

Your guide to problems at work



The Law Society

Get advice early

Employment law can be complicated, and few people have a clear idea of all their rights at work. If you think your employer has treated you unfairly, it is important to get legal advice at the earliest opportunity. In some circumstances there are particular steps you must follow to sort problems out with your employer before you can take a complaint to an employment tribunal, as well as specific deadlines for making such complaints. Generally, the longer you leave a problem, the harder it is to solve.

A solicitor can:

- explain your options;
- tell you if you have a legal case against your employer;
- help you decide whether your case is worth taking further; and
- explain what you should do next.

Finding a solicitor

To find a solicitor who deals with employment law, visit our website at www.lawsociety.org.uk/findasolicitor and search under 'Employment'. Or you can call 0870 606 2555.

If you are a trade union member, you may be able to get legal advice from a union official or a solicitor appointed by the union.

Starting the process

Once you have found a solicitor, you should explain your situation briefly over the phone and set a date for a meeting. Make sure that you mention the dates of the events you are concerned about. If you plan to take someone with you to the meeting, mention this and ask if there are any documents you need to bring.

What your solicitor will need to know

At the meeting your solicitor is likely to ask you:

- how long you have worked for your employer;
- how much you earn;
- the details of your problem at work;
- what events have led you to your current situation;
- whether you have any relevant documents;
- whether there are any documents which you do not have that might be relevant to the case; and
- what, if anything, you have already done to sort the matter out.

Exploring the alternatives

Once you have explained your circumstances in detail, your solicitor can explain your options. If your solicitor believes you have a case and you want to take it further, you need to decide how you are going to do this.

If you have not already done so, you may need to try to sort

the problem out with your employer direct before taking any other action. Your solicitor can help you set out your case and, if appropriate, try to negotiate a settlement for you. If you are happy to carry out negotiations directly with your employer, your solicitor can offer useful advice on how best to go about doing this.

If you cannot solve the problem with your employer direct, an employment tribunal may be your best option. If so, your solicitor can help by preparing your case or representing you at the tribunal.

Following your employer's procedures

It is important to try to sort out your problem with your employer direct first. In some circumstances, employment tribunals will not hear your claim unless you can show that you have set out your complaint in writing to your employer before taking your claim to the tribunal.

If you have started using your employer's complaints procedures or if your employer has started to take action against you (for example, about your behaviour, the quality of your work, your ability to do your job or your attendance) you should try to go to any meetings that are arranged and use any appeal procedures your employer has in place.

You should try to solve your problem with your employer direct because:

- matters can often be sorted out quite quickly this way; and
- employment tribunals can reduce your compensation if you haven't tried to sort out the matter with your employer before taking your case to them.

Time limits

The time limits for taking your claim to a tribunal depend on what your complaint is about.

If you are complaining because you think you were unfairly dismissed, you must make your claim to the tribunal within three months of the date you were dismissed (i.e. within three months less one day from the day you were dismissed).

If your claim is about statutory redundancy payments, you have six months to make your claim to the tribunal, from the date you were dismissed. If your claim is about a breach of contract (for example, that your employer has not paid you a contractual redundancy payment), you must claim within three months of being dismissed.

If your complaint is about something else your employer has done, including constructive dismissal, **before 6 April 2009**, you must first set out your complaint in writing to your employer within three months of the date of the events you are complaining about. You must then wait 28 days from the date that you wrote to your employer before you take your claim to a tribunal. In these circumstances, you have six months from the date of the event to make your claim to the tribunal (i.e. six months less one day).

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If your complaint is about something else your employer has done **after 6 April**, you have three months from the date of the event to make your claim to the tribunal. However, before doing this you should try to resolve your complaint internally as under new rules (the ACAS Code) any compensation you may be awarded could be reduced by up to 25% if you have not tried to sort your dispute out with your employer before going to the tribunal. In your claim, you need to set out:

- your name and address;
- the name and address of the respondent or respondents (the person or organisation against whom you are making a claim); and
- the details of your complaint;

The deadlines may be extended, but only in special circumstances. We have set out above a brief summary of the basic rules but because the rules on time limits are complicated it is worth getting advice from a solicitor as soon as you can to make sure you make your claim in time.

Compromise agreements

If you can reach an agreement with your employer without going to a tribunal, this can be recorded in a 'compromise agreement'. This is a legal document which confirms the terms of the settlement you have agreed, in exchange for which you give up your legal claim against your employer. You may be able to get your employer to make a contribution to your legal costs as part of the agreement.

