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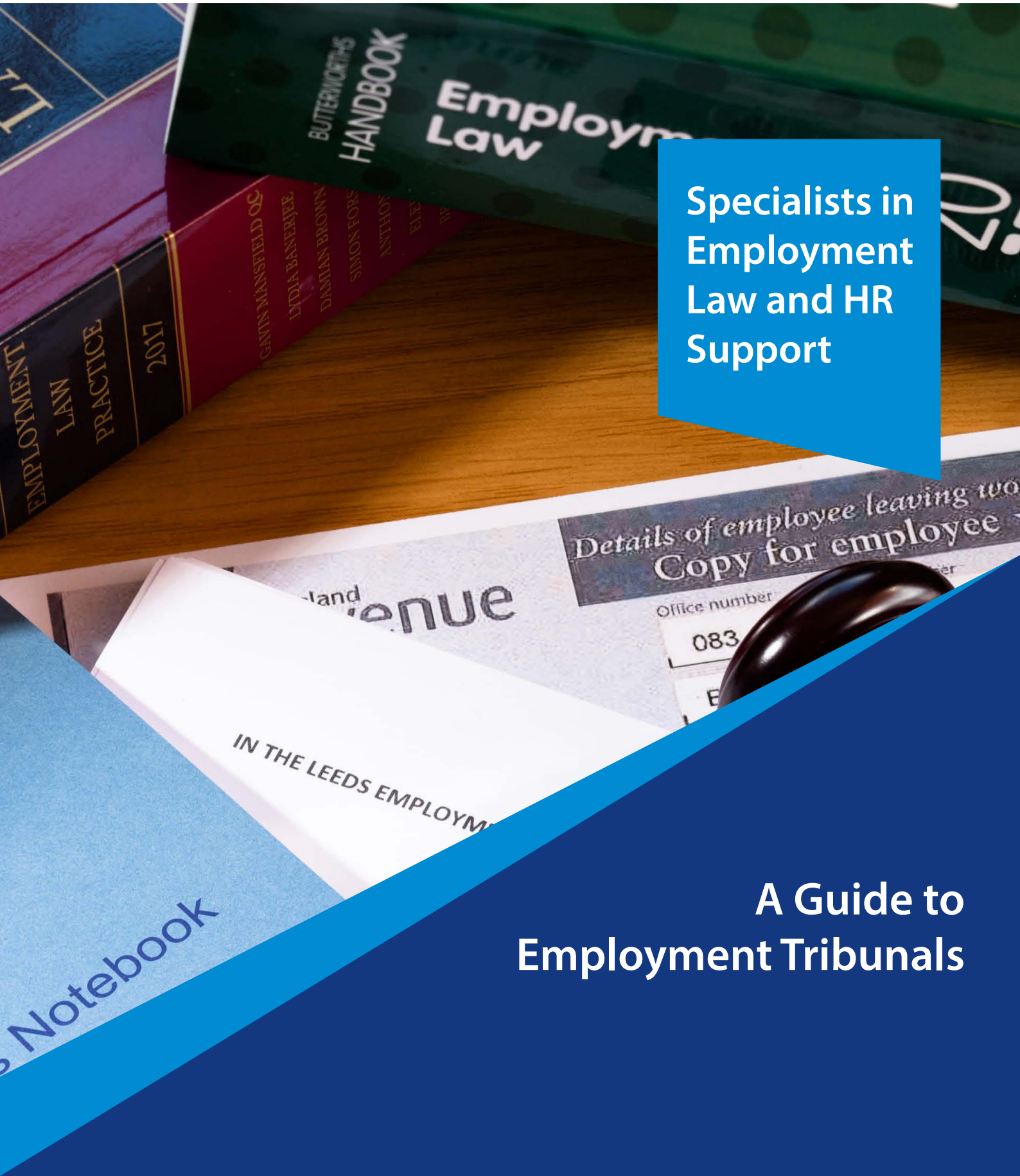

