

2014 No. 254

EMPLOYMENT TRIBUNALS

The Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014

<i>Made</i>	- - - -	<i>11th February 2014</i>
<i>Laid before Parliament</i>		<i>13th February 2014</i>
<i>Coming into force</i>		
<i>for the purpose of regulation 4</i>		<i>6th March 2014</i>
<i>for all other purposes</i>		<i>6th April 2014</i>

The Secretary of State, in exercise of the powers conferred by sections 18A(7), (11) and (12) and 41(4) of the Employment Tribunals Act 1996(a), makes the following Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 and the Rules of Procedure contained in the Schedule may be referred to as the Early Conciliation Rules of Procedure.

(2) Regulation 4 comes into force on 6th March 2014 and the remainder of the regulations come into force on 6th April 2014.

Interpretation

2. In these Regulations and in the Schedule—

“ACAS” means the Advisory, Conciliation and Arbitration Service referred to in section 247 of the Trade Union and Labour Relations (Consolidation) Act 1992(b);

“claim form” means the form prescribed by the Secretary of State in accordance with regulation 12(1)(a) of the Employment Tribunals Regulations;

“conciliation officer” means an officer designated by ACAS under section 211 of the Trade Union and Labour Relations (Consolidation) Act 1992;

“early conciliation certificate” means the certificate prescribed by the Secretary of State in accordance with regulation 4(b);

“early conciliation form” means a form prescribed by the Secretary of State in accordance with regulation 4(a);

(a) 1996 c. 17; by virtue of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) industrial tribunals were renamed employment tribunals and references to “industrial tribunal” and “industrial tribunals” in any enactment were substituted with “employment tribunal” and “employment tribunals”. Section 18A was inserted into the Employment Tribunals Act 1996 by section 7 of the Enterprise and Regulatory Reform Act 2013 (c. 24).

(b) 1992 c. 52.

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

“Employment Tribunals Act” means the Employment Tribunals Act 1996;

“Employment Tribunals Regulations” means the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013(a);

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

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

“relevant proceedings” are those proceedings listed in section 18(1) of the Employment Tribunals Act(b);

“respondent” means the person against whom proceedings are brought in the Employment Tribunal; and

“requirement for early conciliation” means the requirement set out in section 18A(1) of the Employment Tribunals Act.

Exemptions from early conciliation

3.—(1) A person (“A”) may institute 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 institute proceedings on the same claim form as B;
- (b) A institutes 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 ACAS in relation to a dispute, ACAS has not received information from A under section 18A(1) of the Employment Tribunals Act in relation to that dispute, and the proceedings on the claim form relate to that dispute;
- (d) the proceedings are proceedings under Part X of the Employment Rights Act 1996(c) and the application to institute those proceedings is accompanied by an application under section 128 of that Act(d) or section 161 of the Trade Union and Labour Relations (Consolidation) Act 1992(e); or
- (e) A is instituting 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 instituting relevant proceedings in relation to that matter.

Power to prescribe

4.—(1) The Secretary of State may prescribe—

- (a) one or more forms to be used by all prospective claimants for the purpose of complying with the early conciliation requirement; and
- (b) a certificate to be issued by ACAS if rule 6 of the Schedule applies.

(a) S.I. 2013/1237.

(b) Section 18(1) was amended by the Enterprise and Regulatory Reform Act 2013, Schedule 1, paragraphs 2 and 5(1) and (3).

(c) 1996 c. 18.

(d) Section 128(1) was amended by S.I. 2010/493.

(e) Section 161 was amended by the Employment Relations Act 2004 (c. 24), Schedule 1, paragraph 12.

(2) The Secretary of State must publish any forms prescribed under paragraph (1)(a) in a manner which the Secretary of State 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 and the rules of procedure contained in the Schedule may be referred to as the Early Conciliation Rules of Procedure.

Jenny Willott
Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs
Department for Business, Innovation and Skills

11th February 2014

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 must—
 - (a) present a completed early conciliation form to ACAS in accordance with rule 2; or
 - (b) telephone ACAS in accordance with rule 3.
- 2.—(1) An early conciliation form which is presented to ACAS must be—
 - (a) submitted using the online form on the ACAS website; or
 - (b) sent by post to the ACAS address set out 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) ACAS may reject a form that does not contain the information specified in paragraph (2) or may contact the prospective claimant to obtain any missing information.
- (4) If ACAS rejects a form under paragraph (3), it must return the form to the prospective claimant.
- 3.—(1) A prospective claimant telephoning ACAS for early conciliation must call the telephone number set out on the early conciliation form and tell ACAS—
 - (a) the prospective claimant's name and address; and
 - (b) the prospective respondent's name and address.(2) ACAS must insert the information provided under paragraph (1) on to an early conciliation form.
4. If there is more than one prospective respondent, the prospective claimant may provide the name of only one prospective respondent on an early conciliation form presented under rule 2 or in a telephone call made under rule 3.

The early conciliation process

Contact between ACAS and the parties

5.—(1) ACAS must make reasonable attempts to contact the prospective claimant.

(2) If the prospective claimant consents to ACAS contacting the prospective respondent, ACAS must make reasonable attempts to contact the prospective respondent.

(3) If ACAS is unable to make contact with the prospective claimant or prospective respondent 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 ACAS of the early conciliation form presented in accordance with rule 2; or
- (b) the prospective claimant telephoned ACAS 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 up to 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, ACAS 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, ACAS 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 ACAS of the early conciliation form presented in accordance with rule 2 or the date that the prospective claimant telephoned ACAS in accordance with rule 3;
- (d) the unique reference number given by ACAS 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 ACAS, and a statement indicating the method by which the certificate is to be sent.

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

(2) If the prospective claimant or prospective respondent has provided an email address to ACAS, ACAS 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 Enterprise and Regulatory Reform Act 2013 amended the Employment Tribunals Act to introduce a requirement for prospective claimants to contact ACAS before they are able to present a claim in the Employment Tribunal. This requirement applies to claims which are relevant proceedings for the purposes of section 18(1) of the Employment Tribunals Act.

Regulation 3 sets out the circumstances in which a claimant may present a claim for 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 the Employment Tribunal by another claimant (so called ‘multiples’); in such instances, a claimant may rely upon the fact that another claimant has complied with the requirement for early conciliation and has a certificate from Acas.

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 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 ACAS 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 Secretary of State to prescribe a form which prospective claimants must use to contact ACAS in relation to the requirement for early conciliation and a certificate for ACAS to issue following early conciliation.

Rules 1 to 3 in the Schedule set out how a prospective claimant should provide information to ACAS 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 on the introduction of early conciliation is available and a copy can be obtained from the Department for Business Innovation and Skills, Labour Market Directorate, 1 Victoria Street, London, SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.

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