

Guidance on Employment Tribunals Procedures in the Isle of Man

This describes the procedure for making an application to an Employment Tribunal, or contesting such an application, and the procedure for the conduct of the tribunal hearing. It is a guide only and should not be regarded as a complete or authoritative statement of the law.

The statutory regulations which govern an Employment Tribunal procedure for the matters listed are available from the Government Library.

The procedures described apply to all types of cases which can be brought before an Employment Tribunal.

GENERAL INFORMATION

THE TRIBUNALS

Employment tribunals are independent judicial bodies. They have permanent offices in the Manx Industrial Relations Service, 5th Floor, Victory House, Prospect Hill, Douglas. Each has a legally qualified chairman, appointed by the Governor in Council. The other two members are drawn from two panels of members appointed by the Governor in Council, one after consultation with employees' organisations and one after consultation with employers' organisations. It should be noted that in specific cases it is possible for the Chairman to hear a case sitting alone.

MATTERS WHICH A TRIBUNAL, CAN CONSIDER

A list of the main matters which a tribunal can consider under the procedures described below.

THE PARTIES TO A CASE

Persons (or other bodies) bringing cases to tribunals are known as applicants and those against whom such cases are brought are known as respondents. For convenience these terms will be used throughout this booklet.

THE PUBLIC REGISTER

Details of applications of employment tribunals and the decisions of the tribunals are required by law to be kept in a register which is available for inspection by the public. This register contains the names of applicants and respondents and is held at the Manx Industrial Relations Service, 5th Floor, Victory House, Prospect Hill, Douglas.

CONTACTING THE TRIBUNALS

All applications to an Employment Tribunal should be sent to the Secretary of the Tribunals at the following address:

Manx Industrial Relations Service
5th Floor, Victory House
Prospect Hill
Douglas, Isle of Man, IM 1 3EQ
Tel. 01624 672942
Fax. 01624 686550

IF YOU ARE AN APPLICANT

MAKING AN APPLICATION

Application forms IT1 may be obtained from the Industrial Relations Service or Job Centre at Nivison House, Prospect Hill, Douglas. Your application must give your name and address, the name and address of the respondent and particulars of the grounds on which you are seeking a decision. You are asked to give certain other information which

will be helpful to the tribunal, to complete the form as fully as possible and to keep a copy of what you say. You should read the notes on the form before you complete it. The application should be sent direct to the Secretary of the Tribunals at the address given on the form.

OBTAINING INFORMATION

The main matters that may be considered by an employment tribunal are listed at the end of this document. You are strongly advised to read the appropriate guide or booklet before completing your application.

MAKING SURE THE TRIBUNAL CAN DEAL WITH YOUR CASE

If you think you have a case for a tribunal to consider, you should make sure the tribunals have the power to deal with the question you wish to raise (see Matters that may be considered by an employment tribunal below).

SUBMITTING YOUR APPLICATION WITHIN THE TIME-LIMIT

You must submit your application within the time-limit allowed. There are different time-limits for different matters and these are explained in the appropriate guides or booklets. Failure to make your application within these time-limits may deprive you of the right to have the case heard.

GETTING HELP WITH THE APPLICATION

Your trade union or a Citizens Advice Bureau may be able to give you advice or help with your application.

REPRESENTATION

Employment tribunals were setup to provide a less formal way of settling disputes between employer and employee and you may present your case yourself. There is no requirement for you to have a representative to act for you but if you wish you may, on your application form, name a representative (for example, a trade union official or advocate) and give his or her address. If you do so you must first have obtained the agreement of your representative. If you name a representative, all further communication will be sent to him or her and not to you. You should therefore ask your representative to keep you informed of the progress of the case.

RECEIPT OF THE APPLICATION

Applications are registered by the Office of the Employment Tribunals as soon as they are received and are acknowledged within a few days.

