

# EPL Update - Amendments to the Employment Tribunal Rules

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Employment Practices Liability (“EPL”) insurers, broker and insureds will no doubt be aware that since the abolition of Employment Tribunal fees in 2017, there has been an increase in the number of Employment Tribunal Claims being submitted. Alongside that rise, together with the impact of Covid-19, there is currently a significant backlog in the administration of Employment Tribunal Claims leading to fairly lengthy delays in Claims being heard, some as far into the future as 2022.

Since 26 June 2020, hearings have resumed but some Employment Tribunals are unable to operate fully due to social distancing measures as well as staffing issues or where there is a need to isolate or quarantine in line with Government guidance.

The Employment Tribunals are making use of the Ministry of Justice’s Cloud Video Platform (CVP) system to run some hearings remotely. CVP is being used for ‘straightforward’ matters, such as preliminary hearings and straightforward unfair dismissal claims, as well as more complex matters including multi-day discrimination claims. Some hearings are taking place in person, and others a hybrid of CVP and in person.

## **Reforms**

On 8 October 2020 the Government will introduce a number of reforms aimed to reduce the backlog of cases. Amendments to the Employment Tribunal Rules of Procedure 2013 have been designed to increase the Employment Tribunals capacity to hear claims and make the process quicker, simpler and more cost effective:

- In order to increase judicial capacity, **non-employment judges will be allowed to sit as employment judges in the Tribunals** if they meet suitability criteria, and s, subject to authorisation by the Senior President of Employment Tribunals, **legal officers (who don’t need to be legally qualified) will now be able to carry out some functions** such as accepting or dismissing claims, or permitting extensions of time to respond to a claim.
- **More hearings are now being heard remotely via CVP.** Certain rules regarding members of the public being allowed to see witness statements are being relaxed so that such inspection may be otherwise than during the course of the hearing. Also parties and members of the public can hear what the tribunal hears and ‘so far as is practicable’ see any witness as seen by the tribunal. The relaxation of these rules is to reduce the need for physical hearings.
- **Employment Judges will be able to issue default judgments without a full hearing** even where a preliminary hearing has taken place. **Judgments will also be able to be reconsidered by any judge**, not just the same judge who gave the original judgment. The Tribunal will also have the power to list cases for hearing on receipt of the claim form provided that the hearing date is no sooner than 14 days after the response is due, in order to ensure maximum flexibility for hearings to be listed as soon as possible.
- **Multiple claimants will now be able to use the same claim form** if they give rise to common or related issues of fact or law, or if it is otherwise reasonable. Multiple responses will also be allowed to be detailed on the same form.
- **Claims will no longer be rejected if the Early Conciliation (“EC”) number on the claim form is not the same as on the EC certificate** and the judge considers it would not be in the interests of justice to reject the claim.
- **Claims will be accepted where there is simply ‘an error’ in relation to name or address rather than a ‘minor error’** and it would not be in the interests of justice to reject the claim, allowing for more claims to be passed through at a quicker rate.

## **Early Conciliation**

Acas early conciliation has been available since 6 April 2014 and became mandatory for claims presented on or after 6 May 2014. The EC procedure requires a prospective claimant to notify Acas, using an EC form or by telephone, before submitting relevant proceedings to the Employment Tribunal

From 1 December 2020, there are also changes to the EC Rules with **the most significant being the change which extends the basic EC period from one calendar month to six weeks** (there will not be an option to extend this further). This change offers **greater potential to achieve early settlement** and reduce the number of cases passing through to the Tribunal, saving both time and money for the parties, and also hopefully significantly reducing the life cycle of claims and indemnity spend for EPL insurers.

## **Comment**

Any measures designed to help the Employment Tribunals to tackle the backlog will be welcomed, particularly in terms of reducing bureaucracy and allowing the Tribunal to list hearings more quickly. Further, the new blanket six-week period for EC in all claims could result in a greater chance of pre-claim resolution. However it is unclear precisely how effective these changes will be in practice given the current estimate is that there is a 45,000 claim backlog at present, alongside the predicted sharp increase in claims over the next few months as we head out of the current furlough scheme.

## **Our EPL expertise**

DAC Beachcroft has one of the largest Employment Law practices in the UK and is ranked as a National Leader in Chambers & Partners. We have been advising on and handling EPL claims for insurers for many years, and have a dedicated EPL team. EPL claims account for a significant proportion of the employment tribunal claims handled at DACB. For more information contact Louise Bloomfield, Partner, or Anjali Sharma, Senior Associate.

## **Authors**



**Louise Bloomfield**

*Leeds*

+44 (0) 113 251 4717

[lbloomfield@dacbeachcroft.com](mailto:lbloomfield@dacbeachcroft.com)



**Anjali Sharma**

*Leeds*

+44(0)113 251 4963

[ajsharma@dacbeachcroft.com](mailto:ajsharma@dacbeachcroft.com)

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