

ENFORCEMENT OF EMPLOYMENT TRIBUNAL JUDGMENTS

Winning your case at tribunal is often only half the battle. What happens if your ex-employer still refuses to pay up? This information pack explores the different ways in which it may be possible for you to enforce an award through the civil courts.

Caution!!!! If your employer does not have enough money to pay you, there will be little point in attempting to enforce an award, as you will need to pay court fees at every stage, unless your income is low enough to have the fees waived or reduced. The County Court can advise you on this point.

First steps...

Before considering enforcing an award against an employer, it may be prudent to first carry out the following:

- A. Make enquiries of an employer's ability to pay, i.e. are they still trading? Do they have other debts or judgments against them? This could be done informally through contacts you may have such as friends or ex colleagues who still work for the employer.
- B. Check whether an employer, if an individual is bankrupt or, if a limited company, in liquidation, as this will affect the likelihood of you recovering any monies owing. You can check with Companies House for Limited companies – online at www.companieshouse.gov.uk or by telephone – to the companies house contact centre on 0870 3333636, or for individuals via the Insolvency Service – online at www.insolvency.gov.uk or by telephone to their enquiry line – 0845 6029848 by providing details of the employer's name and address to find out whether they are bankrupt. If an employer is insolvent, you may be eligible to claim some of your award back from the Redundancy Payments Office by completing form RP1, – telephone the RPO Help line on 0845 145 0004 for further details.

If, having carried out the above enquiries, you believe that your ex-employers may be able to pay the compensation awarded by an employment tribunal, then the procedure for enforcement is as follows:

1. Wait until 6 weeks after the date on which the tribunal's full written decision was sent because the employer has 6 weeks within which to appeal against the decision. (It is still possible to apply for enforcement if the award is subject to appeal and the money can be paid into the court and accrue interest pending the appeal)
2. Write to the employer along the following lines

Date

Dear.....

Re: (Your name) v (Respondent's name) (Write ET case number)

On..... The employment tribunal awarded me the sum of as compensation for..... You were ordered to pay this amount immediately but I have received nothing from you. Unless I receive the sum of £..... Within 10 days of the date of this letter, I shall apply to the county court for registration of the tribunal's judgment and award, plus interest.

Yours faithfully

3. Keep a copy of the letter.
4. If the employer does not pay up you will need to complete form **N322A – Application to enforce an award**. This form is fairly straightforward to complete but please read the notes below. Once completed, you will need to take or post the form to the county court along with a copy of the employment tribunal decision and the fee (£35.00 at March 2008) (or confirmation that the fee has been remitted (waived) if you have applied for remission – see note 5b below).
5. A court officer then deals with the application for an order. The court will then issue an order that the sum should be paid to you within a set time – usually 28 days. You will be sent a copy of this order and you should keep this in a safe place, as you will need it if you take further action for enforcement.

5. NOTES

- a) Although county courts can usually only enforce claims of up to £5000.00 they can enforce awards above this limit when they relate to employment tribunal awards.
- b) The current fee for making the application to enforce a tribunal award on form **N322A** is recoverable from the employer but you do have the opportunity to apply for exemption (no fee to pay) or remission (reduced fee) of the fees on the grounds of low income. To do this you need to complete the court form **EX160** before making the application for an order. In Box 1 of form **N322A** you are the Applicant and the Respondent is the employer. The case number is left blank at this stage.

WHAT IF THE EMPLOYER STILL WILL NOT PAY UP?

Unfortunately once an Employment Tribunal award has been registered in the County court, this is unlikely to be end of the story.

Note: - enforcement of any debt can be a costly and complicated procedure and you should consider instructing a solicitor and taking legal advice on whether to enforce your award before embarking on County court or High court enforcement.

If you are *unsure* of the employer's ability to pay the judgment at this stage, it may be that the most appropriate thing to do first of all is to use the Oral Examination procedure in the County court to find out their means. You should note that the oral examination or indeed any enforcement of the tribunal award will take place in the hometown of the employer – i.e. the home of their business and not the court where you registered the judgment. This may obviously incur extra cost for you and this needs to be considered before embarking on the next steps in enforcement.

If you know the employer has some money, skip this section and move directly onto enforcing the award in Para 6 of this fact sheet.

Oral Examination

- You will have to make an application for an Oral Examination on form **N316**. Complete this form and send it with the fee (£45.00 at March 2008). You do not need to give the employer notice of the application.
- The court will send the employer (if he is an individual) the form ordering him to come to court on a certain date to give evidence of their means. However, if the company is a Limited Company you will need to know the Registered address of the company – available from Companies House website (see earlier) you should also try and establish the names and addresses of the Company officers and directors, as you will need to effect service of the 'summons to court' at the registered office of the company. If you cannot effect service on the Employer within 14 days of the hearing, - the hearing will not take place.
- If you cannot personally serve the summons you could use a Process server (see Yellow Pages) who will charge to serve the summons on your behalf. This would cost you approximately £125.00 to serve upon a registered company address outside London at March 2008.
- If the hearing takes place, you can attend and ask questions about his/her means. Ask questions about their bank accounts, sums owed to them by others, their ownership of property, and cars owned for example.
- If the employer fails to attend, a new hearing is arranged and if the employer fails to turn up for that hearing the Court can issue a warrant to arrest the employer.

Hopefully the Oral examination will have provided you with sufficient information on the employer's means and there is some money available to pay your judgment. The next step is enforcing the award due to you.

6. Enforcement of the award

Once you have established the means of the employer, enforcement of the award can usefully take place.

In summary, there are 4 realistic options open to you to enforce the employment tribunal award:

1. A warrant of execution: the court bailiff is instructed to remove and sell enough of the employer's goods to pay the amount of the award and the costs of sale. You should read the county court leaflet entitled 'How do I ask for a warrant of execution'.
2. Attachment of earnings order: this is sent to a defendant's employer. It allows the employer to deduct a set amount from the defendant's earnings each day and send this to the Court's collections office.
3. Third party (or Garnishee) debt order: This is usually made to stop a defendant taking money out of his bank account. The money owed for the tribunal award is then paid from this account.
4. Charging order: This prevents the defendant from selling his assets (such as property, land or investments) without paying what is owed to you.

Further assistance can be obtained from the local County Court on the procedure to follow with regard to enforcement.

The address and phone number of the County Court in Sheffield is: -

**SHEFFIELD COMBINED COURT CENTRE
THE LAW COURTS 50 WEST BAR, SHEFFIELD S3 8PH
TEL. 0114 281 2400
FAX. 0114 2812425**

Documents mentioned in this fact sheet are:

- Booklet EX321 'I have a judgment but the defendant hasn't paid – What can I do?'
- Booklet EX322 'How do I ask for a warrant of execution?'
- Form N322A – Application to enforce an award
- Form N323 – Request for Warrant of execution
- Form EX160 – Application for a fee exemption or remission
- Form N316 – Application for an oral Examination

Copies of all these documents can be obtained from Sheffield County Court or the court service website at www.hmcourts-service.gov.uk

**Sheffield Law Centre 10 Joiner Street Sheffield S3 8GW,
Tel 0114 2731888 – Mon – Fri 10 -4.00pm**