Sometimes, however, it will appear to the Secretary of the Tribunals that a tribunal would not be able to deal with your complaint. This might happen, for example, because your complaint does not seem to be one of those which may be considered by an employment tribunal or because it appears from the information on your application form that you had not worked for your employer (or an associated employer) for long enough where a minimum qualifying period of service is required before a complaint can be made or that you are submitting a claim outside the time limits. In these cases the tribunal office will

not register your application. They will write to you explaining why they do not think a tribunal would be able to deal with your complaint and asking you whether you still wish to continue with your complaint. If you wish to continue you must write to the tribunal and tell them. If you do this your complaint will then be registered. If you do not reply no further action will be taken on your complaint.

After your application has been registered a copy of it will be sent to the respondent. The respondent will be asked to complete a form known as a "notice of appearance" stating whether he or she intends to contest the application and, if so, the grounds for contesting it. You will be sent a copy of the respondent's completed notice and a hearing will then be arranged. (See Notice of hearing below).

FURTHER CORRESPONDENCE

After you have made your application, any further correspondence about the case should be sent to the tribunal office at the address notified to you, so as to arrive at least seven days before the hearing. At the same time you should send a copy to the respondent. You should also notify the tribunal office promptly of any change of address. The tribunal office will normally copy correspondence with one party to the other party.

WITHDRAWAL OF APPLICATION

If you decide to withdraw your application before it reaches a tribunal hearing, you must let the tribunal office (at the address notified to you) know at the earliest possible moment and confirm this in writing. Without your written request for withdrawal, the tribunal will usually proceed to hear the case.

IF YOU ARE A RESPONDENT

NOTICE OF APPLICATION

If employment tribunal proceedings have been brought against you, you will receive from a tribunal office a copy of the application setting out the applicant's case.

NOTICE OF APPEARANCE

You will also receive a form known as a "notice of appearance" on which you are asked to state whether you intend to contest the case and if so to give particulars of your grounds for doing so. You should send your completed notice of appearance to the tribunal office at the address given, normally within 14 days of receipt of the copy of the application. If you are unable to return it within 14 days, you should do so as soon as possible explaining the reason for the delay. The tribunal has discretion to extend the time allowed if you have a good reason. Any change of address after you have returned your completed notice of appearance should be notified promptly to the tribunal office.

REPRESENTATION

Employment tribunals were set up to provide a less formal way of settling disputes between employer and employee and you may defend a case yourself. There is no requirement for you to have a representative to act for you but if you wish you may, on your notice of appearance, name a representative to act for you in the matter and give his

or her address. If you do so, all further communications will be sent to him or her and not to you. You should therefore ask your representative to keep you informed of the progress of the case.

FAILURE TO RETURN A NOTICE OF APPEARANCE

If you do not send in a notice of appearance you will not be entitled to take part in the tribunal proceedings, although you will still be able to apply for an extension of time in which to enter an appearance. You may, however, be required to attend as a witness. Even if you have not sent in a notice of appearance the tribunal will be able to record a settlement reached voluntarily between yourself and the applicant. If no voluntary settlement is reached and the case goes to a tribunal hearing you will receive information about the date and place of the hearing and will be sent a copy of the tribunal's decision even if you are not entitled to take part because of your failure to return the notice of appearance.

REDUNDANCY CASES

If you are unable to pay the applicant because of financial difficulties you should mention this on your notice of appearance. The address of the Redundancy Payments Offices are given at the end of the document Redundancy Payments Act 1990 which is available free of charge from offices of the Department of Health and Social Security and the Manx Industrial Relations Service.

IF YOU ARE AN APPLICANT OR RESPONDENT

CONCILIATION

In most cases copies of all relevant documents are sent to an Industrial Relations Officer of the Manx Industrial Relations Service who will try to assist the parties to reach a settlement. This does not delay arrangements for the tribunal hearing. Information given to the industrial relations officer is confidential and cannot be used in evidence at the tribunal hearing without the consent of the party who gave the information to the industrial relations officer.

If you think that the industrial relations officer can help even though an application has not yet been made you should contact the office of the Manx Industrial Relations Service as soon as possible. If you decide to contact the Manx Industrial Relations Service you should not delay any application to a tribunal on that account.

