

GUIDELINES FOR MAKING A CLAIM AND COMPLETING THE CLAIM FORM

WHAT DOES THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL DO?

The Employment and Discrimination Tribunal (Tribunal) hears cases and makes decisions on disputes arising both in the workplace and in the provision of services. Although it is not as formal as a court, the Tribunal must comply with rules of procedure and act independently.

HELP AND ADVICE

You can obtain help and advice from:

- Jersey Advisory & Conciliation Service (JACS) on 01534 730503 for employment-related claims (including discrimination arising in the workplace). Their website is www.jacs.org.je;
- Citizens Advice Jersey (CAJ) On 01534 724942 for non-work related discrimination. Their website is www.cab.org.je;
- your trade union, staff or professional association (if you are a member); or
- lawyers and other professional advisers.

It may be useful to look at previous decisions of the Tribunal in cases similar to yours at www.jerseylaw.je.

Please note that the Jersey legal aid scheme does not pay for employment or discrimination law advice or representation.

Staff at the Tribunal office can answer general enquiries, give information about Tribunal publications and explain how the Tribunal system works. They cannot give legal advice, such as whether your claim is likely to be successful.

HOW SOON MUST I MAKE MY CLAIM TO THE TRIBUNAL

The time limit for making a claim to the Tribunal depends on the type of claim you are making. Most claims (Including unfair dismissal and discrimination) should be received by the Tribunal within 8 weeks from the date when your employment ended or the incident about which you are complaining happened. It is important that your claim is presented within the appropriate time limit, if you are unsure you should take advice on the time limits as soon as possible

Please note that time will start to run on the date when your employment terminated or when the act of discrimination occurred. Instead of counting in weeks, it is often easier to count 56 days from the relevant date. This means that if it happened on 1

March the Tribunal must receive your claim on or before 25 April. If it happened on 5 March the Tribunal must receive your claim on or before 29 April.

The Tribunal is required to apply these time limits very strictly. Therefore, if we receive your claim outside the relevant time limit, the Tribunal will not be able to accept your claim except where it was not reasonably practicable for you to file the claim in time (see Guidance Note “Late Filing of Tribunal Claims”).

UNFAIR DISMISSAL QUALIFYING PERIOD

In general, in order to make a claim of unfair dismissal, you must have worked continuously for the respondent for at least 52 weeks. However, there are some circumstances in which unfair dismissal may be claimed and no minimum qualifying service is required. You should take advice to find out whether this small number of exceptions apply to your claim.

WHERE TO SEND YOUR CLAIM

The address of the Tribunal to send a Claim Form by post is:

First Floor
International House
41 The Parade
St Helier
JE2 3QQ

You should keep a copy of your Claim Form for your records. It is your responsibility to ensure that the Tribunal office receives your claim within the relevant time limit.

INFORMATION NEEDED BEFORE A CLAIM CAN BE ACCEPTED

Your claim cannot be accepted unless it meets certain conditions. It must be on an approved Claim Form which is provided by the Tribunal. The Claim Form can be found on the Tribunal’s website (www.tribunal.je).

By law, you must tell us:

- your name and address or the name and address of the organisation bringing the claim (eg. where an employer is issuing a breach of contract claim against an employee); and
- the name and address of the respondent or respondents (the person or organisation against whom you are making a claim).

You must also give sufficient details about your claim so that the Tribunal and respondent can understand what your claim is about.

If you do not provide these details, your claim will be rejected.

WHAT HAPPENS WHEN I SEND IN MY CLAIM?

If your claim is rejected, the Tribunal office will return your Claim Form to you with a letter telling you the reason for the rejection and what action you should take. Please note that if a claim is rejected, time will continue to run against you so far as the time limit for making your claim is concerned.

If your claim is accepted, we will send you a letter to confirm this. That letter will contain a link to our publication 'Guidance to the Employment and Discrimination Tribunal Process' which will tell you the next steps. At the same time we will send the respondent a copy of your Claim Form together with a response form for their response.

In most cases we will also send a copy of your claim to JACS (for work-related disputes, including discrimination) or to CAJ (for non-work related discrimination). A JACS or CAJ conciliator will contact you to explore whether or not it might be possible to resolve the claim through conciliation and without the need for a Tribunal hearing.

CORRESPONDENCE

In future correspondence we will refer to you as the 'claimant' and to the person you are complaining against as the 'respondent'. We will send a copy of your Claim Form to the respondent. Our preferred method of communication is by email. Please check your email account regularly.

