

Guide

The Equality Act 2010

The TAEN Guides to the age related provisions of the Equality Act 2010 are primarily for employees, jobseekers and learners and aim to give a simple, clear explanation. The relevant provisions were formerly contained in the Employment Equality (Age) Regulations 2006 but since October 2010 they have been found in the Equality Act 2010.

How to Make a Claim

If you think you have been discriminated against and have been dismissed you can bring a claim at the employment tribunal by lodging an ET1 claim form. (See point 3 onwards).

If you think you have been discriminated against by your current employer, you should try to resolve your complaint with your employer before commencing a claim at the employment tribunal. You should follow the steps set out in the Acas guidance and expect your employer to do the same. An unreasonable failure to follow this procedure by either side can affect the compensation awarded by the employment tribunal.

Contact the Advisory, Conciliation and Arbitration Service (Acas) for further guidance on this at: www.acas.org.uk

1. Raise your complaint informally

Arrange to have an informal discussion with your manager or supervisor about the problems and concerns that you have. This may resolve things in the first instance.

It is a good idea to take notes of any conversations you have so that you can refer to what was said later if needed.

2. Follow your employer's grievance procedure.

If informal discussions do not resolve the problem, you should then request a copy of your employer's grievance procedure. Most standard procedures take the following form:

a. Written grievance letter

This is a formal written statement which should detail your complaint. You are required to send such a statement before the rest of the procedure can be commenced. Your employer's procedure should state who to send the grievance letter to but in most cases this will be your manager or HR department.

b. Meeting

Once you have submitted a grievance letter you employer should arrange a meeting to discuss your complaint.

Before you attend the meeting

- You should find out who is conducting the meeting and if it is someone who is involved in the complaint make a request to have that person replaced.
- If you think you have not had enough time to prepare, ask for further time.
- Prepare some notes about what you want to say during the meeting as it is easy in a stressful situation to forget all you wanted to say.
- There is nothing wrong in simply reading out your notes.
- You have a right to be accompanied to the meeting by a colleague or trade union representative. If you wish to be accompanied you must inform your employer before the meeting. This person can present your case on your behalf but can not answer questions for you.
- If you are not a member of a trade union, and wish to become one, you can find which union to join at: <http://www.worksmart.org.uk/unionfinder/>

During the meeting

- During the meeting you should be given the opportunity to raise your complaints and respond to any comments which are made.
- Detailed notes will usually be taken by your employer, but you should take your own set of notes in case there is any dispute about what was said at a later date.
- For further guidance you can consult Acas: www.acas.org.uk

After the meeting

- You should be sent a letter to confirm what took place during the meeting and the decision which has been reached, as well as notification of your right to appeal if you are dissatisfied with the outcome.
- It is a good idea to request copies of any documents or meeting minutes from the meeting if they are not provided to you.

c. Appeal meeting

If you are not happy with the outcome of the meeting you should write a further letter to your employer requesting to appeal. The employer should then hold an appeal meeting.

The appeal meeting will follow the same format as the initial meeting and you should prepare in the same way. It is usual for the appeal meeting to be conducted by a higher level of management, where possible.

Another option is to ask an Acas mediator or other independent party to conduct the appeal. However you should bear in mind that you will have to pay a mediator for this service, although in some cases the employer will agree to pay the fee in an attempt to resolve the situation.

After the appeal your employer will give you their final decision. If you feel the problem is still unresolved you can now commence further formal action.

3. The questionnaire

At this stage if you appeal and still do not get the result you would like, you should try to obtain more evidence in order to aid your decision of whether you should pursue your complaint to the employment tribunal.

There is a questionnaire which you can use to gain additional information from your employer or the person you are making a claim against. This is extremely useful if you think you have been discriminated against but do not have sufficient evidence to prove it.

A template of this questionnaire can be found at: <http://www.equalities.gov.uk/docs/NEW%20FORMS%20discrimination%20and%20other%20prohibited%20conduct%20JB.doc>

You can find sample questions on the Age Legislation section of the TAEN website at: www.taen.org.uk/adl/tools/questionnaire

You should submit the questionnaire to your employer before starting a claim at the employment tribunal or within 21 days of submitting your claim form.

If your employer fails to respond to your questionnaire within eight weeks or fails to answer questions properly, you can ask the tribunal to infer that your employer has discriminated against you, as they have failed to give an answer to the contrary.

Sample questions:

- Do you accept that your treatment of me was unlawful discrimination/harassment by you against me?
- If not:
 - a) why not,
 - b) for what reason did I receive the treatment accorded to me, and
 - c) how far did considerations of age affect your treatment of me?
- Was the reason for me being refused a job due to my age?
- If not, what were the qualifications of the person who did get the job and why did that person get the job?

