

## EMPLOYMENT TRIBUNAL CASES

### OUR COSTS

We provide prompt and practical advice to employers in defending claims for wrongful or unfair dismissal at an Employment Tribunal.

#### What is Wrongful Dismissal?

Wrongful dismissal is a claim by an employee that their employment was terminated in breach of contract, for example because their employer failed to give them (or pay them for) the required period of notice.

#### What is Unfair Dismissal?

Unfair dismissal is a claim that can be made by certain employees that their employer acted unreasonably in terminating their employment.

#### How much do these claims cost?

The information set out below is a general indication of the costs involved in defending claims of wrongful or unfair dismissal before an Employment Tribunal. However, no two situations are the same and we tailor our advice and fees to your own requirements. We will always provide you with a specific estimate of costs, based on the particular circumstances of your case.

<b>Simple cases:</b>	<b>£2,500 – £9,999 +VAT</b>
<b>Medium complexity cases:</b>	<b>£10,000 – £29,999 + VAT</b>
<b>High complexity cases:</b>	<b>£30,000 + VAT upwards</b>

#### Other costs:

- Currently there are no fees payable by parties to Employment Tribunal claims. However the government has indicated that fees may be introduced in the future.
- Out of pocket expenses. You will be charged for any out-of-pocket expenses that we may incur in dealing with your case, for example: Travelling costs, Car parking charges, Subsistence, Courier's fees or Hotel charges (where an overnight stay is required). Unless there are exceptional circumstances, we will agree any out-of-pocket expenses with you before incurring them.
- Barristers' fees: we may consider it appropriate (or more cost effective) to instruct a barrister (or Counsel) to represent you at the hearing of the Tribunal claim. If so,

## Employment law and people management experts.

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we will agree Counsel's fees with you in advance of the hearing. Counsel's fees can vary depending on a number of factors including: the seniority and experience of the barrister, the complexity of the case, the amount of preparation time required by the barrister and the length of the hearing.

### **What is the difference between simple, medium or high complexity cases?**

We regard a case as 'simple' if it has one or more of the following features:

- the case is undefended by your opponent
- the facts of the case are straightforward and/or largely agreed by both parties
- it involves a straightforward issue of law
- it is listed by the Employment Tribunal for a hearing of no more than 1 day

However, you should bear in mind that cases which start as simple ones may become of medium or high complexity as the case progresses.

### **Factors that could make a case more complex include:**

- complex or disputed issues of law or fact
- multiple, disputed allegations by either party
- numerous witnesses giving evidence on either side
- a claim for a large sum of money even if the claim is otherwise "simple"
- a large volume of documents
- cases listed for a hearing lasting more than 1 day
- amending a claim or defence
- providing further written particulars about the claim or defence
- dealing with complex preliminary issues, for example, whether the claim was brought in time, or whether the Claimant was disabled
- attending and preparing for Preliminary hearings
- making or defending applications to the Employment Tribunal
- defending claims that are brought by unrepresented Claimants
- making or defending a costs application
- allegations of discrimination which are linked to the dismissal
- if there is a mix of corporate and personal liability



### What timescales are involved in Employment Tribunal cases?

The process is likely to take up to 12 – 18 months from start to completion.

You should bear in mind that:

- more complex claims are likely take longer to conclude than more straightforward claims
- timescales can be affected by factors outside our control, including:
  - the efficiency of the Tribunal service (for example in dealing with correspondence or listing your case for hearing);
  - the approach of your opponent; and
  - how quickly and efficiently you provide us with your instructions.

### What are the usual steps involved in Employment Tribunal cases?

Please note that not all of the steps below may be relevant to your case.

#### Step 1

**Instruct us to act for you.** At our initial meeting or discussion, we will talk you through the details of the case on which you are seeking our advice. We may ask you for additional information and/or documentation. At or shortly after this initial meeting or discussion we will advise you as to your options and the merits of the case. We will provide you with a quote, and if you choose to instruct us to proceed, we will send you our terms of engagement letter confirming your instructions and our charges.

#### Step 2

**Pre-claim conciliation.** In most cases, an employee will be required to contact the Advisory, Conciliation and Arbitration Service (ACAS) before lodging an Employment Tribunal claim. We will advise you on the merits of using ACAS's free Early Conciliation service and, if you wish us to do so, conduct any negotiations via ACAS on your behalf.

#### Step 3

**The Employment Tribunal claim.** We will:

- advise you about the claim that you have received and the merits of your defence;
- advise if you can make any counter-claim against the employee;
- draft your response to the claim, seek your approval of the document and lodge it as appropriate with the Employment Tribunal;
- consider any schedule of loss setting out the compensation being claimed in the case;
- it may be necessary to request further particulars from your opponent about aspects of their case. If so, we will draft a request for further particulars, serve it on your opponent, consider their responses and seek your comments thereon.



#### Step 4

**Conciliation.** Even if Early Conciliation has failed the services of ACAS are generally available and, if you wish us to do so, we will continue to discuss with ACAS the possibility that your case may be settled without recourse to a Tribunal hearing. If the case is settled, we will advise you about (and if necessary draft) the settlement agreement.

#### Step 5

**Preliminary Hearing.** The Tribunal may decide that a Preliminary Hearing is necessary – for example because there is a preliminary issue of law to be dealt with or because the Tribunal wishes to better understand and identify the issues in your case.

If a Preliminary Hearing is listed by the Tribunal some or all of the following steps may be necessary:

- preparation of an agreed list of issues/chronology
- preparation of agreed directions
- collation of a bundle of documents for use at the Preliminary Hearing
- drafting any witness statements for use at the Preliminary Hearing

We will advise you about whether your attendance at the Preliminary Hearing is necessary and discuss whether we will represent you or whether we recommend the instruction of Counsel.

In some complex cases more than one Preliminary Hearing may be necessary.

#### Step 6

**Directions.** It will be necessary for us to comply with any Directions issued by the Tribunal. Directions are the procedural steps that the parties must comply with in preparation for the final Hearing of your case.

Typical actions we will need to undertake as a result of the Tribunal's directions include:

- preparing/responding to requests for further particulars
- collating documents relevant to your case
- disclosing those documents to your opponent
- preparing/agreeing an indexed and paginated bundle of documents for use at the final Hearing
- preparing a Schedule of Loss or counter-Schedule
- interviewing you and any of your witnesses who will give evidence at the final hearing
- drafting, seeking approval of and finalising written witness statements of all your witnesses
- exchanging witness statements with your opponent
- considering, advising you about and seeking your comments on your opponent's witness statements



- preparing/agreeing a list of issues
- preparing/agreeing a chronology
- lodging witness statements, bundles and other relevant documents with the Tribunal in readiness for the hearing.

### **Step 7**

**Hearing.** Well in advance of the hearing we will discuss with you whether we will represent you at the hearing or whether we recommend that Counsel be instructed. If the latter, we will send a written set of instructions to Counsel together with copies of all relevant paperwork.

Please note that, following the conclusion of the hearing on the merits of your case, there may be a separate hearing to determine the amount of any compensation to be awarded.

### **Step 8**

**The Decision.** The Tribunal will either issue its decision about your case orally at the conclusion of the hearing or will send its written decision to the parties at a later stage.

Following receipt of the Tribunal's decision we will discuss with you the implications of that decision and if necessary, advise about your ability to appeal or review the decision.

### **What is not included in your costs?**

The fee indications set out in this section are in respect of steps 1 – 8 above.

They do not include any subsequent work – for example representing you at any appeal or review hearing or advising you about the merits of any such appeal or review.

