

WHAT HAPPENS AT THE EMPLOYMENT TRIBUNAL

This fact sheet is designed to give you an idea about what happens at the tribunal so that if you need to bring a claim in the tribunal you have some idea of what to expect.

What is an employment tribunal?

An employment tribunal is a specialist court which hears employment law claims brought by employees against their employers or former employers. Examples of the types of claims tribunals hear are unfair dismissal; sex, race, age and disability discrimination; equal pay, redundancy; and unauthorised deductions from wages.

The tribunal is made up of three people: an Employment Judge who has a thorough knowledge of employment law, and two 'wing members', one nominated by employers' organisations and one nominated by the trades unions.

The procedure at the tribunal

a) Arriving at the tribunal

You will have received well in advance, a notice telling you the date, time and place of the hearing. Always arrive at least 15 minutes early. Go to the Claimants' waiting room. The clerk of the tribunal will come to see you and check your full name and ask whether you wish to affirm (promise) or swear when you give your evidence. Sometimes the tribunal doesn't start on time; the clerk will keep you informed.

b) Going in to the tribunal

The clerk will call you in. The tribunal is a public court but there's not usually anyone watching. When you and the other side go in, the tribunal members come in and you'll be asked to stand. Once everyone's settled, the Employment Judge will explain who is who, and will usually clarify what it is you are claiming. They will then go on to hear the evidence.

c) Handing in your documents

If you have any documents that you are going to use you should let the tribunal know and hand in your bundles of documents to the clerk before the start of the hearing.

You will need to have prepared your relevant documents in advance. You should put your documents in date order and number them. You will need to have prepared an

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index sheet like the example below.

| <i>Page no.</i> | <i>Date</i> | <i>Document</i> |
|-----------------|-------------|---|
| 1 - 4 | 1/8/05 | Statement of terms & conditions of employment |
| 5 | 1/10/06 | Written warning |
| 6 | 25/2/08 | Letter of dismissal |
| 7 | 1/3/08 | Final wage slip |

You will need to have 6 sets (bundles) of documents, 3 for the tribunal, one for yourself, one for the other side, and one for the witness table. You will need to discuss with the other side, in advance, who is going to prepare the bundles. If the employer is represented their representative will normally be willing to prepare these.

d) Who goes first?

This is up to the tribunal but usually in unfair dismissal and redundancy claims the employer goes first, and in other cases the employee goes first. Each side then goes through the process of giving evidence, cross-examination and re-examination with each of their witnesses (Usually the only witness the employee has is themselves).

e) Giving evidence

This is where the witness gets a chance to tell their story. When you are giving your evidence, it is best to have typed out beforehand what you want to say so you can read this out (See Law Centre fact sheet Preparing a Statement). The tribunal will often stop you at various points to clarify something. Always look at the tribunal when giving evidence and remember they have to write down what you have to say, so don't talk too fast. If the tribunal is looking bored and not taking down what you're saying it's probably because what you are saying is irrelevant, so you should move on to your next point.

If you think that a witness is not telling the truth, make a note of what they say so you can ask about it when you cross examine them. Don't tut or sigh or try to indicate you don't believe them; this will only annoy the tribunal and make it more difficult for you. Just try and keep calm.

f) Cross examination

After giving evidence, each witness is cross-examined by the other side. Cross examination means asking questions. You should try and prepare questions before the tribunal. The questions can be thought of in broad categories: -

- Trying to get the other side to admit to something in your favour, although such an admission is rare.
- Questions about all the relevant points, which support your case so, the other side has an opportunity to comment on them.
- Questions about documents.
- Questions about things the witnesses said when giving their evidence.

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You'll find it helpful to group your questions around the different points of your case, e.g. the incident that led to the dismissal, the dismissal hearing, the investigation.

When you ask questions, the tribunal will write down the answers so don't fire the questions one after the other.

The tribunal will usually guide you. If you are asking a lot of questions about something which they think isn't relevant, they will usually tell you and that's a sign to move on to your next set of questions.

g) Questions from the tribunal

After cross-examination the tribunal chair and members usually ask questions of the witness.

h) Re-examination

This is where the witness can be asked by their own side about anything that's come up in cross-examination or from questions by the tribunal.

i) Swapping over

Each witness goes through the process of giving evidence; cross-examination and re-examination then it's the turn of the other side's witnesses.

j) Summing up

The side that gave evidence last will sum up first. Summing up is where you outline the law relating to your case and highlight the evidence that supports your case. If you don't know what to say at this point, don't worry. You don't have to say anything. The employment tribunal has heard all the evidence and knows the law, so you can leave it in their hands. If you have any case law which you want them to consider you can give them a copy of it at this stage. You probably won't need any case law. If you've spoken to us at the Law Centre we'll let you have a copy of anything we think will help you.

The decision

After summing up the tribunal will retire to consider their decision. You will be asked to wait in the waiting room and the clerk will fetch you when the tribunal has reached a decision. You will be told the decision on the day if at all possible.

If the case is complicated or the summing up doesn't finish until late in the day the tribunal may "reserve" their decision. This means they won't decide that day and you'll get a written decision at a later date.

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Compensation

If your claim is successful you'll be required to give evidence about what your losses are. If your claim is about unlawful deductions from wages this will be straightforward and you will already have given your evidence about this. If your claim is unfair dismissal then you'll have to give evidence about what you've been doing to look for work. It will be helpful if you have with you copies of job adverts you've applied for or letters from employers refusing you work. For calculating compensation see Law Centre fact sheet *Employment tribunals - taking your own case*.

How long will the tribunal hearing last?

Usually the tribunal will last anything up to a full day. If it's complicated or there are a lot of witnesses, it may take longer. If you think the tribunal may last more than one day you should write to the tribunal as soon as you realise this explaining why it will take longer than a day and saying how long you think it will take.

Further reading:

Employment tribunal procedure: a users' guide to Tribunals and Appeals, by Jeremy McMullen, Rebecca Tuck and Betsan Criddle. Legal Action Group, 2004

Other Law Centre publications referred to:

Fact sheets *Employment tribunals - taking your own case*
 Preparing a statement

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.

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