

## **GIVING EVIDENCE AT AN EMPLOYMENT TRIBUNAL IF YOU ARE REPRESENTING YOURSELF**

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

### **1. Your evidence (statement)**

There are two ways to give evidence. One is to read from a written statement, which you have prepared beforehand. It is always best to have a written statement as it has the advantage of being quicker, and you don't forget to mention anything important. The other way is to tell your story from memory with the tribunal asking questions to fill in any gaps. It is the usual practice to read from your prepared statement. Sometimes the tribunal will have written to you directing (ordering) you to exchange (swap) witness statements with the employer.

### **2. Arriving at the Employment 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).

When you speak to the clerk, tell him/her that you wish to use a written statement and give him/her 6 copies of it (you only need to give 5 copies if you've already sent one to the employer), keeping one for yourself.

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 organization, the other by an employers' organization. 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 wing members will come in and you will 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 unauthorised deductions from wages.

The order of witnesses from each side is at each side's discretion, although sometimes an Employment Judge 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.

*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 Employment Judge: 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 one side asks the other side's witnesses questions about what they have said and puts to them their version of events where it differs. This gives the witness the opportunity to comment on their opponent's version of events.

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.
- Before the tribunal hearing you should prepare how you want to cross-examine the employer's witnesses. You can do this either by highlighting points in their witness statements you want to ask about or prepare a lists of points / questions that you want to ask each witness about.

## **7. How to deal with re-examination**

After you have given your evidence and been cross-examined, you will be asked if you want to add anything to what you have been cross-examined about. 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. Bear in mind the same points as for when you gave your own evidence. Re-examination is a chance to clear up anything that you got confused over 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 him or her 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 the day before you intend to go.

## **9. Summing up**

At the end of all the evidence from both sides, you will be asked if you want to say anything further. Often there will be nothing to say because you have already covered everything. However, if there are any legal points that you want to mention, this is the time to do it. If you feel everything has been covered, just say so - the tribunal won't find it helpful if you just try and go through your evidence again.

## **10. Costs**

It is increasingly becoming common for legal costs to be awarded against Claimants by employment tribunals. You should be aware that there is a real risk of 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 employment problem*