

Jersey Employment Tribunal

A USER'S GUIDE

Introduction

This leaflet is for general guidance only. It is not intended to give guidance on all the requirements of the Employment (Jersey) Law 2003 nor is it intended in any way to be a statement of the Law. Copies of the Law are available from the States Bookshop.

This leaflet explains what happens when a complaint is made to the Jersey Employment Tribunal and the process which follows under the Employment (Jersey) Law 2003.

For the sake of convenience, in this form 'he' includes 'she' and 'his' includes 'her'.

How is a complaint made?

If an employee thinks he is entitled to make a complaint under the Law he may refer the matter to the Jersey Employment Tribunal. A complaint can be dealt with by the Tribunal if it concerns:

- The requirement for and details in a written statement of employment
- Minimum rest periods and annual leave
- Payment of the minimum wage
- The proper payment of wages,
- Termination of employment,
- Unfair dismissal from employment.

An employer may apply to the Employment Tribunal:

- For determination that a pay statement complies with the Law,
- Where there is an infringement of his rights under the Law,
- For clarification of the Tribunal's jurisdiction in certain limited situations.

There are some restrictions on matters which you can refer to the Tribunal and it may be best when considering making a complaint or application to seek advice from the Jersey Advisory & Conciliation Service, your union representative, the Citizens Advice Bureau, the Secretary to the Employment Tribunal or a lawyer.

Application forms (Form JET1 & JET1EMP) are obtainable from the Secretary to the Jersey Employment Tribunal or should be available from the Jersey Advisory & Conciliation Service (JACS) or the Jersey Citizens Advice Bureau.

Forms, when completed, must be returned directly to the Secretary to the Tribunal. See 'Where is the complaint sent?'

Time limits for complaints

A complaint made under the Law must be submitted to the Employment Tribunal within eight weeks of the 'effective date of termination'.

The 'effective date of termination' is:

- The date on which the notice period ends; or
- The last day at work (if the dismissal was without a notice period) or
- Where the employee is on a fixed term contract (which is not being renewed under the same terms), the date the contract expires.

Out of time complaint?

If an application is received outside the eight week time limit, the Secretary to the Employment Tribunal will refer the application to the Chairman of the Tribunal, who will probably reject it. However, in exceptional circumstances, the Tribunal can consider a late application (depending on the reason for the delay).

If an application is late, and the Chairman has rejected it, the application form will be returned to the applicant who will also be given the reasons for its rejection.

Where is the complaint sent?

A completed application form must be sent to the: -

Secretary to the Jersey Employment Tribunal, 1st Floor, Trinity House, Bath Street, St Helier, Jersey, JE2 4ST.

There is no fee payable in submitting an application form.

How is an application dealt with?

When the application form (Form JET 1 or JET 1EMP) is received and registered, the applicant will be informed in writing. A case number will be allocated to the complaint, which **must** be quoted in any further correspondence with the Tribunal. The employer will be sent a copy of the application form and will be asked to respond by completing the response form (Form JET 2) confirming whether or not he intends to resist the complaint.

The employer should then return the completed form, within 21 days. Should the employer fail to submit a response it is possible that the Tribunal may hear the complaint and make a decision without hearing from the employer. (A 'default award')

A copy of the completed employer's response form (JET 2) is always sent to the employee.

Copies of the application and response forms are sent to the Jersey Advisory and Conciliation Service (JACS) unless you ask us not to do so. However, if requested by either party a copy of the application and the reply may be passed to a conciliation officer at the Jersey Advisory and Conciliation Service (JACS). Conciliation will then be offered with a view to reaching an agreed settlement, without the need for a Tribunal hearing. Conciliation is voluntary and either side may refuse to use it. It is recommended that you try to settle your claim through JACS but a failure to do so will not be count against you. JACS is separate to the Employment Tribunal and all discussions with them remain confidential to both parties and have no effect on the proceedings of the Employment Tribunal. The conciliation period will continue until the date of the hearing or a settlement is reached.

If a settlement is reached, an agreement will be signed by both parties, and countersigned by the conciliation officer. A copy of the signed agreement will then be forwarded to the Tribunal office and no further action may be taken under the Law in respect of the complaint.

Should conciliation fail to reach a settlement, or one or both of the parties do not wish to make use of the service, the complaint will then come before the Tribunal for a hearing.

What happens next?

Notwithstanding the conciliation period, a hearing will be arranged, normally as soon as practicable of the complaint being registered and a Tribunal will be appointed to hear the case. After the hearing the Tribunal will either make an award or dismiss the complaint as it sees fit.

The Tribunal may consist of a Chairman sitting alone or a panel of three people, depending upon the case before it.