Parties are required under the Tribunal's Procedure Order to copy any letters, emails or documents that they send to the Tribunal (other than an application for a witness order) to all other parties and must state that they have done this. You can show that this has been done, for example, by the use of 'cc'.

We will send you and the respondent any decision the Tribunal makes.

You must let us know immediately if your contact details change. If you have a representative (a person you ask to act on your behalf) who you have formally instructed, we will send all correspondence about your case to them and not to you. If your representative has not been formally instructed (eg a family member, friend or other uninsured individual) we will send all correspondence about your case to that representative but will also copy you in on all such correspondence.

DO I HAVE TO PAY THE RESPONDENT'S COSTS?

The Tribunal does not have the power to make an order for costs or preparation time. Similarly, the Tribunal does not have the power to order payment to cover expenses.

FILLING IN THE CLAIM FORM

We have designed these guidance notes to be as helpful as possible. However, they do not give a full statement of the law. **If you do not provide the information marked with an asterisk (*) your claim will not be accepted.**

DO NOT include any supporting documents with the Claim Form. Supporting documents **will not be accepted** by the Tribunal at this stage. Anyone who is making a claim must complete this form.

1. YOUR DETAILS

Please give your details:

1.1 Tick the relevant box to show how you want to be referred to.

1.2* Give your first name or names.

1.3* Give your surname or family name in CAPITAL letters.

1.4* Give your full address, including house name/number, street, parish, town or city, county and postcode.

1.5* Please give the telephone numbers (including the full dialling code for a landline) where we can contact you during normal working hours.

1.6 Please give your mobile telephone number if different from the number provided at 1.5.

1.7* Please give your email address. If you do not have an email address please state as much. Email is our preferred method of contact and you should check it daily.

2. RESPONDENT'S DETAILS

If your claim is accepted we will send a copy of your Claim Form to the person or organisation about whom you are complaining (the respondent) so that they can prepare a response to your claim. It is important that you tell us the correct identity of the respondent and the respondent's current address in order to avoid any delay in processing your claim. If your claim is work related, you should be able to identify these details by looking at the letter that offered you the job, your contract of employment or your wage slip.

2.1* Give the respondent's name.

2.2* Give the respondent's full address and postcode.

2.3 Give the respondent's phone number.

2.4 Give the respondent's email address.

2.5 Give the full address and postcode of the place where you worked, or applied to work, if this is different from the respondent's address you gave at 2.2. If you worked from home please enter your home details, as we will treat your home address as your work address.

2.6 In discrimination cases, claims may be made against more than one respondent, *ie* the employer or organisation as well as any person for whom the employer or organisation is responsible, that you allege has committed an act, or acts, of discrimination against you.

If your claim is brought against more than one respondent please tick the box and enter the details of the second and any other respondents including their names, addresses, telephone numbers and email addresses.

Please use Section 14 of this form to give details of additional respondents where there are more than three respondents

3. MULTIPLE CASES

3.1 If you are aware that your claim is one of a number of claims arising from the same or similar circumstances against the same respondent, please tick 'Yes' and, if you know the names of any of the other claimants, include their names in the space provided. This will help Tribunal staff to process these claims efficiently.

4. TYPE OF CLAIM

Please tick the appropriate box or boxes to say what you are complaining about. In discrimination claims, please also indicate whether or not the act of discrimination was work-related.

5. DISCRIMINATION DETAILS

If your claim includes one of discrimination, please either provide the date on which the last incident occurred or confirm whether the discrimination is on-going.

6. EMPLOYMENT DETAILS

6.1 Are you 'entitled' or 'licensed' to work under the Control of Housing & Work (Jersey) Law 2012?

6.2 If your claim is against your employer or ex-employer, please give the date when your employment started and, if it applies, the date when it ended or will end.

6.3 If your employment has not ended please confirm whether you are in a period of notice

6.4 Please give your job title and say what job you do or did for your employer.

7. EARNINGS AND BENEFITS

7.1 Please give the basic number of hours you work or worked each week. Do not include overtime even if you work or worked it regularly.

7.2 Give details of your basic weekly pay before tax and any deductions but not including any overtime payments. Then give details of your normal weekly take-home pay (this is your pay after tax, Social Security and any other deductions but including overtime, commissions and bonuses). Your payslip should show these amounts. Please round the amounts to the nearest pound.

7.3 If your employment has ended, please tick the appropriate box to say if you either worked or were paid for a period of notice. If so, please tell us how long you worked or were paid for.