NOTICE OF HEARING

You will be sent a notice of hearing at least 14 days before the date of the hearing. If you are unable to attend the hearing you must notify the tribunal office immediately. The tribunals have powers to adjourn a hearing if it has good reason, or postpone a hearing at the request of either party if good reason can be shown why the date in the notice of hearing is not suitable.

PRELIMINARY HEARING

Sometimes the tribunal dealing with a case will decide to hold a preliminary hearing. This happens where it appears to the tribunal that they do not have power to consider the complaint at all or where there is a dispute about this between the parties. At a preliminary hearing, unless the tribunal tells you otherwise, they will deal only with the question whether or not they have power to consider the complaint. If they decide that they do have power a further hearing will be arranged to consider the merits of the complaint.

PRE-HEARING ASSESSMENT

A pre-hearing assessment is a procedure used by an industrial tribunal in cases where either party appears to have a case which has no reasonable chance of succeeding. Its purpose is to consider, by looking at the contents of the originating application and the respondent's notice of appearance and any other representations, whether a party's case has substance or not.

Either party may request a pre-hearing assessment but it is for the tribunal to decide whether to hold one. Tribunals also have power to call a pre-hearing assessment on their own initiative. Normally only the party whose case is considered unlikely to succeed (with a representative if he or she has one) need attend. The other party has the right to attend if he or she wishes. No evidence from the parties or from witnesses will be taken at pre-hearing assessment but the parties may attend and address the tribunal.

Tribunals have no power to decide or dismiss a case at a pre-hearing assessment, nor can they order a party to withdraw an application. They may, however, warn parties that if they persist in cases that the tribunal consider to be without merit they may be liable for costs of the other party if they are subsequently unsuccessful. Such a warning does not prevent a party from continuing to a full hearing. Nor does such a warning mean that costs (or expenses) will automatically be awarded against warned parties if they are unsuccessful at the full hearing; that is a matter for the tribunal at the full hearing to decide.

JOINDER IN CASES CONCERNING NON-MEMBERSHIP OF A TRADE UNION

An employer who faces a complaint of unfair dismissal may have dismissed the employee concerned as a result of pressure, in the form of actual or threatened industrial action, exercised by a union or other persons because the employee was not a member of a trade union. In these circumstances the Employment Act 1991 gives both the applicant and the respondent the right before the start of a hearing, to require that a trade union or other person should be "joined" as a party to the proceedings. A request can also be made during the hearing, as long as it is made before the complaint is decided, but in these circumstances the tribunal can refuse the request.

JOINDER IN OTHER CASES

Sometimes an applicant will seek a remedy against a person (or other body) who is not the respondent named in his or her application. In such cases, either on request or on their

own initiative, the tribunals have power to order that the person (or other body) be "joined" as a party to the proceedings.

THE HEARING

The procedure during the hearing is orderly, but informal and flexible. The parties may give evidence, may call their witnesses to give evidence and may question their own witnesses and those brought by the other party. Each party may address the tribunal. The order in which evidence is given is not fixed and is a matter for the tribunal hearing the case. At the hearing, you present your case in person or be represented by any person whom you wish to represent you and who has agreed to do so.

The tribunal clerk will normally tell the parties about procedure before the case begins and is available to give information about the arrangements. If necessary, the tribunal will give guidance on procedure to a party during the hearing. Tribunal members may ask questions of parties or witnesses in order to obtain relevant facts.

It is generally in your interest to attend in person. While every consideration is given to written representations, personal evidence is likely to be more helpful. If you are neither present nor represented, the tribunal may decide the case in your absence, after considering any written representations you may have made. In some cases a tribunal cannot reach a decision if a party does not attend. A tribunal has power to dismiss an application if the applicant fails to attend without explanation.

EVIDENCE

Oral evidence plays a key part at an employment tribunal. If there is likely to be argument over matters of fact it might therefore be important to arrange for witnesses with personal knowledge of the matters in dispute to attend the hearing to establish the facts of your case or rebut the allegations of the other party. Both you and your witnesses may be required to give your evidence on oath or affirmation. Any witness you bring to a hearing may be cross-examined by the other party. (See Orders for attendance of witnesses below).