Employment tribunals

An employment tribunal is chaired by a lawyer and made up of two independent 'wing' members with experience of employment relations. It is up to the tribunal to:

- weigh up the evidence;
- consider the law; and
- decide whether your claim against your employer is justified.

In doing this the tribunal may also consider:

- what policies or procedures your employer has for dealing with problems at work;
- your behaviour and your employer's behaviour throughout the time you were employed; and
- what steps you and your employer have already taken to solve the problem.

Tribunal hearings are usually completed within a day.

Decisions are made by majority vote and most are announced straight away. If the tribunal decides in your favour, it has the power to award you compensation. Or if you are claiming for unfair dismissal, it can sometimes order your employer to give you your job back, though this is rare.

It is important to remember that even if you win your tribunal case, you may not receive any financial award. If you do, the amount you receive is unlikely to be large. The average

compensation award is £4,000, and often much of the award is simply to compensate you for the actual losses you have suffered. Because of this, it is almost always better to sort out problems early, before losses begin to mount up.

Claiming unfair dismissal

Generally, you are only entitled to make a claim for unfair dismissal once you have been employed for a year or more, full or part-time. However, if you are dismissed for any of the reasons described below, your dismissal is 'automatically unfair'. This means that you are protected by law from the first day of your employment. These reasons include:

- trade union membership or duties;
- whistle-blowing (telling your employer or someone else about anything illegal or dangerous you know is happening at work);
- health and safety issues; and
- exercising a legal right, such as your right to a minimum wage, paid leave, leave for family reasons including pregnancy or maternity, a written statement of your terms and conditions of employment, or an itemised pay statement.

Discrimination

If you believe that you are being treated less favourably than other employees for any of the reasons set out below, you may have a discrimination claim. You are protected against discrimination based on any of the following.

- Your sex (including reasons related to being pregnant, being transsexual and whether or not you are married)
- Your sexuality
- Your race, including your skin colour, nationality, and ethnic background
- Your religion and beliefs
- Your disability
- Your age

You can make a claim to the tribunal if you have been less favourably treated at any stage of your employment. This includes how you were treated when you applied for the job and were interviewed, as well as during your employment or after your employment ends. Your solicitor can tell you more about this.

Solicitors' charges

Charges can vary between solicitors. They depend on:

- the experience and knowledge of the solicitor; and
- how complicated your case is.

If your solicitor acts as a consultant in helping you to prepare your case but does not actually represent you, their charges are likely to be based on an hourly rate. However, if the case goes to a tribunal, other types of fee arrangement may be

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more suitable. You could, for example, agree a 'contingency fee' where, if you win, the solicitor gets an agreed percentage of the pay-out. Your solicitor can run you through the options.

Help with costs

Legal aid is not available to pay for a solicitor to represent you at a tribunal. But if your income is low, you may be able to get financial help to prepare your case before it reaches tribunal. If in doubt, you can get free advice on this at your local citizens' advice bureau or law centre. You will also find information on all these options on our website at www.lawsociety.org.uk/findasolicitor under 'Paying for legal services'.

Trade union members are normally entitled to free legal help from a trade union official or from a solicitor employed by the union. Check with your workplace representative or your union's regional office.

Some household contents insurance policies also cover legal expenses for claims in an employment tribunal, so it is worth checking your policy to see if it covers this.

Tribunals can order that you pay the employer's costs if you have acted unreasonably by making your claim. Your employer might have to pay your costs if they have acted unreasonably by disagreeing with your claim. Your solicitor can give you advice about this.

More information

This is one of a series of leaflets covering the most common types of legal services which solicitors provide. Other leaflets in the series are listed below. You can get them from your solicitor or from www.lawsociety.org.uk/commonlegalproblems.

Your guide to making a will

Your guide to buying a home

Your guide to renting out your property

Your guide to renting a home

Your guide to getting a divorce

Your guide to setting up in business

Your guide to making a personal injury claim

Your guide to financial matters for the elderly

Your guide to setting up home with your partner

Your guide to using a solicitor

Your guide to probate

Your guide to claiming asylum

You can get this leaflet in large print, in Braille, on audio tape and on CD. If you need one of these versions, please contact us by e-mail at accessibility@lawsociety.org.uk or phone 0870 606 2555.

You can also get this leaflet in different languages. You can get these by visiting our website, www.lawsociety.org.uk.