

2020 No. 2

EMPLOYMENT

DISPUTE RESOLUTION

The Industrial Tribunals and Fair Employment Tribunal (Early Conciliation: Exemptions and Rules of Procedure) Regulations (Northern Ireland) 2020

Made - - - - - *3rd January 2020*

Coming into operation - - - - - *27th January 2020*

The Department for the Economy(a), in exercise of the powers conferred by Articles 20A(7), (11) and (12) and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996(b) and Articles 88ZA(7), (10) and (11) and 104(3) of the Fair Employment and Treatment (Northern Ireland) Order 1998(c), makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Industrial Tribunals and Fair Employment Tribunal (Early Conciliation: Exemptions and Rules of Procedure) Regulations (Northern Ireland) 2020 and the Rules of Procedure contained in the Schedule may be referred to as the Early Conciliation Rules of Procedure.

(2) These Regulations come into operation on 27th January 2020.

Interpretation

2. In these Regulations and in the Schedule—

“the Agency” means the Labour Relations Agency;

“claim form” means the form prescribed by the Department in accordance with Regulation 15(1)(a) of the Tribunal Regulations;

“early conciliation certificate” means the certificate prescribed by the Department in accordance with regulation 4(1)(b);

“early conciliation form” means a form prescribed by the Department in accordance with regulation 4(1)(a);

“Fair Employment and Treatment Order” means the Fair Employment and Treatment (Northern Ireland) Order 1998;

(a) 2016 c. 5 (N.I.). Functions relevant to these Regulations were transferred from the Department for Employment and Learning by S.R. 2016 No. 76, article 6(1)(c).

(b) S.I. 1996/1921 (N.I. 18); Article 20A was inserted by the Employment Act (Northern Ireland) 2016 (c. 15 (N.I.)), section 1(1).

(c) S.I. 1998/3162 (N.I. 21); Article 88ZA was inserted by c. 15(N.I.), section 5(2).

“Fair Employment Tribunal” means the Fair Employment Tribunal for Northern Ireland established in accordance with regulation 5 of the Tribunal Regulations;

“industrial tribunal” means an industrial tribunal established in accordance with regulation 4 of the Tribunal Regulations;

“Industrial Tribunals Order” means the Industrial Tribunals (Northern Ireland) Order 1996;

“prospective claimant” means a person who is considering presenting a claim form to an industrial tribunal or the Fair Employment Tribunal in relation to relevant proceedings;

“prospective respondent” means a person who would be the respondent on the claim form which the prospective claimant is considering presenting to an industrial tribunal or the Fair Employment Tribunal;

“relevant proceedings” means proceedings listed in Article 20(1) of the Industrial Tribunals Order or proceedings under Article 38 of the Fair Employment and Treatment Order;

“respondent” means the person against whom proceedings are brought;

“requirement for early conciliation” means the requirement set out in Article 20A(1) of the Industrial Tribunals Order or Article 88ZA(1) of the Fair Employment and Treatment Order;

“Tribunal Regulations” means the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020(a).

Exemptions from early conciliation

3.—(1) A person (“A”) may start relevant proceedings without complying with the requirement for early conciliation where—

- (a) another person (“B”) has complied with that requirement in relation to the same dispute and A wishes to start proceedings on the same claim form as B;
- (b) A starts those relevant proceedings on the same claim form as proceedings which are not relevant proceedings;
- (c) A is able to show that the respondent has contacted the Agency in relation to a dispute, the Agency has not received information from A under Article 20A(1) of the Industrial Tribunals Order or Article 88ZA(1) of the Fair Employment and Treatment Order in relation to that dispute, and the proceedings on the claim form relate to that dispute;
- (d) the proceedings are proceedings under Part XI of the Employment Rights (Northern Ireland) Order 1996(b) and the complaint presented to start those proceedings is accompanied by an application under Article 163 of that Order; or
- (e) A is starting proceedings against the Security Service, the Secret Intelligence Service or the Government Communications Headquarters.

(2) Where A benefits from the exemption in paragraph (1)(a), the requirement for early conciliation shall be treated as complied with for the purposes of any provision extending the time limit for starting relevant proceedings in relation to that dispute.

Power to prescribe

4.—(1) The Department may prescribe—

- (a) one or more early conciliation forms to be used by prospective claimants for the purpose of complying with the early conciliation requirement; and
- (b) an early conciliation certificate to be issued by the Agency if rule 7 of the Schedule applies.

(a) S.R 2020 No. 3.

(b) S.I. 1996/1919 (N.I. 16)

(2) The Department must publish any forms prescribed under paragraph (1)(a) in a manner which the Department considers appropriate to bring them to the attention of prospective claimants and their advisers.

Application of the Schedule

5. The Schedule to these Regulations has effect.

Sealed with the Official Seal of the Department for the Economy on 3rd January 2020.



Colin Jack
A senior officer of the Department for the Economy

SCHEDULE

Regulation 5

THE EARLY CONCILIATION RULES OF PROCEDURE

Starting Early Conciliation

Satisfying the requirement for early conciliation

1. To satisfy the requirement for early conciliation, a prospective claimant or their representative must—

- (a) present a completed early conciliation form to the Agency in accordance with rule 2; or
- (b) telephone the Agency in accordance with rule 3.

2.—(1) An early conciliation form which is presented to the Agency must be—

- (a) submitted using the online form via the Agency's website; or
- (b) sent by post to the Agency address provided on the early conciliation form.

(2) An early conciliation form must contain—

- (a) the prospective claimant's name and address; and
- (b) the prospective respondent's name and address.

(3) The Agency may reject a form that does not contain the information specified in paragraph **(2)** or may contact the prospective claimant or their representative to obtain any missing information.