Specialists in Employment Law and HR Support

A Guide to Employment Tribunals

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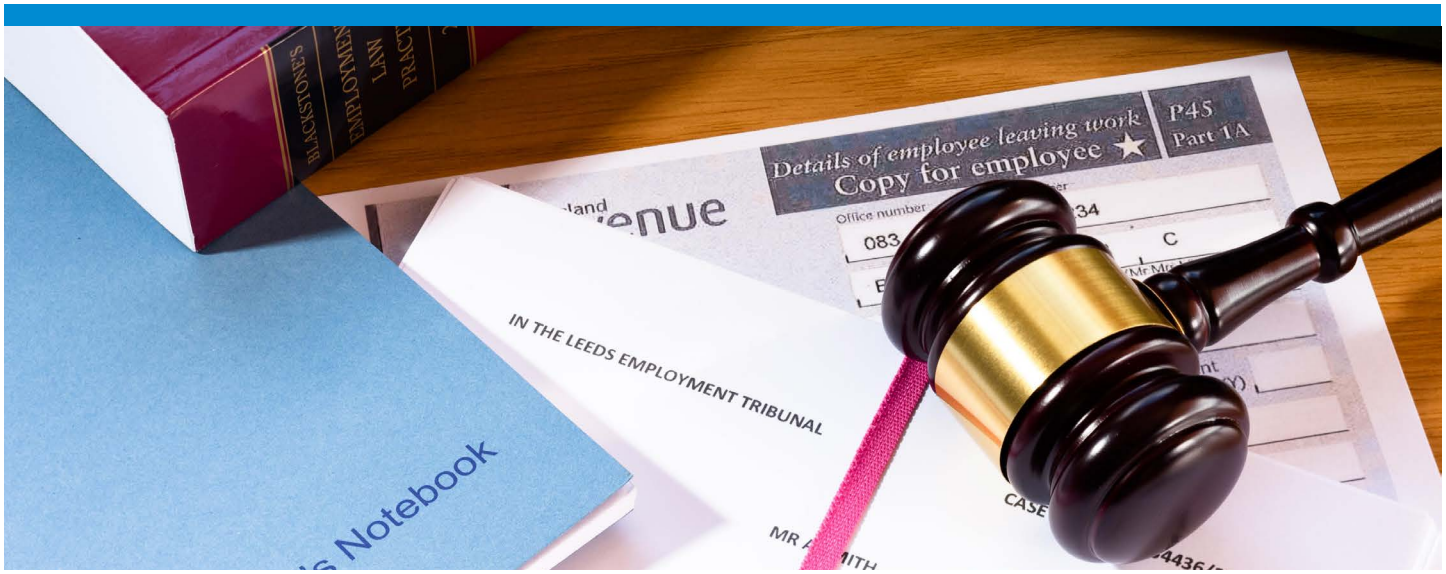

A Guide to End of Employment

Including valuable information on:

- **The tribunal process**
- **Document preparation**
- **Witness preparation**
- **Compensation levels**
- **Appealing a tribunal decision**

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Delphi Business Support Services, Princes Exchange, Princes Square, Leeds, West Yorkshire, LS1 4HY

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A Guide to Employment Tribunals

Employment Tribunals

If you have recently dismissed an employee, or your company has been accused of workplace discrimination or failing to meet its obligations on pay or conditions, you could be called to defend your business at an employment tribunal.

How do employment tribunals work?

Industrial tribunals were established over 40 years ago, with the aim of offering an informal and inexpensive way to resolve workplace disputes. Most cases are heard by a judge, with discrimination claims heard by a three-member panel.

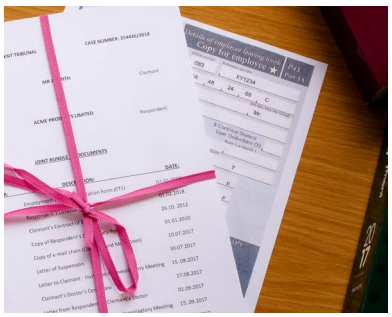
Before reaching a decision, the tribunal will consider the evidence and witness statements of both parties – the person bringing the claim, known as the claimant, and the business or individual defending the claim, known as the respondent.

If the claimant wins, the respondent will usually be ordered to pay compensation.

How will an employee launch an employment tribunal claim?

Before your employee starts an employment tribunal claim, they must notify ACAS (Advisory, Conciliatory and Arbitration Service) or their claim will not be accepted. ACAS will contact you offering to mediate in an attempt to resolve the issue without the need for a full employment tribunal hearing. This is known as early conciliation. If early conciliation does not succeed, the case will proceed to an employment tribunal and your employee will be sent an Early Conciliation Certificate, which they will need in order to complete their employment tribunal claim form, known as an ET1.

