

10 TIPS FOR AVOIDING EMPLOYMENT TRIBUNALS

If an employee [or a disgruntled applicant] is determined to bring a Tribunal claim against your organisation, there is little you can do other than defend the application. These tips are intended to help you to minimise the risks of being taken to Tribunal, or if the worst does happen, to reduce the hassle by being prepared.

FACTS

Employment Tribunals award £millions each year in respect of cases brought before them by employees or workers depending on eligibility. The amounts awarded vary enormously with the highest being awards being made for discrimination claims where significantly, the cap which applies for unfair dismissal is not applied.

Are you aware that the **maximum Basic Award** for unfair dismissal is **£9,300** (this is calculated on the same basis as redundancy pay related to the employee's age and service at date of dismissal)? **If the dismissal is deemed as automatically unfair, there is a minimum basic award of £4,200.** The maximum award for Breach of Contract is **£25,000.**

There is also a **Compensatory Award** to cover loss of earnings, pension rights and so on. The maximum for this is currently **£60,600 (from February 2007).** These figures are reviewed annually each February.

NB for cases of Sex, Race, Age, Disability and Trade Union activity, there is no ceiling on compensation, nor does an employee have to have one year's qualifying service to make a claim - they do not even need to be an employee, for example an employment applicant claiming discrimination at the recruitment stage. Dismissal for exercising a statutory right such as taking time off to care for a dependent in an emergency, is automatically unfair and does not need a year's qualifying service for eligibility.

TIPS

1. Make sure you are aware of your responsibilities under the **Statutory Dispute Resolution Regulations (October 2004).** You may not realise that in addition to recognised dismissals these also apply to Retirements, Redundancies and the non-renewal of Fixed Term contracts. See ACAS website - www.acas.org.uk.
2. In line with the above, make sure you have both **Disciplinary and Grievance Procedures** in place which comply. The old exemption for companies employing 20 or fewer employees, no longer exists. The [ACAS website above](#) also provides information, sample policies and letters and a link to their publications to assist employers.
3. **Don't just have procedures in place, MAKE SURE YOU FOLLOW THEM!** Failure to adhere to the Statutory Dispute Resolution Regulations will render a dismissal automatically unfair and could lead to the award of additional damages against you. Other cases are lost by employers through failing to follow a fair process or ignoring their own procedures. **Never suggest that someone resigns or have an 'off the record' chat about them leaving** - it could be held against you as evidence of constructive dismissal.
4. Make sure you have **held all the necessary disciplinary and grievance meetings** and have followed up as required in writing confirming the outcome and offering an **Appeal.** The Tribunal will ask you to confirm whether or not the ex-employee has already raised the substance of their claim with you under your grievance procedure, if not, the claim can be referred back to you before they hear it (a shortened process is allowed in these circumstances).

5. **Stamp down on any bullying** which comes to your attention - even off-site incidents between work colleagues, such as in the pub after work may count. Ideally, you should have a **bullying and harassment policy** in place see [again www.acas.org.uk](http://www.acas.org.uk) or www.bullyingbusiness.com/html/employers.html. Also have clear policies about sex and race discrimination and an equal opportunities policy. Regularly review policies for example in addition to banning porn, should your Use of Internet and Email policy also cover blogging?
6. **Encourage people to talk to you in confidence** and then do not betray their confidences. Seek their permission if you want to take the matter up on their behalf. Bring in a qualified external resource if any internal investigation is likely to cause divided loyalties or people to clam up when questioned about reported incidents.
7. **Have clear rules and stick to them** e.g. what is acceptable/not acceptable round here? It is good to get agreement/buy-in from staff for the rules which are being established, so consult with them on what they think are fair rules. Make sure new employees are made aware of the rules from day one in a document or staff handbook.
8. **Keep records** of any discussions held about performance, absences and late arrivals/early departures (unless of course the latter are covered by a flexitime policy). **Keep a note of facts and statistics which might be useful to you in the future.** Print and keep emails which may be useful evidence. Hold return to work interviews when people have been off sick - even for one day - it shows them you have noticed their absence. Get them to complete and sign self-certification forms.
9. **Make sure your contracts of employment are kept up to date** and in addition to the elements you must include to comply with the **Written Statement of Employment Particulars, required within 8 weeks of an employee joining** include clauses such as authority to make deductions from pay so you are not in contravention of the Employment Act 1996 (previously the Wages Act 1986); Data Protection; Internet and email rules; Intellectual Property; right to ask for a Medical Report and so on.
10. The amount of legislation with which you have to comply, even as a small employer is growing all the time and you should at least be familiar with some of the main legal requirements - Working Time Regulations; Health and Safety (including duty to carry out Risk Assessments); Asylum and Immigration Act; Statutory Notice requirements; Maternity, Paternity, Adoption and Parental Leave, Time off for Dependents and Right to request Flexible Working; Equal Pay Act; Redundancy and Transfer of Undertakings (TUPE) rights and in 2006 - [now you also need to](#) look out for Age Discrimination.

(See also 10 Tips for a Happier Workforce; 10 Tips for Recruiting Successfully and 10 Tips for Dealing Successfully with People at Work).

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