

## EMPLOYMENT TRIBUNALS COSTS

### 1. Information

We represent clients on the many different types of claims that can be brought in an Employment Tribunal, from simple claims for wrongful and unfair dismissal to more complex claims for constructive dismissal and discrimination. What comes with this experience is knowledge of the time that it generally takes to deal with them. As we typically charge at our current hourly rate when advising our clients, the greater the amount of time that it takes to deal with a case then the higher the cost. Where we can, we will agree fixed fees for certain stages of the case, and alert you as to the cost involved in progressing to the next stage. 'Ordinary' unfair and wrongful dismissal claims (in respect of unpaid notice) are common in the Employment Tribunal and we've set out below a range of potential fees for bringing and defending such claims.

### 2. Potential fees

Whilst each case is different, potential fees for a simple case can range from £10,000 to £20,000; fees for a moderately complex case can range from £20,000 to £50,000; and fees for a highly complex case can range from £50,000 to £90,000. This does not include VAT.

The more complex the claim, the more time we have to spend dealing with it, which means higher costs. Examples of factors that usually make a case more complex (and expensive) include the following:

- There being a large number of witnesses (the more witnesses, the more time it takes to interview them);
- There being more than one person bringing or defending the claim;
- The longer the duration of the final hearing (4-7 days in some cases), the more time it will take to deal with the case;
- The nature and extent of the disclosure process (where each party searches for, lists and discloses their documents that are relevant to the claim) entailing a large volume of documents and/or documents in different formats or from multiple sources (e.g. paper and computer records, telephone logs and emails);
- Where we have to deal with:
  - applications to amend a claim, cost applications, applications to force an individual to be a witness or requests made by either party for additional documents relevant to the case;
  - arguments about whether the Employment Tribunal has jurisdiction to hear the claim or complex preliminary issues, such as whether the person making the claim is an employee or worker or whether a person is disabled;
  - requests for more information about an existing claim or defence;
  - an individual bringing a claim against our client who isn't legally represented; or
  - claims that the dismissal itself was discriminatory (not including standalone claims of discrimination or allegations that there were a series of discriminatory acts which ended with the dismissal)
  - automatic unfair dismissal claims, e.g. if the claim is that the dismissal took place as a result of the person blowing the whistle on their employer;
- If you require face-to-face meetings rather than discussions by telephone.

Cases for anything other than wrongful or unfair dismissal, for example, claims for discrimination not linked to the dismissal, allegations of being treated detrimentally for blowing the whistle, equal pay claims, very complex whistleblowing cases or complex claims for constructive dismissal (i.e. where the employee resigns and claims that their employer's actions were tantamount to a dismissal) will fall outside of the categories set out above. If you are not clear about whether the claim that you are bringing or defending falls outside of the categories, or want to understand the costs for a claim that you know falls outside of the categories, please let us know. We will be happy to discuss it with you.

### 3. At the hearing and barristers

We will always instruct a barrister (also known as 'counsel') to represent you at the final hearing of the claim. In particular, as Employment Tribunal advocacy is a specialist skill, instructing the barrister is generally more cost effective. However, we will generally need to have one of our team accompany the barrister, to help them with

the evidence and documents. If a claim succeeds, and there is a separate hearing to deal with what compensation should be awarded, this will result in further costs being incurred. We will discuss with you what those costs are should the need arise.

Whilst we would generally represent you at any case management Preliminary Hearing (i.e. the preliminary hearing that takes place to decide what steps need to take place before the final hearing and the issues to be addressed at the hearing) there may be issues, such as the Employment Tribunal being outside of the Greater London area, that make it more cost effective to have a barrister closer to the location of the Employment Tribunal to represent you. We will always discuss the best approach with you before we proceed.

Barristers' fees for attendance at hearings include a fixed element (called the 'brief fee') and a variable element. The brief fee covers reading the documents that will be referred to at the hearing, preparing to represent you at the hearing and then representing you on the first day of the hearing. The variable element of the barrister's fees is the daily fee that they will charge you for each day (after the first day) that they represent you at the hearing. Depending upon the type of claim and the level and experience of the barrister that you want to represent you, barrister's fees can be expected to be between £1,500 - £10,000 for the brief fee with daily fees thereafter of between £750 to £1,750. Again, we will discuss this with you and ensure that you are clear on the barrister's fees before we instruct them. We are not responsible for setting counsels fees and so the above fees are only indicative. These fees are in addition to the range of costs that we have set out under the heading 'Potential Fees' above.

