

## **LOOKING FOR WORK AFTER A DISMISSAL (MITIGATING YOUR LOSS)**

This fact sheet tells you the steps you need to take to ensure that an Employment Tribunal awards you the maximum compensation for the loss of earnings resulting from your dismissal.

### **1. Compensation for loss of earnings**

An employment tribunal has the power to award compensation for the loss of earnings following your dismissal, but only loss of earnings caused by the dismissal will be taken into account.

The way the tribunal assesses the loss of earnings is in two stages: -

- a) Loss of earnings from the date of the dismissal to the date of the tribunal hearing (or the final tribunal hearing if the case lasts more than a day);
- b) Loss of earnings from the date of the hearing into the future: "future loss". To decide this, the tribunal has to estimate when they think you will get a job. Their estimate will take into account the following factors: -
  - The type of work you do and its availability. For example, tribunals tend to consider that shop work or bar work is fairly easily available;
  - Your age;
  - How hard the tribunal believes you've been looking for work; *and*
  - Any factors hindering you from getting work, e.g. a bad reference from your employer.

### **2. Reduction in compensation for loss of earnings**

The above is the first step the tribunal takes in assessing your loss of earnings, but there are a number of other factors which can determine whether they award you the full compensation based on the above assessment: -

#### **a) Benefits**

- Up to the date of the hearing. Any Income Support or Job Seeker's

Allowance or Incapacity benefit, you have received up to the date of the tribunal hearing will be taken off the amount of money your employer is required to pay you. This is known by the technical term "recoument of benefit".

- After the date of the hearing. If you receive an award for loss of future earnings, you may be barred from claiming the above benefits for any period of future loss.

N.B. If you claim benefits as part of a couple, you may wish to consider whether your partner should make the claim for benefit. That way, you will avoid both these benefit problems.

#### **b) Other work that you obtain**

If you have obtained another job paying the same as, or more than, your old job, then you will not be compensated for loss of earnings from the date you obtained this work. *If it is only temporary or casual work, the tribunal may consider whether it is likely to continue or not.* A letter from your new employer stating that your job is due to end will be helpful in allowing the tribunal to make an award for future losses.

If, however, you are dismissed for misconduct from a new permanent job, the tribunal will probably not take into account losses resulting from the second dismissal.

#### **c) Failure to look for work, or failure to "mitigate your loss"**

Very often a tribunal will decide that you have not done enough to look for work. They are more likely to do this if your ex-employer brings along evidence of jobs that are available and can show that you have not applied for them. The tribunal will also take into account its own knowledge of what work is available. When they make their decision, they may decide that if you had looked harder for work you would have got a job by a particular date (which the tribunal will have to guess at) and will only award compensation for loss of earnings up to this point.

### **3 What can you do to stop a tribunal finding that you have failed to mitigate your loss?**

Firstly, you must *actively look for work*. If you get a job then, unless your new job pays less than your old one, you will have stopped losing money and loss of earnings compensation will stop at this point.

Secondly, you have to demonstrate that you have *taken all reasonable steps to try and find work*. You will have to give evidence to the tribunal to show what these steps are. This will be your own written and verbal evidence about what you've done, and any documentary evidence from employers who have turned you down. It will be particularly helpful to have letters from employers who have turned you down because of a bad reference.

#### 4. How do you collect the evidence?

- a) Get a notebook or piece of paper and make a Job Search Record: Write down everything you do to look for work as you do it. Record it like in the example below: -

<i>Date</i>	<i>Activity</i>
1/1/08	looked in the Star newspaper.
2/1/08	visited the Jobcentre. Asked about ..... jobs.
3/1/08	Asked for a job at .....
5/1/08	asked my Mom if there was anything going at her place.
8/1/08	visited the Jobcentre, and looked in the Star.

- b) Keep a copy of every job application you send in, and the adverts of jobs you've gone after. Put them in date order. If you get a reply from an employer, put this together with your copy of the application and the job advert.
- c) If your job is in a particular locality, look for work around that locality. For example, if you worked in a pub, ask around other pubs in the area. Try and get a letter from the pubs if they turn you down. It's likely your employer will have known of any local vacancies and you might be asked about these at your tribunal, so you'll need to show what you've done.
- d) If you are refused work, ask the reason. If it is because of your dismissal or your reference, ask the employer to put this in writing. If they won't, make a note on your Job Search Record of the reason you've been given.
- e) Remember to take all this evidence with you to the tribunal. It will be helpful to the tribunal if you can provide photocopies (six sets: three for the tribunal, one for you, one for the other side, and one for the witness table) of your Job Search Record so the tribunal can see what you have been doing.

#### 5. Expenses

Your losses on account of being dismissed will include any expenses reasonably incurred in consequence of your dismissal. This includes a reasonable amount of money spent looking for a new job: e.g. telephone calls, postage, and the cost of travelling to interviews.

You should keep a record of these expenses. With any large expenses, like the cost of the train fare to an interview, keep the evidence (in this case, the train ticket).

Obviously, you can't claim for any expenses that have been reimbursed.

*N.B. This Fact sheet does not take into account any reduction in compensation because of misconduct on the employee's part. This is known as "contributory conduct". Nor does it take account of any reduction based on a finding by the tribunal that a dismissal, although technically unfair for procedural reasons, would have occurred in any event. If you need any more information about these points, the Law Centre can advise you.*

*You can contact the Law Centre for help by phoning 0114 273 1888. When you phone, have any documents with you relating to your dismissal.*

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