7.4 Give details of any other benefits you received from your employer. Examples might include a company car or medical insurance. Please describe what kind of benefit you received and give an idea of how much it was worth.

8. IF YOUR EMPLOYMENT WITH THE RESPONDENT HAS ENDED, WHAT HAS HAPPENED SINCE?

8.1 Please tick the appropriate box to say whether or not you have got another job since leaving your employment. If you have not, please now go straight to section 9.

8.2 If you have got another job, please tell us when you started (or will start) work. Please say whether the job is permanent or temporary. If it is temporary, give the likely date it is due to end (if you know it).

8.3 Please tell us the amount you are earning (or will earn) each week in your new job.

9. TYPE AND DETAILS OF CLAIM

9.1* Please give the background and details of your complaints.

UNFAIR DISMISSAL

If your claim or part of it is about being unfairly dismissed by the respondent, or if you are claiming constructive dismissal, please use the box provided to explain the background to the dismissal and give any other information you think would be helpful to us. If you disagree with the reason the respondent gave for dismissing you, please say what you think the reason was. You should describe the events which led up to your dismissal and describe how the dismissal took place, including dates, times and the people involved. If you are claiming that the respondent's actions led

you to resign and leave your job (constructive dismissal), please explain in detail the circumstances surrounding this.

DISCRIMINATION

Discrimination can take place on the grounds of sex, pregnancy or maternity, gender reassignment, race, sexual orientation, age or for a reason related to a disability. Discrimination laws apply to:

- paid work, including recruitment, training, promotion and dismissal;
- voluntary work;
- education;
- provision of goods, facilities and services;
- access to and use of public premises;
- disposal or management of premises; and
- membership of clubs.

Discrimination also covers:

- victimisation because you (or the respondent thought that you) complained about discrimination or assisted someone else to do so or you did something else connected to the rights arising under the Discrimination (Jersey) Law 2013 (“Discrimination Law”); and
- harassment, where someone engages in unwanted conduct against you which is contrary to the provisions of the Discrimination Law.

Events that happen after you have left employment can also be covered by discrimination laws. In the box please describe the incidents which you believe amounted to discrimination, the dates of these incidents and the people who were involved. Explain in what way you believe you were discriminated against. If you are complaining about discrimination when you applied for a job, please say what job you were applying for. If you are complaining about more than one type of discrimination, please provide separate details of the act (or acts) of discrimination. You should describe how you have been affected by the events you are complaining about.

REDUNDANCY PAYMENT

If you are claiming a redundancy payment please say whether you have asked your employer for payment. If so, please give the date on which you made the request.

FAMILY FRIENDLY

If you are claiming for family friendly rights such as maternity rights, flexible working or parental or adoption leave, please use the box provided to explain the background to your employer’s breach and give any other information you think would be helpful to us. You should include details of discussions relating to the breach of your rights, including dates, times and people involved.

OTHER PAYMENTS YOU ARE OWED

If you are complaining about outstanding unpaid wages, holiday pay, payment for a period of notice or some other payment (other unpaid amounts could include unpaid expenses, commission or a bonus) tell us how much you are claiming.

Please explain why you believe you are entitled to this payment, setting out full details such as the period the payment covers and the rate of pay. If you have specified an amount, please say how you worked this out. If you are claiming more than one type of payment, please give the amounts you are claiming for each type of payment and explain how you worked out each amount.

10. WHAT DO YOU WANT IF YOUR CLAIM IS SUCCESSFUL?

10.1 Please state what you are seeking from the respondent if your claim is successful by ticking the appropriate box. If your claim is for non-work related discrimination, you may only seek a recommendation or compensation.

UNFAIR DISMISSAL

In an unfair dismissal case the Tribunal can order:

- that the employer reinstate you in your old job; or
- re-engage you in a comparable job; or
- award you compensation.

Please note that it is not possible to be reinstated or re-engaged and also receive compensation.

Assuming that you are not returning to work with the employer then the Tribunal can award financial compensation which is calculated with reference to your length of service and your weekly wage.

If you wish to be re-instated or re-engaged, you should tick the appropriate box. If the Tribunal does not make a direction for continued employment, it will automatically award compensation to you instead.

In cases where the Tribunal orders that the employer reinstate you in your old job or re-engage you in a comparable job, you would also receive backdated wages. Other employment benefits such as membership of your employer's pension scheme would be restored as if you had not been dismissed. If your employer refuses to re-employ you in accordance with the Tribunal's order, he cannot be compelled to do so. However, in such circumstances the Tribunal would award compensation as above and may also consider whether to increase that award of compensation to take into account the employer's refusal to comply with its order.