You should try to bring to the hearing any documentary evidence which might help the tribunal. These documents will vary according to the subject of the application but will usually include:

- the contract of employment or other documents relating to the terms of employment; details of pay in the previous and any new job for example, pay statements, wages records;

documents relating to other benefits received in the previous and any new job, for example, traveling expenses, car allowance, free or subsidised housing;

documents relating to any pension or superannuation scheme, documents relating to any money which had to be spent in taking up a new job - for example, traveling expenses, household removal expenses;

documents relating to income tax paid or refunded or unemployment or other benefits received.

There may be documents not mentioned in the previous paragraph which will help the tribunal. If there are, you should bring them with you to the hearing. You should also be prepared to give oral evidence about the matters mentioned in the documents. It will be helpful, and may simplify and shorten the hearing, if each party sends to the other and to the tribunal, well in advance of the hearing date, a list of documents which they intend to produce at the hearing.

The tribunal may wish to consider all matters arising out of the application which are within its jurisdiction, whether or not they have been referred to in the application. For example the application may relate to entitlement to a redundancy payment on dismissal, but at the hearing the question may arise as to whether the dismissal was unfair. It is therefore in your interest to come to the hearing prepared to give evidence on all points which may arise. If you do not do so it may be necessary to adjourn the case and arrange a second hearing on another day.

FURTHER EVIDENCE IN SUCCESSFUL, UNFAIR DISMISSAL COMPLAINTS

Respondents should bear in mind that they may have to pay the costs of any postponement or adjournment of a tribunal hearing that is due to their failure, without a special reason, to provide reasonable evidence about the continuing availability of the applicant's previous job. Respondents may also have to pay the costs of a postponement or adjournment in similar circumstances where a woman has succeeded in her complaint against her employer's refusal to allow her to return to work after she has been away from work due to pregnancy or confinement.

If, a tribunal awards compensation, this will relate in part to losses arising as a result of the dismissal. It is the applicant's duty to reduce these losses as much as possible, for example, by making adequate efforts to get another job. The applicant should be ready to give evidence about what he or she has done to reduce such losses.

ORDERS FOR ATTENDANCE OF WITNESSES, PRODUCTION OF DOCUMENTS AND SUPPLY OF PARTICULARS

If you have difficulty in persuading someone to give evidence on your behalf, the tribunal may grant an order requiring the witness to attend the tribunal hearing. Such an order will be served by the tribunal clerk upon the direction of the tribunal chairman.

Similarly, if you wish the other party to identify or produce relevant documents or supply further particulars about the case, you may ask them to do so. If they refuse, you may apply to the tribunal for an order to require them to do so. Such an order may allow you to take copies of the documents.

Applications to tribunals for orders relating to attendance of witnesses, the production of documents or the supply of particulars should give names and addresses of witnesses and details of information and documents to be provided. An application for a witness order should also say why the witness is unwilling to attend.

AWARD OF COSTS OR EXPENSES

Each party at a tribunal should meet his or her own expenses. They are not payable out of public funds. You will not have to pay any of the other party's costs or expenses merely because you lose your case. However, the tribunal does have power to order you to pay all or part of the costs or expenses of the other party if they decide that you have acted frivolously, vexatiously or unreasonably. An award of costs may follow a warning given at a pre-hearing assessment. This may apply even if the application is withdrawn and the case does not go on to a hearing. The tribunal may also order you to make a payment to the other party if he or she suffers loss because a hearing is postponed or adjourned at your request because of some action or failure on your part. It is open to either party to ask for costs against the other. A request should be made to the tribunal at the hearing if you wish it to consider making an order for costs to be paid. Where costs are sought relating to a withdrawn case, a request in writing should be made to the tribunal immediately on receipt of notice of withdrawal.

THE TRIBUNAL DECISION

The tribunal may announce its decision and perhaps also the reasons on which it is based at the close of the hearing. If it does not do so at this stage, the decision and/or the reasons will be given later. In every case, you will be sent a document setting out the decision and the reason behind it.