4. Taking a claim to tribunal in England, Wales and Scotland

Before making a claim

You can get more help and advice from:

Advisory, Conciliation and Arbitration Service (Acas)

Tel: 08457 474747

Website: www.acas.org.uk

A trade union, if you are a member

To find a union: <http://www.worksmart.org.uk/unionfinder/>

TUC information on unions: http://www.tuc.org.uk/tuc/unions_main.cfm

Free advice services such as a law centre or a citizens advice bureau

Website: www.citizensadvice.org.uk

Solicitors and other professional advisers.

It is best to check whether you are entitled to help in funding.

Website: <http://www.legalservices.gov.uk/civil.asp>

Tel: 0845 345 4345

Scottish Legal Aid Board: <http://www.slab.org.uk/>

The Equality and Human Rights Commission

The Commission may be able to help.

<http://www.equalityhumanrights.com/en/Pages/default.aspx>

England – 0845 604 6610;

Wales – 0845 604 8810

Scotland – 0845 604 5510

Making the claim

1. Obtaining the correct claim form

There are a number of ways for you to obtain an ET1 form, which is what you will use when making a claim to an employment tribunal:

- You can contact the Employment Tribunals Public Enquiries Office by calling 0845 795 9775.
- A list of contact numbers and email addresses for different regions can be found at: <http://www.employmenttribunals.gov.uk/GenericPages/contactUs.htm>
- You can print or download a copy from <http://www.employmenttribunals.gov.uk/formsguidance/formsGuidance.htm>
- You can make a claim online: http://www.employmenttribunals.gov.uk/login_et1.asp

2. Filling in the claim form

You must state the following in the ET1 form:

- your name and address;
- the name and address of the respondent or respondents (the person or organisation against whom you are making a claim);
- the details of your employment e.g. starting date, position held, working hours, etc;
- the details of your complaint; and
- whether or not you are or were an employee of the respondent.

If you are, or were, an employee of the respondent you need to state whether your claim relates to your dismissal. See: <http://www.bis.gov.uk/> for further guidance.

Time limits

- General rule: the employment tribunal must receive your claim within three months less one day.
- The three-month period begins from the date your employment ended, or when the matter you are complaining about happened.
- For example:
 - If it happened on 1 March, the tribunal must receive your claim on or before 31 May.
 - If it happened on 5 March, the tribunal must receive your claim on or before 4 June.

Serving a questionnaire from (see above) does NOT affect the time limit and you may have to lodge your claim with the tribunal even if you are still waiting for a reply.

3. Sending the claim form

You may then send your claim in the following ways:

Paper copy

- Use the postcode for the place where you normally worked or where you applied to work to identify the tribunal office to which you should send your claim.
- In England and Wales, please refer to the list on pages 18-20 of the Claim Form (ET1) and send by post, fax or take your claim to the tribunal office listed against the postcode.
- In Scotland, all claims are initially processed by the Glasgow tribunal office and you should send your claim to that office:
glasgowet@ets.gsi.gov.uk
- However, you may take your claim to the Aberdeen, Dundee or Edinburgh office if that is more convenient and they will forward it for you.

Online copy

- If you are submitting an online or downloadable pdf version of the form via the Employment Tribunals website it will be automatically sent to the correct office if the correct postcode is provided.
- Or you can just make the claim online (the link is above).

4. Result: acceptable or unacceptable claims

Acceptable claims

- If your claim is accepted, the tribunal office will send you a letter to confirm

this together with a booklet which will tell you what the next steps are.

- You will be known as the 'claimant'.
- At the same time the tribunal will send the respondent a copy of your claim form together with a form for their response.
- If no response is received within 28 days, the tribunal may consider issuing a default judgment. A default judgment allows a tribunal judge to give a decision about the claim without the claimant having to go to a hearing.
- Having received and accepted the claim, the tribunal will give it a case number. You should quote your case number if you contact a tribunal office either by phone or in writing.
- In most cases, the tribunal will also send a copy of your claim to Acas. They will try to help you and the respondent reach an agreed settlement if that is what you both wish to do.

Unacceptable claims

Your claim will not be accepted if:

- It is not on an approved form;
- You have not given all the required information; or
- The tribunal will return your form to you with a letter telling you the reason why your claim has not been accepted and what action you should take.

Settlement

If you start a claim in the employment tribunal an officer from the Acas will contact both you and your employer to act as a conciliator between you, in an attempt to settle your claim before it reaches tribunal.