The ET1 is the first document the employment tribunal will read. If your employee has good legal counsel it is likely the ET1 will contain a clear and accurate account of their perspective on the issues that they are complaining about. If they miss out an important point, it can be difficult for them to include it later on, once the ET1 has been submitted. If your employee has a legal representative, they will usually be responsible for sending the ET1 form to the employment tribunal but if they don't it can still be submitted by them as it is not necessary for your employee to quote the law or use legal language in their ET1. However, their claim must fall within the areas of law that an employment tribunal has authority to hear – for example, unfair dismissal, breach of contract, discrimination, etc. – otherwise their claim will be thrown out.



Time limits for employment tribunal claims

The time limits for making employment tribunal claims are extremely short and very strictly enforced. In most cases, an employee has only three months, less one day, to make a claim, starting from the date of their dismissal – in unfair dismissal cases – or the date of the last act of discriminatory treatment, in discrimination claims. Time limits can differ in certain situations, however.

If their ET1 is not received at the employment tribunal office before the relevant deadline, their claim will probably be rejected. However, the time limits for an employee making a claim can also be affected by the ACAS early conciliation process and it can be difficult to work out exactly when this timescale starts and finishes. An employment lawyer can advise you with this if you have doubt a claim has been made against you within the correct time period.

What happens after an employment tribunal receives a claim?

Once the tribunal receives their claim, they will send you a 'ET3 response pack', which includes a copy of the ET1. You then have 28 days to submit a response, if you wish to defend the claim. The tribunal will send your employee a copy of your defence, known as an ET3, about five weeks after they submitted their claim. If you fail to respond, or do not send your ET3 back in time, the tribunal may make a decision against you without hearing your side of the story.

How soon is an employment tribunal case typically heard?

If the case is quite straightforward, it will probably be listed at court as a one-day hearing, generally taking place about four to six months after your employee submitted their claim. However, if the case is more complex – perhaps involving discrimination claims – it will usually need more than one day, so there might be a longer wait for the hearing date. Hearings are normally held at the employment tribunal office closest to where your business' place of work. How quickly a hearing date is allocated also depends on how busy that tribunal office is.

What do I need to do to prepare for the hearing?

The employment tribunal will write to you before the hearing, enclosing an order setting out a timetable for when documents and witness statements must be exchanged with the respondent. By law, you must release all documents relevant to the case, whether they support your claim or not.

What documents will I need?

You, as the respondent, are normally responsible for collecting all the relevant papers for your case together in a document bundle. This must include copies of all the documents you intend to rely on, copies of which you must send to the claimant and all the documents that they send to you. The document bundle should be arranged in date order and all the pages should be numbered and referenced in an index.

Examples of relevant documents might include:

- Your employee's contract of employment
- Notes from relevant meetings
- Your employee's pay slips
- Details of your employee's pension scheme

What role will witnesses play?

Any witnesses who can give evidence which is directly relevant to the case will need to attend the hearing. These might include anyone who accompanied your employee to a disciplinary or appeal hearing and anyone who has provided a counter witness statement. Any witness statements you prepare to rely on, setting out your witness' version of events, should be sent to the claimant before the hearing.

What is a preliminary hearing?

The employment tribunal might ask you to attend a preliminary hearing. This is a fairly informal meeting at which an employment judge – not necessarily the one who will hear the case – will issue guidance on points such as:

- The date and time of the hearing
- How long the hearing should take
- How many witnesses will be called
- The dates by which the parties must exchange documents and witness statements.

How much notice will I get of the employment tribunal hearing?

The employment tribunal will write to you at least 14 days before the hearing, telling you where and when the hearing will take place. You must prepare all your documentation and arrange for your witnesses to attend in advance.

How can I avoid going to the hearing?

You can try to settle the case at any time by proposing a financial settlement. If the claimant agrees to settle the case, this would need to be legally confirmed by a settlement agreement, or via a formal settlement through ACAS, known as a COT3.

What happens at the hearing?

At the hearing, you will be expected to present your defence yourself – unless you have employed a legal adviser to represent you. The claimant or their representative will present their case.
As in all court hearings, your witnesses must swear an oath – promising to tell the truth – before giving evidence. They will then be asked questions by:

- The judge
- The claimant or their representative
- Two other tribunal members, if the case involves discrimination claims.

You will have the chance to question the claimant and their witnesses, and they will also have to answer further questions from the judge and the other two tribunal members if present.

When will I get the tribunal's decision?

The judge may verbally explain their decision at the end of the hearing, or they may send it to you in writing a week or two after the hearing.

Will I get my costs back if I win?

The general rule in the civil courts is that the loser is ordered to pay the winner's legal costs. However, in employment tribunals, costs are not usually awarded. So even if you do win your case, you will not be awarded costs against the claimant, unless the judge thinks that the claimant acted unreasonably in presenting their case.

