constructive unfair dismissal, discrimination, and unlawful deductions from wages. The order of witnesses from each side is at each side's discretion, although sometimes a tribunal will indicate which witness they would like to hear from next. Very often employees have no other witness beside themselves.

5. How to give your evidence (known as "evidence in chief")

When giving your evidence, which you do sitting down at the witness table, please bear in mind, the following points: -

- Always address yourself to the tribunal, even if someone else has asked the question.
- Normally you will be reading from a written statement, but if you say anything extra the tribunal will want to write down what you say. For example, your representative may have a few extra questions to ask you after you have finished reading from your statement.

Where you are giving extra information: -

- Speak clearly, and pause to allow the tribunal to finish writing. If you don't, the tribunal may ask you to slow down!
- To get an idea of when to pause, watch the chairperson: when s/he stops writing, you can carry on speaking.
- If you are talking and the tribunal isn't writing down what you are saying, it may be because you have gone off at a tangent and what you are talking about isn't relevant to the case. Alternatively, they may simply be listening intently. You can usually tell the difference.

6. How to deal with cross-examination

Cross-examination is where the other side asks you questions about what you have said and put to you their version of events where it differs from yours, so you can comment on what they have to say.

When answering questions under cross-examination, you should bear in mind the following points: -

- Continue to address your answers to the tribunal.
- If you are asked a question which you don't understand, say that you don't understand.
- If you are asked more than one question and this confuses you, ask the questioner to ask one question at a time.
- Don't get into an argument with the person asking the questions.

- Try to remain calm.
- If you are asked the same question over again, just give the same answer.
- If you say something which you don't think has come out right, say that it's not come out right and answer the question again.

7. How to deal with re-examination

After you have given your evidence and been cross-examined, your representative will be asked if they want to ask you anything further about what you have been cross-examined on. The technical term for this is re-examination. It is not a chance to say everything over again. Often very little, if anything, will need to be said and your representative may decide not to ask you anything. Bear in mind the same points as for when you gave your own evidence. Re-examination is a chance for your representative to try to clear up anything that you got confused over or forgot to mention when you were being cross-examined

8. General points

- If you get upset whilst giving evidence, feel free to ask the tribunal if you can have a short break because you are upset.
- Do not interrupt when someone else is giving evidence. If you do, it will only annoy the tribunal.
- Whilst someone else is giving evidence, do not make sighing or other noises in an attempt to get over to the tribunal that you think the evidence the witness is giving is a pack of lies. Again, it will just annoy the tribunal. If anyone is at the tribunal with you, tell them about this point too. Bear in mind, also, what is said below about costs.
- If you want to observe a tribunal to get a feel for what happens, you can do so. The Sheffield Employment tribunal is at 14 East Parade, Sheffield S1 2ET, telephone 0114 2760348. The tribunal sits most days but you should phone to check at least the day before you intend to go.
- If there is a break (e.g. for lunch) whilst you are in the middle of your evidence or cross-examination your representative will not be able to talk to you about the case during the break.

9. Costs

It is becoming increasingly common for legal costs to be awarded against Claimants by employment tribunals. You risk costs being awarded against you if you act vexatiously, abusively, disruptively or otherwise unreasonably or you have brought a case when it was obvious to you that you had no chance of succeeding.

Law Centre Opening Times

You can contact the Law Centre for help by phoning 0114 273 1888 between 10 and 4 each weekday.
When you phone, have any documents with you relating to your case.