You should note that there are certain circumstances where the Tribunal can reduce the unfair dismissal award. One example is if it concludes, on the basis of the evidence it hears, that you have 'contributed' to (*ie* partially been to blame for) your dismissal. The Tribunal cannot award extra compensation in unfair dismissal cases for upset or hurt to feelings.

DISCRIMINATION

Recommendation

If a Tribunal finds that unlawful discrimination has been proved it has the power to recommend that an employer takes steps to reduce the effect of discrimination on you and on any other person such as your colleagues at work. A recommendation will identify the steps that have to be taken within a specified time and could, for example, include re-training staff; publishing selection criteria used for staff transfer or promotion; setting up a review panel to deal with equal opportunities, harassment and grievances. If the employer fails to comply with the recommendation and the Tribunal also awarded you compensation that award can be increased. If no compensation was awarded initially it can be awarded once it is clear that the employer has not complied with the recommendation. Although not binding, failure to comply with the Tribunal's recommendation could be damaging to the employer's reputation and be used in evidence against them in future discrimination claims.

Compensation

In a discrimination case the Tribunal can award compensation for financial loss. This could be loss of wages if you were dismissed for a discriminatory reason or if you should have got a job you applied for but were unsuccessful due to discrimination. However, you are expected to minimise (mitigate) your loss by trying to find another job.

In a discrimination case the Tribunal can also award compensation for injury to feelings. This is a sum of money paid to compensate for the upset and distress caused by discrimination. The amount awarded will vary depending on how badly a person has been affected. Evidence will be needed so the Tribunal can assess this.

A Tribunal can also make a recommendation in a discrimination case and if the employer does not do what is recommended compensation can be given instead.

Overall the Tribunal award of compensation will be what is considered just and equitable in all the circumstances and will be subject to the relevant statutory maximum caps. If you have made both an unfair dismissal and discrimination claim you will not get 'double' compensation. In other words, if you received the wages you have lost as part of the unfair dismissal compensation you will not be awarded that wage loss again as part of your discrimination compensation.

10.2 If you are seeking financial compensation, please enter the details in the space provided as to the amount of compensation you are seeking.

10.3 If you are claiming financial compensation please give details of how you have calculated the amount

11. YOUR REPRESENTATIVE

You only need to fill in this section if you have appointed a person to act on your behalf (a representative). If you appoint a representative we will deal directly with them, not with you, although if your representative has not been engaged in a professional capacity and does not hold professional indemnity insurance, we will continue to copy you in on correspondence. Please do not give the name of a representative unless they have agreed to act for you. Do not give the name of a person or organisation who is only giving you advice on filling in this form.

11.1 If you know the name of the person representing you, give it here. If you don't know it, leave this section blank.

11.2 Give the full name of the representative's organisation (for example, the union, firm of solicitors or Citizens Advice Jersey).

11.3 Give the full address and postcode of the representative's organisation.

11.4 Give the representative's phone number.

11.5 Give the representative's email address.

11.6 Give the reference number your representative has given to your case (if you know it)

11.7 State whether or not your representative holds professional indemnity insurance.

11.8 State whether or not your representative will benefit from representing you in your claim. For example, are you paying for their services? Have you entered into a "no win no fee" arrangement? Or will the representative take a cut or seek to recover an uplift in any award?

12. TRANSLATOR

If you require a translator, please tick 'yes' and tell us which language you speak. Please note that the Tribunal will not allow you to bring your own translator to hearings.

13. DISABILITY

If you have a disability it would be helpful if you could advise us of any assistance you will need as your claim progresses through the system.

14. DETAILS OF ADDITIONAL RESPONDENTS

Use the boxes to give details of additional respondents.

15. ADDITIONAL INFORMATION

Please **do not** send either a covering letter or supporting documentation with your Claim Form. You should give us any extra information that you want to tell us

in your Claim Form. For example, you may want to give an explanation of why your claim is out of time or tell us whether you raised the issue with the respondent and, if so, what if any action was taken. If there is not enough space, please continue on a separate page and attach it to this form. If you are providing information on separate pages for a number of questions, please say here how many pages in total you have attached to the form.

16. CONFIRMATION

Please check the checklist which appears at the end of the form. Once you are happy with the contents of the form, please sign and date the form in the boxes provided.

A copy of your Claim Form will be sent to the respondents and either to JACS or to CAJ. We will put the information you give us on this form onto a computer. This helps us to monitor progress and produce statistics for our annual report.

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