The parties will be given the names of the Tribunal members appointed to hear the complaint in advance of the hearing. If a party believes that there may be a conflict of interest between him and any Tribunal member, or for any other reason a particular member should not deal with the case the Secretary should be informed immediately, and he will refer the matter to the Chairman or Deputy Chairman. This important principle applies if a conflict of interest arises during the course of a hearing too.

Case Management Orders.

Other than in the most straightforward of cases there are likely to be Directions given by the Tribunal. The Chairman will have considered the file and make an initial assessment on what further information is required and what needs to happen to bring a case to a hearing as soon as possible.

These Directions will be given during the period of conciliation. These orders must be complied with and will usually include time limits for compliance. The parties may receive more than one set of Directions during the period of preparation of a case for hearing. The parties may be required to appear before the Chairman for a Case Management discussion before Directions are given and a party may request a case management hearing at any time by contacting the Secretary to the Tribunal.

What if I or my representatives have Special Needs?

If a party, their witnesses or representatives have special needs, including requiring the services of an interpreter or where access to the Tribunal Hearing Room may present a problem, please contact the Secretary to the Tribunal immediately, so that suitable arrangements may be made.

Attendance at the hearing.

The parties will be advised of the date, time and place of the hearing at least 14 days before. The hearing will normally be held in public, unless the Chairman decides that there is a good reason why some or all of the hearing should be held in private.

What if the parties or witnesses cannot attend the hearing?

If either party or their witnesses cannot attend the hearing on the notified date, they should write promptly to the Secretary to the Tribunal explaining the reasons why they cannot attend.

There will need to be a good reason why the party cannot attend, supported by evidence, otherwise the Chairman will not change the hearing date. It should also be made clear if there any alternative dates that would **not** be suitable during the following six weeks. The Chairman will then decide whether the hearing should be postponed and the parties will be notified of his decision.

Arriving at the Tribunal

On arrival each party should register with the Secretary to the Employment Tribunal and then each party should go to their allotted waiting area. The parties (or their representatives) may wish to meet each other before the hearing begins. If that is the case they should advise the Secretary who in turn will advise the Tribunal. When approached by the Secretary to the Tribunal the parties should, if not submitted earlier (see next section), give the names of their representatives, intended witnesses and observers. The Secretary will want to know whether there are any additional bundles of documents still to be given in, (see below) whether other cases are likely to be referred to and if so their references. It is at this stage that parties should ask about any matters concerning the hearing which need clarifying.

Calling Witnesses

The appearance of a witness at the hearing enables the Tribunal members to put questions directly to them. It is a far better option than just submitting a written statement of that witness's evidence although if that person's evidence is not disputed by the other side then they need not attend in person. However it is always better to have a witness at the hearing wherever possible as evidence of a witness in person carries more weight.

It may be useful if the parties and their witnesses write or type what they intend to say, to ensure that everything is included. Six copies of each statement should be produced to the Tribunal as described below.

It is the responsibility of each party to ensure that the witnesses that they wish to call can attend on the hearing date. Neither the parties nor the witnesses will be reminded of the date of the hearing.

A list of the witnesses to be called to a hearing must be produced to the Secretary at least one week before the hearing date.

Copies of the relevant documents.

Bundles of relevant documents are very important in the preparation and presentation of a case. It would be very helpful to the Tribunal, witnesses and the parties concerned if the documents are put into the order in which they will be referred to. Please read the following section as it tells you how to compile and present a bundle to the Tribunal.

Firstly identify the documents which are relevant to the hearing. These would include items such as contracts of employment, letters of appointment, letters of warning, pay slips, or wage records, a diary, medical certificates, staff handbook, expert evidence, witness statements and relevant case law.

The parties must inform each other of the relevant documents to which they intend to refer, before the hearing. If supplying documentation to another party consider sending them by recorded delivery.

Where possible, try to agree beforehand with the other party which documents are relevant to the hearing. In the event of a dispute the parties should inform the Secretary to the Tribunal who may ask the Chairman to decide upon the relevancy of a document in a case.

Where the parties cannot agree or do not wish to agree which documents are relevant to the hearing, each party should still make copies of and submit the documents they consider to be important to the hearing.

Relevant documents will be presented to the Tribunal in 'bundles' of documents. A bundle of documents consists of a copy of each relevant document in the hearing. All copies must be identical and of good quality. The documents should be clipped or stapled together. The pages must be numbered and an index of the documents included at the beginning. A timetable of events if relevant would also be useful. All bundles of documents must be presented to the Tribunal in a file.