The written reasons for the tribunal's decision will be given in either full or summary form. In most cases it is likely that summary written reasons will be sent to the parties. However, where the tribunal decision relates to one of the following matters, full written reasons will automatically be given:

complaints of dismissal, action short of dismissal or selection for redundancy on the grounds of trade union membership or activities or non-membership of a union; applications for interim relief from those alleging dismissal on the grounds of trade union membership or activities or non-membership of a trade union.

In other cases a party has the right to ask the tribunal to provide full written reasons. If the request is made orally at the hearing or in writing within 21 days after the date on which the summary written reasons were sent to the parties, full written reasons will be provided. If the request is made at any other time it will be for the tribunal to decide whether or not to provide full written reasons.

From 1st April 1992 tribunal awards will carry interest under the Industrial Tribunals (Interest) Order. Under this Order, if all, or part of an award remains unpaid 42 days after the document containing the tribunal's decision is sent to the parties, this remaining sum will carry simple interest. In those decisions where interest applies, a Notice will accompany the decision stating the date from which interest starts to accrue and the rate at which it accrues.

REVIEWS

In certain circumstances a tribunal may review their decision, and change or correct it if they consider it to be wrong. These circumstances are:

- an error on the part of the tribunal staff caused the tribunal to make a wrong decision;

- or

- a party did not receive a notice of hearing; or
- the decision was made in the absence of a party or other person entitled to be heard;

- or

- since the conclusion of the hearing new evidence has become available and the existence of that evidence could not have been reasonably known or foreseen;

- or

- the interests of justice require such a review.

A tribunal will not review its decision merely because a party disagrees with that decision.

If you think you have grounds for asking for the decision to be reviewed you may apply to the tribunal at the hearing immediately after the decision has been given or you may send to the tribunal office a written request for a review, stating your reason in full, at any time after the hearing to reach the tribunal office not later than 14 days after the date (as shown on the copy of the decision) on which the tribunal's decision is sent to you.

The chairman who considers the application for a review, who is usually the chairman of the tribunal which decided the case, may refuse the application if, in his opinion, it has no reasonable prospect of success. If the application is accepted, it will normally be heard by the tribunal which decided the case.

APPEALS

You have the right to appeal against the decision of an employment tribunal only on a point of law.

TIME-LIMIT FOR APPEALS

You must give the Employment Tribunal written notice of your appeal within 42 days of the date on which the tribunal decision giving full written reasons is sent to you.

The Employment Tribunal will normally accept an appeal only if it is accompanied by a tribunal decision giving full written reasons. Therefore, if you intend to appeal against a tribunal decision you should ask for full written reasons as explained earlier. The time-limit of 42 days for making an appeal will run from the date on which the tribunal's full written reasons are sent to you. The Employment Tribunal have discretion to accept an appeal which is not accompanied by a tribunal decision giving full written reasons but it is possible that they will use this discretion only in exceptional circumstances.

MATTERS THAT MAY BE CONSIDERED BY AN EMPLOYMENT TRIBUNAL

Employment tribunals may be asked to decide questions relating to many different matters. The main ones are listed in the tables below. The table also includes the Act of Tynwald or statutory regulations which give the tribunals power to hear the case and, for most of the matters, the name of an explanatory guide or booklet which describes the matter concerned more fully and says who has the right to make an application to the tribunals. These guides and booklets are available, unless otherwise stated, free of charge from offices of the Manx Industrial Relations Service.

INTEREST ON AWARDS

In the event of an award not being paid 42 days after the date of the decision being made simple interest shall be accrued to the award.

The Secretary of the Employment Tribunal will when distributing to the parties the Tribunal's written decision include a notice defining:

- i) The decision date
- ii) The rate of interest
- iii) The date on which interest will accrue

INTEREST

The interest payable is defined under Section 9 of the Administration of Justice Act 1981 and is subject to amendment but is currently 8% per annum.

If only part of the award is made within the time limit only the balance outstanding will accrue interest. In addition if the award is subject to either a recoupment notice issued by the Department of Health & Social Security or any other statutory provision such amounts so defined will not be subject to interest.

CALCULATION

Interest accrues on a daily basis. The method is shown by example.