What happens if I lose the case?

If you lose, the tribunal is unlikely to order you to pay the claimant's legal costs unless the judge thinks you acted unreasonably in conducting your case.

There are limits on the amount of money a tribunal can award a claimant. The maximum is currently £25,000 in breach of contract cases and £83,682, or one year's gross salary, whichever is lowest, in unfair dismissal cases. Awards in unfair dismissal cases are based on your employee's actual financial losses, calculated from the date of their dismissal until the date of the tribunal hearing.

If they have not found a new job – or if their new job pays less than they were earning when they worked for you – the tribunal can make a future loss of earnings award. This is based on an estimate of how long it will take them to find a new job or get back to the level of earnings they had previously with you.

You may also be ordered to refund the government for any Jobseeker's Allowance, Income Support or Employment Support Allowance your employee received after their dismissal. The tribunal can additionally award them compensation for the loss of their statutory employment protection rights – usually anywhere between £250 and £700.

Compensation can be reduced if the tribunal decides that they were dismissed for a fair reason, but that the dismissal procedure was flawed, or that they acted in a way that contributed to their dismissal.

There is no limit to the amount of compensation employment tribunals can award in discrimination cases, and very large sums of money have been awarded in some instances. Compensation is calculated in line with complex guidelines, which consider the seriousness of the discrimination and the hurt they suffered.

What happens if I refuse to pay their compensation?

If you do not pay, you can be taken to the civil courts and forced to pay. Bailiffs can be ordered to seize your goods and property, and you can be fined.

Can I pay a tribunal award in instalments?

No. Employment tribunal awards must be paid in one lump sum, in accordance with the tribunal's orders.

Can I appeal a tribunal decision?

If you lose the case, you can write to the tribunal within 14 days of receiving the decision, asking them to reconsider. However, you must give very good reasons – for example, if the tribunal made a mistake in the way it reached its decision, or you were not told about the hearing. You can also appeal to the Employment Appeal Tribunal if you think the employment tribunal made a fundamental legal mistake. You cannot appeal because you did not agree with the employment tribunal's decision.

Delphi's barrister-level service for businesses facing employment tribunal claims

If you are facing an employment tribunal claim, Delphi can help you through the process. We will deliver the highest levels of client care and expert guidance at an affordable price.

Providing detailed written legal advice, Delphi will assess the strengths and weaknesses of the case against you – and evaluate the potential value of the claim – to help make an informed decision about the most appropriate strategy for your business. By taking care of the preparation for your case, we will ensure the process is as straightforward as possible. You will be represented throughout by a highly-experienced employment tribunal advocate who can:

1. Undertake any negotiations with the other side
2. Draft your ET3 response pack
3. Draft your witness statements
4. Comply with all tribunal orders and directions
5. Put together the tribunal document bundles
6. Attend any preliminary hearings on your behalf
7. Conduct all aspects of tribunal advocacy at the full hearing.

If you're facing an employment tribunal claim made by a member of staff, Delphi will ensure you receive the best representation available. At Delphi, we specialise in employment law and with many years of experience and successes in defending again employee claims we are qualified to assist you at employment tribunal. **Contact us today on 0113 867 2815.**

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Workshops for witnesses

Witness testimony in employment tribunals can win or lose a case – and sometimes tens of thousands of pounds in compensation – so it is crucial for anyone taking the stand to be well prepared.

Delphi can help prepare your witnesses for tribunal. It is perfectly understandable to feel nervous, or under pressure, about giving evidence in court – particularly if it is for the first time. Delphi runs witness workshops with your witness or witnesses to help them to feel more confident and better-prepared for what will happen on the day of an employment tribunal.

Run by highly-experienced employment tribunal barristers and solicitors, our workshop will cover:

- How tribunals work, and the roles of the people involved
- The dos and don'ts of giving evidence
- How to stay calm and confident under cross-examination
- Strategies for coping with stress and anxiety.

Participants will be able to put what they have learned into practice at a realistic tribunal role-play session, with real employment lawyers. There will also be plenty of time for questions and answers. This briefing and rehearsal will help witnesses give evidence effectively – and maximise your prospects of a successful outcome.

If you need to prepare witnesses to give evidence in your defence at an employment tribunal, Delphi can ensure they enhance your defence. For more information about prices and dates of availability for workshops for witnesses, **please contact us today on 0113 867 2815.**