Each party must make **six** copies of each document. (**3 for the Tribunal** - 1 for the other party and 1 for the witness). See next paragraph for details of distribution. The Tribunal does not provide a photocopying service so the parties must ensure that they have sufficient copies of all the documentation required in their case.

Three (3) copies of the paginated bundles shall be delivered to the Tribunal office at least 72 hours before the date of the hearing unless the hearing is scheduled for a Monday, in which case the bundles must be delivered to the Tribunal Office by 2.30pm on the preceding Thursday. A copy of the bundle shall be delivered to the other party at least 48 hours prior to the hearing date.

If an unrepresented party is unsure about the relevancy of a document or the form of presentation of documents to the Tribunal they should contact the Secretary for advice.

Summoning witnesses and documents

If a witness is reluctant, or refuses to attend the hearing to give evidence, or refuses to produce a document as evidence, a party may apply to the Chairman to issue a summons on his behalf in order to require that witness to attend or produce that relevant document as evidence. It is the Chairman's decision as to whether to issue a summons.

The Chairman will require brief details of the evidence the witness will be asked to give and the relevancy of this evidence, before issuing a summons.

Applications for the issue of a summons and any other matters brought to the attention of the Chairman by either party will, in the interest of openness, be disclosed to the other party.

Applications for a summons will normally be accepted up until two weeks prior to the hearing date.

The Hearing

Parties may present their own case before the Tribunal, have someone else present their case or they may be legally represented should they so wish. Both parties will be given the opportunity to describe their case, call witnesses or produce written evidence as necessary. Both parties may also ask questions of the other party's witnesses, with the Chairman's permission.

When the Tribunal has heard the full case put forward by each party and had the opportunity to question the witnesses the Chairman will close the hearing in order for the Tribunal to consider the evidence and make a decision.

The parties may not approach any Tribunal member in advance of, during or after the hearing.

It is not appropriate for parties or their witnesses to bring babies or young children to a Tribunal hearing. If you have children please make alternative arrangements for their care whilst the Tribunal is in session.

There are no refreshments available at a Tribunal hearing.

Mobile telephones must be switched off during a Tribunal hearing. There is no public internet access available in the Tribunal offices.

Can a complaint be withdrawn before the hearing?

Yes. If the parties think they can agree a settlement, either before or during the hearing they should request an adjournment by applying in writing to the Secretary of the Tribunal.

If the parties settle the case before the hearing, they should notify the Secretary to the Tribunal as soon as possible, in writing, that a settlement has been reached.

The Award

When the Chairman is satisfied that the Tribunal has heard and seen all the relevant evidence submitted by the parties, the Tribunal will consider the facts and the parties will be notified, in writing of the decision usually within two weeks of the hearing. Depending upon the circumstances of the case, the Tribunal's award may take the form of a finding of fact in the dispute and/or a financial award reflecting any of the following: a period of notice due but not given, compensation for being unfairly dismissed (based on years of service) or payment of sums due under the contract but not paid to a maximum of £10,000.

Appeals

The decision reached by the Tribunal will be final and legally binding upon both parties. An appeal may be made to the Royal Court on a point of law.

What costs are involved?

There is no fee payable to the Tribunal for issuing a complaint, starting the Employment Tribunal process or for conducting a Tribunal hearing.

Each party will be responsible for their own costs involved in preparing and presenting their case to the Tribunal.

There is no legal aid available for advice or representation concerning a complaint under the Employment (Jersey) Law 2003.

The confidential advisory and conciliation service provided by the Jersey Advisory and Conciliation Service, (JACS) is free to both parties. The services of the Citizens Advice Bureau are also free of charge.

If an appeal is made to the Royal Court, the parties will be subject to awards of costs made under the Royal Court rules and procedures.

Media Notification

IMPORTANT: Tribunal Case listings are published to the Media at 2.30pm on the Thursday before the week that a case is scheduled to be heard. Parties are encouraged to settle their dispute prior to this date if they wish to wish the matter to remain confidential.

Other publications.

Advisory leaflets on a wide range of employment issues are available from The Jersey Advisory and Conciliation Service (JACS) and the Citizens Advice Bureau.

Advice and conciliation

The Jersey Advisory & Conciliation Service (JACS) based on the 3rd Floor, Trinity House, West Centre, Bath Street, St Helier, provides a free and confidential advisory service to both employers and employees on any employment related matter.

Conciliation should be seen as a positive means of resolving disputes between employers and employees. The confidential service is provided by trained staff that are impartial and able to assist in resolving disputes at all levels. **The JACS help line is 730503.**

Forward all correspondence to the Tribunal to:

Secretary to JET,
1st Floor, Trinity House,
West's Centre,
Bath Street,
St Helier,
JE2 4ST