EXAMPLE

- 1) Tribunal award £250
- 2) Decision date 1.1.92

- 3) Interest 10% per annum
- 4) Interest date = 1. 1.92 + 42 days = 11th February 1992
- 5) Award paid to applicant on 19th February 1992
- 6) Settlement figure calculation
$$\text{£250 award} + \left(\frac{250 \times 50}{10 \times 365} \right) \text{ interest} = \text{£253.42 payable.}$$

Matters which a tribunal may be asked to decide**Act or regulations giving tribunals power****Explanatory guide or booklet****Insolvency of employer**

Right to be paid by the D.H.S.S. certain debts owed by an insolvent employer

Employment Act 1991

Employee's rights on insolvency of employer

Right to be paid by the D.H.S.S. occupational pension scheme contributions owing on behalf of employees of insolvent employer

Employment Act 1991

Insolvency of employers safeguard of occupational pension scheme contributions (Available only from insolvent employers' representatives and from D.H.S.S. and Manx Industrial Relations Service)

Itemised pay statement

Right to receive an itemised pay statement

Employment Act 1991

Guide to Employment Act 1991

Maternity rights

Right not to be unfairly dismissed for reasons connected with pregnancy

Employment Act 1991

Guide to Employment Act 1991

Right to time off work for ante-natal care

Employment Act 1991

Guide to Employment Act 1991

Right to return to work following absence because of pregnancy or confinement

Employment Act 1991

Guide to Employment Act 1991

Redundancy

Right to receive redundancy relating to the amount of such payments	Redundancy Payments Act	Guide to Redundancy Payments Act 1990
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Time off (see also Maternity rights and trade union membership/non-membership rights)

Right to time off for public duties	Employment Act 1991	Guide to Employment Act 1991
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Right to paid time off in the event of redundancy to look for other work or to make arrangements for training	Employment Act 1991	Guide to Employment Act 1991
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Matters which a tribunal or may be asked to decide	Act or regulations giving tribunals power	Explanatory guide booklet
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Trade union membership/non-membership rights

Right to time off for trade union duties; right to time off for trade union activities	Employment Act 1991	Department of Industry Code of Code of practice - Time off for trade union duties and activities
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Right not to suffer action short of dismissal for trade union membership or activities	Employment Act 1991	Guide to Employment Act 1991
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Right not to be unfairly dismissed for trade union activities	Employment Act 1991	Guide to Employment Act 1991
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Right not to be unfairly dismissed for non-membership of a union whether in or outside a closed shop	Employment Act 1991	Guide to Employment Act 1991
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In the event of either party seeking an adjournment or postponement such an application must be made **IN WRITING** to the Clerk of the Employment Tribunal, explaining fully the grounds that would justify the request in order that such an application can be fully considered by the Chairman who does hold the right to either agree or disagree with the application.

Unfair dismissal (see also Maternity rights, Medical suspension, Transfer of undertakings, Trade union membership/non-membership rights)

Right not to be unfairly dismissed	Employment Act 1991	Fair and unfair dismissal: a guide for employers
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Written reasons for dismissal

Right to receive a written statement for reasons for	Employment Act 1991	Guide to Employment Act 1991
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Written statement of main terms and conditions of employment

Right to receive a written statement of terms of employment or any alteration to them with sufficient details to meet the requirements of the Act	Employment Act 1991	Guide to Employment Act 1991
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Matters which a tribunal may be asked to decide	Act or regulations giving tribunals power	Explanatory guide or booklet
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Deductions from wages

Right of all workers not to have deductions made from their wages (or to be required to make payments to their employers), unless allowed by statute, by the contract of employment or with the worker's prior written agreement	Employment Act 1991	Guide to Employment Act 1991
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Additional rights for workers in retail employment who suffer deductions from wages (or are required to make payments) because of cash shortages or stock losses.

Employment Act 1991

Guide to Employment Act 1991

The definition of wages includes any sums payable to the employee as defined in their statement of employment to include fees; bonuses; commission; holiday pay, and amounts owed in lieu of notice.

Employment Act 1991