#### 4. Disbursements

Disbursements are costs related to your matter that are payable to third parties such as barristers' fees, couriers' fees (where sending large numbers of or confidential documents) and costs for the likes of travel, accommodation (where necessary), some overseas telephone calls and significant printing or copying charges. We handle the payment of the disbursements on your behalf to ensure a smoother process. We may, though, arrange for you to be invoiced direct by the third party.

#### 5. Key stages

The range of fees set out under 'Potential Fees' above is intended to address the typical stages of a claim in the Employment Tribunal for wrongful and/or unfair dismissal which include:

- taking your initial instructions, considering the relevant documents and advising you on your likely success in bringing or defending the claim, including potential compensation (we will revisit this throughout the case as prospects may change);
- entering into pre-claim conciliation where this is mandatory to explore whether a settlement can be reached;
- preparing your claim or response to the claim (as applicable);
- reviewing and advising on the claim or response from the other party;
- a reasonable amount of time exploring settlement and negotiating settlement throughout the case;
- preparing for and considering a schedule of loss;
- preparing for (and attending) a case management Preliminary Hearing;
- exchanging documents with the other party and agreeing a bundle of documents to be referred to in the final hearing;
- taking statements from the witnesses, drafting their statements and agreeing the content with them;
- reviewing and advising on the other party's witness statements;
- preparing the bundle of documents to be referred to in the final hearing;
- agreeing a list of issues, a chronology and/or cast list i.e. a list of 'who's who';
- preparation and attendance at final hearing, including giving instructions to the barrister.

The stages set out above are only an indication of the likely process. It may be that not all stages are required or relevant, a result of which may be that the case falls at the lower end of the range of costs given above. Further, you may wish to handle the claim yourself and only have our advice in relation to some of the stages. This can be discussed on a case-by-case basis. If the party making the claim succeeds, and there is a separate hearing to deal with what compensation should be ordered, this will result in further costs being incurred. We will advise you further on potential costs should this arise.

## 6. How long will my application take?

The time that it takes from taking your initial instructions to the final resolution of the matter depends largely on the stage at which the case is resolved. If a settlement is reached during pre-claim conciliation, the case is likely to take 4 - 6 weeks. If the claim proceeds to a final hearing, the case is likely to take 9 – 12 months (this depends upon which Employment Tribunal is hearing the claim and the complexity of your case). This is just an estimate and we will be able to give you a more accurate timescale once we have more information and as the matter progresses.

## 7. Funding for Employment Tribunal claims

It may be that you can recover your legal costs for bringing a claim from an insurer under an existing insurance policy that you may have, for example household contents insurance. We will discuss this with you when we have our first appointment.

You should note that the range of costs and the barristers' fees set out above are not quotes and exclude VAT.

## 8. Bringing or defending a claim

If you would like further guidance on making or defending an Employment Tribunal claim, you can access free advice from the gov.uk website. <https://www.gov.uk/courts-tribunals/employment-tribunal>. ACAS (short for the Advisory, Conciliation and Arbitration Service) website is also helpful. The ACAS website also contains details of the free ACAS Early Conciliation Service. <http://www.acas.org.uk/index.aspx?articleid=1461>

## 9. Who will represent you

Adele Dethick is our Consultant Legal Director who will work with you when you are bringing or defending an Employment Tribunal Claim. Adele has over 25 years' experience in advising clients in all matters relating to employment law and has represented a significant number of clients bringing or defending claims in the Employment Tribunal, which includes volume litigation in relation to holiday pay and protective award claims. Adele has extensive experience in tribunal litigation ranging from wrongful dismissal and unfair dismissal claims to complex cases which raise arguments about employment status, discrimination and whistleblowing. Adele has experience of working in-house with a blue-chip communications giant, and with a large employer in the care sector, where she managed a team of ER advisors handling an annual caseload in excess of 2,000 cases. Adele has also spent time with a trade union law firm with responsibility for advising trade unions and their members at regional and national level on all aspects of employment law.

Dated: April 2024