(4) If the Agency rejects a form under paragraph **(3)**, it must either return the form or notify the prospective claimant or their representative that the form is rejected.

3.—(1) A prospective claimant or their representative telephoning the Agency for early conciliation must call the telephone number provided on the early conciliation form and inform the Agency of—

- (a) the prospective claimant's name and address; and
- (b) the prospective respondent's name and address.

(2) The Agency must insert the information provided under paragraph **(1)** on to an early conciliation form or on to the Agency's electronic case management system.

4. If there is more than one prospective respondent, the prospective claimant or their representative must present a separate early conciliation form under rule 2 in respect of each prospective respondent or, in the case of a telephone call made under rule 3, must name each prospective respondent.

The Early Conciliation Process

Contact between the Agency and the parties

5.—(1) The Agency must make reasonable attempts to contact the prospective claimant or their representative.

(2) If the prospective claimant consents to the Agency contacting the prospective respondent, the Agency must make reasonable attempts to contact the prospective respondent or their representative.

(3) If the Agency is unable to make contact with the prospective claimant or prospective respondent or their respective representatives it must conclude that settlement is not possible.

Period for early conciliation

- 6.**—(1) For up to one calendar month starting on the date—
- (a) of receipt by the Agency of the early conciliation form presented in accordance with rule 2; or
 - (b) the prospective claimant or their representative telephoned the Agency in accordance with rule 3,

the conciliation officer must endeavour to promote a settlement between the prospective claimant and the prospective respondent.

(2) The period for early conciliation may be extended by a conciliation officer, provided that the prospective claimant and prospective respondent consent to the extension and the conciliation officer considers that there is a reasonable prospect of achieving a settlement before the expiry of the extended period.

(3) An extension under paragraph (2) of the period for early conciliation may only occur once and may be for a maximum of 14 days.

Early conciliation certificate

7.—(1) If at any point during the period for early conciliation, or during any extension of that period, the conciliation officer concludes that a settlement of a dispute, or part of it, is not possible, the Agency must issue an early conciliation certificate.

(2) If the period for early conciliation, including any extension of that period, expires without a settlement having been reached, the Agency must issue an early conciliation certificate.

- 8.** An early conciliation certificate must contain—
- (a) the name and address of the prospective claimant;
 - (b) the name and address of the prospective respondent;
 - (c) the date of receipt by the Agency of the early conciliation form presented in accordance with rule 2 or the date that the prospective claimant telephoned the Agency in accordance with rule 3;
 - (d) the unique reference number given by the Agency to the early conciliation certificate; and
 - (e) the date of issue of the certificate, which will be the date that the certificate is sent by the Agency, and a statement indicating the method by which the certificate is to be sent.

9.—(1) Where the Agency issues an early conciliation certificate, it must send a copy to the prospective claimant and, if the Agency has had contact with the prospective respondent during the period for early conciliation, to the prospective respondent.

(2) If the prospective claimant or the prospective respondent has provided an email address to the Agency, the Agency must send the early conciliation certificate by email and in any other case must send the early conciliation certificate by post.

- (3) An early conciliation certificate will be deemed received—
- (a) if sent by email, on the day it is sent; or
 - (b) if sent by post, on the day on which it would be delivered in the ordinary course of the post.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Employment Act (Northern Ireland) 2016 amended the Industrial Tribunals (Northern Ireland) Order 1996 and the Fair Employment and Treatment (Northern Ireland) Order 1998 to introduce a requirement for prospective claimants to contact the Labour Relations Agency before they are able to present a claim to an industrial tribunal or the Fair Employment Tribunal. This requirement applies to claims which are relevant proceedings under Article 20(1) of the Industrial Tribunals Order or Article 38 of the Fair Employment and Treatment Order.

Regulation 3 sets out the circumstances in which a claimant may present a claim dealing with relevant proceedings without complying with the requirement for early conciliation.

The exemption in regulation 3(1)(a) relates to claimants who are presenting a claim on the same claim form as other claimants or joining a claim which has already been presented to an industrial tribunal or the Fair Employment Tribunal by another claimant (so called ‘multiples’); in such circumstances, a claimant may rely upon the fact that another claimant has complied with the requirement for early conciliation and has a certificate from the Agency.

The exemption in regulation 3(1)(b) means that if a claim for relevant proceedings appears on the same claim form as proceedings which are not relevant proceedings, there is no need for a claimant to satisfy the early conciliation requirement in relation to those relevant proceedings.

The exemption in regulation 3(1)(c) means that a claimant need not comply with the requirement for early conciliation where the prospective respondent has already contacted the Agency in relation to the dispute.

The exemption in regulation 3(1)(d) means that a claimant does not have to comply with the requirement for early conciliation where a claim for unfair dismissal is accompanied by a claim for interim relief.

The exemption in regulation 3(1)(e) means that a claimant does not have to comply with the requirement for early conciliation where the claim is against the Security Service, the Secret Intelligence Service or the Government Communications Headquarters.

The power in regulation 4 allows the Department for the Economy to prescribe a form which prospective claimants must use to contact the Agency in relation to the requirement for early conciliation and a certificate for the Agency to issue following early conciliation.

Rules 1 to 4 in the Schedule set out how a prospective claimant or their representative should provide information to the Agency so as to comply with the requirement for early conciliation.

Rule 5 details the process for early conciliation. Rule 6 provides that conciliation may be attempted for up to one calendar month and that this period may be extended for up to two weeks.

Rules 7 to 9 set out what will happen if early conciliation is unsuccessful in whole or in part.

A Regulatory Impact Assessment has been produced and is available from the website of the Department for the Economy at <https://www.economy-ni.gov.uk/consultations/employment-law-review> or alongside this Statutory Rule at <http://www.legislation.gov.uk/nisr>.

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