5. Taking a claim to tribunal in Northern Ireland

Before making a claim

You can get more help and advice from:

Labour Relations Agency

Tel: 028 9032 1442

Email: info@lra.org.uk

Website: www.lra.org.uk

The Department for Employment and Learning

Tel: 028 9025 7777

Email: del@nics.gov.uk

Website: www.delni.gov.uk

A trade union, if you are a member;

To find a union: <http://www.worksmart.org.uk/unionfinder/>

TUC information on unions: http://www.tuc.org.uk/tuc/unions_main.cfm

Free advice services such as a law centre or a citizens advice bureau;

Their official website: www.citizensadvice.org.uk

Solicitors and other professional advisers

The Northern Ireland Legal Services Commission promote fair and equal access to justice in Northern Ireland in its provision of publicly funded legal services when obtaining legal advice:

NILS: Tel: (028) 9040 8888

NILS website: www.nilsc.org.uk

The Equality Commission for Northern Ireland

This is an independent public body established under the Northern Ireland Act 1998. Their mission is to advance equality, promote equality of opportunity, encourage good relations and challenge discrimination through promotion, advice and enforcement.

Tel: (028) 9050 0600

Email: information@equalityni.org

Website: www.equalityni.org

Making the claim

1. Obtaining the correct claim form

There are a number of ways for you to obtain an ET1(NI) form, which is what you will use when making a claim to an industrial tribunal and/or a fair employment tribunal:

- You can obtain a copy from any local Jobs & Benefits office (Jobcentre),
- You can contact the Office of the Industrial Tribunals and the Fair Employment Tribunal:
Tel: (028) 9032 7666
Email: mail@employmenttribunalsni.org
Website: www.employmenttribunalsni.co.uk
- You can download a pdf copy from:
http://www.employmenttribunalsni.co.uk/index/publications_statistics/publications.htm

- You can make a claim online at:
<http://www.employmenttribunalsni.co.uk/index.htm>

2. Filling in the claim form

You must state the following in the claim form:

- your name and address;
- the name and address of the respondent or respondents (the person or organisation against whom you are making a claim);
- the details of your employment e.g. starting date, position held, working hours, etc;
- the details of your complaint; and
- whether or not you are or were an employee of the respondent.

Jurisdiction

- The jurisdiction of an industrial tribunal to hear and determine complaints of unfair dismissal and unlawful discrimination on the grounds of age is subject to Article 85 of The Fair Employment and Treatment (Northern Ireland) Order 1998.
- Where a complaint has been made to the fair employment tribunal of unlawful discrimination on the ground of religious belief/political opinion and it appears that this complaint is one in respect of which:
 - a complaint could be made to an industrial tribunal on the ground that the person complaining was unfairly dismissed or unlawfully discriminated against on the ground of their age
 - a complaint on one or both of those grounds has been made to an industrial tribunal which has not been disposed of;
- Then it may be directed that these matters shall be heard by the fair employment tribunal and not by an industrial tribunal.
- For these purposes the fair employment tribunal has the jurisdiction and powers of an industrial tribunal.

Time limits

- Please refer to the guide on Redress.
- General rule: The last day on which you can lodge proceedings with the tribunal will be within three months less one day after the date of your complaint.
- For example: if you consider that the act you are complaining about occurred on 2 June 2009 the last day on which you can lodge a claim form will be 1 September 2009.
- It is advisable to lodge your proceedings promptly and not wait until the last possible moment.

- If your time limit expires the tribunal has discretion to extend the time for you to lodge your claim but this is used sparingly and it is unwise to assume that an extension will be granted.

3. Sending the claim form

You may then send your claim in the following ways:

Paper copy

- Send the claim form by post to:
The Secretary,
Office of the Industrial Tribunals and the Fair Employment Tribunal,
Long Bridge House,
20-24 Waring Street, Belfast, BT1 2EB

Online copy

- As mentioned above, you can make the claim online.

4. Result

- The Office of the Tribunals will acknowledge receipt of your claim as soon as they have processed it.
- If your claim has been accepted a copy of it will be sent to the respondent(s).
- You will be sent a copy of any accepted response.

If you are concerned you may have experienced discrimination fill in the online questionnaire (EqualityXpress) at www.rjw.co.uk/equalityxpress. Russell Jones & Walker Solicitors will then contact you with their opinion on your claim. The service is free and 100 per cent confidential.

The information in this guide was prepared by the award winning employment department at Russell Jones & Walker Solicitors

Care has been taken to ensure that the information provided in this Guide is accurate up to the date of publication (6 April 2011). However, we do not accept responsibility for mistakes or omissions. In particular, the information provided is for general educational purposes only and is not intended to be legal advice, taking into account your particular circumstances. Please do not use this information to disregard any legal advice, nor to delay in seeking legal advice or representation because of any material contained in it.

© TAEN – The Age and Employment Network 2011

TAEN's aim is to help create an effective labour market which works for people in mid and later life, for employers and for the economy.

Supported by 