



Employment Tribunal Guide: Complaints to the Employment & Discrimination Tribunal

Note: This publication is intended to provide general guidance only. It does not constitute legal advice and should not be relied upon as doing so.

Advisory Officers, at the Employment Relations Service, can offer confidential and free advice on all aspects of employment law and employment relations.

Overview

Introduction

This information is provided to people making a complaint (Applicants) and employers (Respondents) responding to a complaint to the Employment & Discrimination Tribunal (the Tribunal).

Types of Complaint

Under the Employment Protection (Guernsey) 1998, Law

- Unfair dismissal (including constructive unfair dismissal)
- Failure to be provided with written reasons for dismissal or that the reason(s) given by an employer for dismissal is/are inadequate or untrue
- Having suffered a detriment for refusing, or proposing to refuse to work in a shop on a Sunday

Under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005

- Discrimination on the grounds of gender, married status or gender reassignment

Under the Minimum Wage (Guernsey) Law, 2009

- Where a worker has been paid at less than the prescribed minimum wage
- Where a worker has been refused proper access, by their employer, to relevant records in order to establish whether or not they have been paid at a rate that is less than the minimum wage; or

- Where a worker has suffered a detriment which they believe was as a result of exercising their rights under the Minimum Wage Law

Awards

Unfair Dismissal

If a complaint is upheld the Tribunal can make an award equal to six months' pay or for weekly paid staff, one week's pay multiplied by 26.

Sunday Shop Workers

In the case of shop workers who wish to complain that they have suffered or are suffering a detriment for refusing, or proposing to refuse to work in a shop on a Sunday or who have been dismissed for refusing or proposing to refuse to do shop work on Sundays, the Tribunal can make an award equal to one month's pay or for weekly paid staff, one week's pay multiplied by four.

Sex Discrimination

If a complaint is upheld the Tribunal can make an award of three month's pay or for weekly paid staff, one week's pay multiplied by 13 and/or an award of six month's pay for unfair dismissal which can be brought alongside a claim for discrimination.

Minimum Wage

In a complaint of 'failure to allow access to records' - the Tribunal can award 80 times the Minimum Wage per offence.

In a complaint of failure to be paid the Minimum Wage - the Tribunal can award the difference between the Minimum Wage and what has been paid to the worker during the period of underpayment.

In complaints brought under the Employment Protection (Guernsey) Law, 1998, involving the Minimum Wage regulations - the Tribunal can award one month's pay in 'suffering a detriment' claims and six months' pay in 'unfair dismissal' claims.

Please note that complaints relating to failure to be paid the Minimum Wage can be taken to the Employment & Discrimination Tribunal or to the Civil Court; this information relates only to those complaints brought to the Employment & Discrimination Tribunal.

Reduction of Awards

Before making an award for unfair dismissal, the Tribunal will take into account whether or not the Applicant was offered reinstatement. If an offer of job reinstatement was made and was unreasonably refused, the Tribunal may reduce the award.

If a Tribunal considers that, by reason of any other circumstance, it would be just and equitable to reduce the amount of the award of compensation for unfair dismissal, (for example, if the Applicant's conduct contributed to their own dismissal) then it may reduce the award to whatever extent it sees fit.

However, the facility to reduce the award, as described above, does not apply if it is shown that the reason for the dismissal, or in a redundancy case – the reason for selecting the Applicant for dismissal, was one of the '**automatically unfair**' reasons, details of these are listed in the following section.

Qualifying Periods

The Employment Protection (Guernsey) Law, 1998, as amended

Unfair Dismissal

In most cases a person is eligible to make a complaint as described above if they have been in the same employment for **one year or more** (known as the qualifying period).

