



## **EMPLOYEES OR WORKERS FREQUENT ASKED QUESTIONS**

We have compiled list of questions we are frequently asked by employees who wish are perhaps seeking legal advice and representation. Please click on links below:

- 1 Are there time limits in Employment Law cases?**
- 2 What do I need to do before making a claim to the Employment Tribunal?**
- 3 Are there fees to pay to issue Employment Tribunal claims?**
- 4 Do I have to pay the opponents fees if I lose my case?**
- 5 Will I win my case?**
- 6 It sounds difficult and expensive is it worth it?**
- 7 How much does it cost for legal advice?**

### **1 Are there time limits in Employment Law cases?**

Yes often very short time limits. For example, the time limits for making claims to an Employment Tribunal are 3 months in cases of unfair dismissal, unlawful deductions of pay, notice and holiday pay. The time limit for claiming a redundancy payment is 6 months. Claims for unlawful discrimination must be made within 3 months of the date of the prohibited act – this does not include any time pursuing the employer’s internal grievance procedure.

Employees must be very careful that the time limit does not expire. Employment Tribunals can extend the time limits in certain circumstances but it is best not to rely on this. Take advice as soon as you have a problem to confirm the time limits.

### **2 What do I need to do before making a claim to the Employment Tribunal?**

Before issuing claims in the tribunal there is compulsory Early Conciliation through ACAS by the Claimant completing an Early Conciliation Notification form. ACAS will contact both parties to see if the matter can be resolved before a tribunal claim is made. This puts the time limit for the claim on hold for a month or at most a further 2 weeks if conciliation with ACAS is continuing but not completed. If a settlement is agreed between the employer and employee ACAS issue a COT3 agreement of the terms of settlement. If it is not settled ACAS issues a certificate with a reference number which is required before completion of the Employment Tribunal claim form. ACAS will conciliate but they will not offer advice to either party. Expert legal advice is advisable to confirm the appropriate level of settlement.

### **3 Are there fees to pay to issue Employment Tribunal claims?**

Yes for Claimants there are issue fees of £160.00 for category A claims (unpaid wages, pay in lieu of notice, redundancy payments, time off for antenatal classes) and £250.00 for category B claims (unfair dismissal, discrimination, whistleblowing) and also hearing fees of £230.00 for category A and £950 for category B.

If employers make a counter claim for breach of contract the fee is £160.00.

Other fees apply such as for application to dismiss on settlement, Judicial Mediation, review of judgments and there are a scale of fees for multiple cases.

Fee remission allows people on means tested benefits to avoid the fees by completing a form and providing evidence of their benefits and those on a low income can apply for full or partial remission by completing the form and providing proof of income.

### **4 Do I have to pay the opponents fees if I lose my case?**

The usual rule about fees in tribunals are that each party pays their own fees. The Employment Tribunal has power to review claims or responses and strike them out if they have no prospect of success or order that a party pays a deposit of up to £1000 to continue with a claim or response and the deposit is lost if they fail on that issue. Costs orders can also be made if parties act unreasonably, scandalously or vexatiously causing their opponent to incur costs. The Employment Tribunal can make costs orders against a party up to £20,000. They can refer the matter to County Court for detailed assessment of costs above that amount.

Unreasonable behaviour might be rejecting an offer if it is reasonable and acceptance would have avoided significant costs such as the costs of legal representation at a hearing. All offers and threats of costs must be taken seriously but the reality remains that tribunals rarely make costs awards and they take account of a person's ability to pay before making costs orders.

Sometimes parties or their advisers cause their opponents or advisers to waste costs by not following case management orders or otherwise causing delay and tribunals can make "wasted costs" orders in those circumstances. Always complete case management orders or ask the tribunal for more time or instruct a solicitor to deal with the case for you. An experienced Employment Law solicitor can follow all the procedures and advise of the appropriate action every step of the way. They can put your mind at rest if the opponent are acting unfairly and they can advise you appropriately if you genuinely need to take action to avoid costs orders.

