

Employment

Acas early conciliation – what you need to know

Acas early conciliation (EC) was introduced on 6 April 2014 and was initially voluntary. From 6 May 2014, it has been compulsory for most claimants to notify Acas before issuing an employment tribunal claim. Acas then contacts the parties to explore settlement. The aim behind EC is to assist parties in resolving their employment dispute without having to resort to a tribunal.

Procedure

The prospective claimant must submit an EC notification form online or by post or telephone Acas. The form is available on the Acas website and is very straightforward; it simply asks for the name, address and contact details of the employee and the employer, together with details of the employee's representative, the start and end dates of the employment, the job title and the date of the incident giving rise to a potential claim. Details of the potential claim are not required. Acas will send the claimant an acknowledgement online, by email or by post.

An EC support officer will contact the claimant by telephone within two working days to confirm the details, outline the EC process and ensure the claimant wishes to proceed. A conciliation officer will then contact the claimant and the respondent to try and promote a settlement within a one month period, which can be extended by 14 days if both parties agree. Acas has to make "reasonable efforts" to contact the claimant. If the claimant consents to EC, Acas must make "reasonable efforts" to contact the respondent. If either party has a legal representative, Acas will conciliate through them.

If a settlement is reached, it will be recorded in a COT3 settlement agreement. This is legally binding and will mean that the claimant will not be able to bring a tribunal claim.

If no contact is possible, either party does not wish to participate in EC or it is not possible to reach a settlement, Acas will issue an EC certificate by email or by post. This will include an EC reference number, which the claimant must include on the employment tribunal application form.

A claim form will be rejected by the tribunal if it does not contain this unique number. A copy of the formal acknowledgement that EC has finished will also be sent to the employer.

EC is not compulsory and either or both parties can decide not to participate. It is, however, compulsory for the claimant to notify Acas of a potential claim before issuing it, unless an exception applies. An employer can also notify Acas of a potential dispute and request EC.

The role of the conciliator

The conciliator will talk through the issues with the employer and employee. This will usually be done by telephone but meetings may sometimes take place. The conciliator will explain the EC process, encourage the use of internal procedures (such as the grievance procedure), explain how tribunals make decisions and what they take into account, discuss the options available, help the parties to understand how the other side views the issues and discuss any proposals either party has for a resolution.

There are various things that the conciliator cannot do. They include: knowing what the outcome of the tribunal hearing would be; advising either party whether to make or accept an offer; taking sides; representing either party; helping prepare a case or a defence; taking a view on the merits of a claim; or advising whether a claim should be made.

Time limits

Contacting Acas has the effect of pausing the clock for the purposes of calculating the time limit for the claimant to issue his claim. The pause can be for up to one calendar month plus a further 14 days if more time is needed. The time limit starts to run again when the claimant receives an EC certificate. Once EC has ended, a claimant will have at least one calendar month in which to submit a tribunal claim (ET1).

Exemptions

There are some cases that are exempt from EC. They include:

- where the respondent has contacted Acas first in relation to a dispute;
- where there are multiple claimants (such as in an equal pay case) and another claimant has already notified Acas;
- where the claimant is applying for interim relief in an unfair dismissal case; and

- where the claimant is issuing proceedings against the security services or GCHQ.

In these cases it is not compulsory for the claimant to notify Acas but he can still do so and request EC if he wishes.

Difficult issues

Some of the difficult issues include:

- time limits and whether the claimant issued his claim in time;
- whether he is covered by an exemption;
- whether the EC certificate covers the claims he is making; and
- whether the name of the employer is the same on the EC notification form and the ET1.

There has been satellite litigation around some of these points.

What you need to do

You can expect to have more dealings with Acas than before and for there to be a longer gap between a claim arising and being issued.

You should consider who will speak to Acas if an EC support officer contacts your organisation with a view to entering into EC and inform the relevant people. You should also think about whether any training is necessary for staff who will engage with Acas.

If you have more than 1,000 employees, you should register with Acas using **ECcontactslist@acas.org.uk** so that Acas has contact details for the relevant managers if it needs to get in touch with you. Lastly, you should consider what your approach will be to EC: you may decide to try to settle all potential cases through Acas or to wait and see if the employee issues a tribunal claim or you could take a case by case approach.

At a glance

Acas early conciliation was introduced on 6 April 2014 and it is now compulsory for most claimants to notify Acas of a potential claim. Acas will then contact the employee and employer to explore settlement. If this is successful, it will be recorded in a COT3 agreement; if Acas cannot contact either party or a settlement is not reached, Acas will issue an early conciliation certificate and the claimant will be able to launch a tribunal claim. The service is free and is intended to resolve disputes without the parties having to go to a tribunal. There is no obligation on either party to take part in early conciliation.

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