There are exceptions to this requirement and a qualifying period may not be required if a person has been dismissed for the following **automatically unfair** reasons:

- Because they are pregnant or for any reason connected with their pregnancy
- Where a person has been unlawfully discriminated against contrary to the 'Maternity Leave and Adoption Leave Ordinance'
- Because they were involved in legitimate trade union activities or in relation to trade union membership
- For a reason connected to Health and Safety, for example they were dismissed because they were asked to perform an unsafe or unlawful task and refused
- Because they asserted a relevant statutory right (examples include: they asked for a written contract of employment or payslip or properly requested access to relevant records in order to establish whether or not they had been paid at a rate that is less than the Minimum Wage)
- Because they refused or proposed to refuse to work in a shop on a Sunday (or if they have suffered a detriment for refusing or proposing to refuse to work in a shop on a Sunday)
- Because they have suffered a detriment/less favourable treatment or have been dismissed, for a reason which they believe was based on their gender, married status or because they intend to undergo, are undergoing or have undergone gender reassignment

- Because they have suffered a detriment/less favourable treatment for a reason which they believe was a result of exercising their rights under the Minimum Wage Law

Failure to be provided with a written reason(s) for dismissal or where reason(s) provided are inadequate or untrue

The one-year qualifying period also applies to the right to be provided with a written reason for dismissal. The only exception is when the dismissal occurred while the employee was pregnant or on maternity leave. In such cases, the woman is entitled to a written reason for her dismissal, without requesting it, regardless of the length of time she has been employed.

The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005

Under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, complaints can be made by a person whilst still in employment.

However, rights under the Sex Discrimination Ordinance are not limited to existing or ex-employees but also cover other areas related to employment, for example, job applicants, contract workers, trade unions and partnerships.

The Minimum Wage (Guernsey) Law, 2009

Under the Minimum Wage Law, a person may be able to bring a complaint while they are still working for the employer if:

- They believe they have been paid at less than the prescribed Minimum Wage
- They have been refused proper access, by their employer, to relevant records in order to establish whether or not they have been paid at less than the Minimum Wage; or
- They have suffered a detriment which they believe was as a result of exercising their rights under the Minimum Wage Law

Time Limits for Complaints

Unfair Dismissal

A complaint must be submitted to the Secretary to the Employment & Discrimination Tribunal (the Secretary) within three months of the 'effective date of termination'.

The 'effective date of termination' is:

- The date on which the notice period ends
- The last day at work (if the dismissal was without notice or with pay in lieu of notice) or

- If a person is employed on a fixed term contract, which is not going to be renewed, the effective date of termination is the day the contract expires

This means that, for example, if employment ends on the 30 March, an application to make a complaint to the Tribunal must be received by the 29 June; if employment ended on the 5 April, an application must be received by the 4 July.

Sunday shop Workers

In the case of shop workers who wish to complain that they have suffered or are suffering a detriment for refusing or proposing to refuse to work in a shop on a Sunday, complaints must be submitted within three months of (or becoming aware of) the act, or failure to act, which caused the detriment.

In the case of shop workers who have been dismissed for refusing or proposing to refuse to do shop work on Sundays, a complaint must be submitted within three months of the effective date of termination of employment.

Sex Discrimination

A complaint must be submitted within a period of three months beginning on the day the discriminatory act complained of was done. An act extending over a period of time is treated as having been done at the end of that period and the three months' time limit starts from the end of that period.

Minimum Wage

A complaint must be submitted within a period of three months. When calculating the limit it may be necessary to take into account times specified in the Law for a response, by the employer, to requests for access to relevant records.

Out of Time Complaints

If a complaint is not received within the three month time limit, it will be rejected.

It is possible to apply for a complaint to be 'allowed in' outside of the time limit, on the basis that it was not 'reasonably practicable' (reasonably possible) for the complaint to have been submitted before.

The application form (ET1) should be sent to the Secretary, together with a covering letter stating the reason(s) why it could not be submitted earlier. The Respondent (employer) will be notified and the matter will be referred to a Tribunal for a decision.

The decision of the Tribunal may be appealed, but only on a point of law.

The Process

Making a Complaint

An [Application Form \(ET1\)](#) can be downloaded. Forms can also be obtained from the Employment Relations Service, contact details are listed at the end of this document.