### **5 Will I win my case?**

One of the most difficult issues about any legal case is advising if a case will be won or lost. In some cases the evidence is clear cut with more witnesses on one side than the other and to the legal standard of proof in civil cases – "on a balance of probability" one party is much more likely to win than the other if their witnesses say what you expect them to. Often documents will also support one party's case, in particular emails, text messages and even voice recordings. Each party is entitled to disclosure of all relevant documents and these must be reviewed very carefully. Often the evidence is very finely balanced between each party's case with witnesses on each side contradicting each other and even some of the documents supporting each party's case. It is often difficult to assess who will win as the Employment Tribunal must assess all of the evidence. Listening to

witnesses answer questions and cross examination and comparing all of the documents. Solicitors often assess prospects of winning or losing in percentage terms like 60/40 or 50/50. Even the best case has a 10% chance of failure because a witness may be very nervous and make mistakes giving evidence. Some opponents simply will not give in and offer to settle the case. Some will use the better financial position to try to force their opponent to give up.

The majority of cases are settled, often before a claim is made to the Employment Tribunal whether by settlement agreement, ACAS Early Conciliation or negotiation through each parties employment law solicitors

## **6 It sounds difficult and expensive is it worth it?**

Access to justice is important. There is no legal aid for employment law now but legal expenses insurance should fill that gap in funding for many people. It is important to see an experienced Employment Law solicitor for advice on the value of a claim, an estimate of the fees and the prospects of winning or losing. Some cases don't meet the criteria for making a claim because the value of the claim may not be enough to justify the fees or a claim may be too risky because of the lack of evidence even though the value of a successful claim would be high. However many claims are worth pursuing and a case with good prospects of success is more likely to settle rather than go all the way to a tribunal hearing.

## **7 How much does it cost for legal advice?**

Many people already have legal expenses insurance as part of their home (building and contents) insurance. This insurance will cover the cost of legal advice for employment law matters as long as you have a good case. The reason for this is that however a legal case is funded it is only worth incurring fees if your case is good enough to win. Speak to Hallmark Solicitors before your insurance company and we will assess your case and contact the insurance company with your permission.

If you do not have legal expenses insurance you will have to pay our legal fees and we can give you an estimate of our fees as well as an assessment of how good your case is and how much compensation you might get, or if you might get your job back (re-instatement) or a similar job (re-engagement) if you win your case. We would only advise you to make a claim if the remedy or compensation justified the fees you were paying and you have a good chance of winning the case. Hallmark Solicitors will always act in your best interests.

Sometimes the employer offers the employee compensation to terminate employment under a settlement agreement (until 2013 these were called compromise agreements). It is essential that employees have independent legal advice before accepting a settlement agreement and the employer will pay some or all of the employee's solicitor's fees. For example the employer pays compensation plus £500 for legal fees and the solicitors bill is £500 or less the employer would pay all legal costs. In some circumstances the employees legal fees may exceed the amount the employer is prepared to pay and in that case the employee would pay the additional legal fees. We will always give fee estimates and inform you when our fees are increasing because of the amount of work required.

### **Hallmark Solicitors**

At Hallmark, we work on the concept that prevention is better than cure. Sound legal advice acted upon in good time can save you and your business from problems and undue costs in the long run. It can help you gain a competitive advantage over your rivals and is why we offer all new clients a free

initial consultation. We are available to meet with you on a confidential and no obligation basis to discuss any requirements you may have.

### **Our Expertise**

Hallmark Solicitors' Employment Law Department has lawyers with extensive employment law experience. We can assist with the drafting of your contractual documents to ensure your interests are protected and you are Construction Act compliant. We can also assist with staff training in this area. In the event of a dispute we are experienced in all forms of dispute resolution and have particular experience in dealing with employment tribunal matters.

### **HALLMARK SOLICITORS**

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