When an ET1 is received and the complaint registered, this will be confirmed in writing. A case number will be allocated to the complaint, which will be quoted in any further correspondence. A copy of the ET1 is sent to the Respondent (employer).

Responding To a Complaint

The Respondent (the employer) will be asked to respond to the complaint by completing the [Response Form \(ET2\)](#) and confirming whether or not it intends to resist (dispute) the complaint.

The Respondent should return the completed form within **two weeks**. A copy of the response form is sent to the Applicant. (If no response is received the complaint may still be heard by a Tribunal and a decision made in the Respondent's absence).

Where to send Application and Response Forms

Completed Application forms (ET1) and Response forms (ET2) should be sent to the Secretary to the Employment & Discrimination Tribunal at the address listed at the end of this document.

What Happens Next?

Copies of the ET1 and ET2 forms are sent to the conciliation officer assigned to the complaint.

Conciliation

An opportunity to reach a settlement without the need to refer the case to a Tribunal hearing will then be offered to both parties. Conciliation is a free service but it is not compulsory to take part. For further information on this process see [Conciliation for Individuals](#) or contact an Employment Relations advisory officer.

If a settlement is reached, the parties will sign an agreement, which will be countersigned by the conciliation officer. The complaint will be closed and no further action concerning the complaint may be taken, under the Law.

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

Compromise Agreements

Ordinarily, people cannot 'contract out' of the rights to claim unfair dismissal, sex discrimination etc.

An exception to the above rule is where settlement is reached through the conciliation process, as referred to above.

Another exception is where the parties reach what is called a compromise agreement, making it possible for parties to come to an agreement without reference to the Tribunal or conciliation processes.

However, for a compromise agreement to be legally binding, it must meet certain prescribed conditions as follows:

- a) the agreement must be in writing
- b) the agreement must relate to the particular complaint
- c) the applicant must have received advice from a fully insured, independent adviser as to the terms and effect of the proposed agreement, in particular, its effect on his/her ability to pursue their rights before the Tribunal
- d) the agreement must identify the adviser
- e) the agreement must state that the conditions regulating a compromise agreement, under the relevant law, are satisfied.

A person is an independent adviser if he is a lawyer, or an officer, official, employee or member of an independent trade union (certified in writing by the union as competent to give advice and authorised to do so). A person is not an independent adviser if he/she is employed by, or is acting in the matter for the other party (Respondent) or a person connected with the other party (Respondent).

Tribunal Hearings

A hearing will be arranged (normally within six weeks of the complaint being registered, unless conciliation is still in progress with a view to a settlement) and a Tribunal will be appointed to hear the complaint. After the hearing, the Tribunal will either make an award or dismiss the complaint. Further information can be found in Employment Tribunal Guides: 'Preparing for a Tribunal Hearing' and ['Attending a Tribunal Hearing'](#).

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 only on a point of law and must be made within **one month** of the date of the decision of the Tribunal.

What Costs are Involved?

Each party will normally be responsible for any costs involved in preparing and presenting its own case for a Tribunal hearing.

A Tribunal **may**, in certain circumstances, award costs to either party; however, this will not include costs for legal representation. Legal fees are not recoverable. Information on costs can be accessed through www.guernseylegalresources.gg or by contacting the Employment Relations Service.

Note:

In a complaint or an appeal brought before the Magistrates/Royal Court, the parties may be subject to any costs incurred under Court procedures.

Other Publications

There are two further **Employment Tribunal Guides**: [‘Preparing for a Tribunal Hearing’](#) and [‘Attending a Tribunal Hearing’](#)

Publications can be downloaded from the website on a wide range of employment relations subjects, including local employment legislation and best practice guidance on other employment related matters.

Contact Information

For further advice

- Check www.gov.gg/employmenttribunal
- Email employmentrelations@gov.gg
- Contact the **Employment and Discrimination Tribunal**, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH
- Telephone number: 01481 717056