

Unite LE111 Branch

ACAS Early Conciliation - Information for Unite Housing Branch Representatives

July 2014

Summary

Since the 6th of May 2014 all potential Employment Tribunal Claims must be referred to the ACAS Early Conciliation service. Previously ACAS were only notified after an actual Employment Tribunal Claim had been submitted. Claimants were notified of who their individual ACAS Conciliator was, but there was no obligation for the claimant to contact ACAS directly. Now, since May this year, before any Employment Tribunal Claim is submitted, ACAS must be notified and the case discussed, first by the claimant (or their union representative) then the ACAS Conciliator will contact the employer. If both sides wish to make an agreement the ACAS Conciliator will attempt to broker a deal, if no agreement can be reached then ACAS will issue a certificate allowing the claimant to make an Employment Tribunal Claim.

Advice for Union Representatives

There is (currently) no section on the ACAS pre-claim conciliation form for our member to add the contact details of their union representative. As such it is important for the member to state clearly in the "additional information" section, the name and contact details of their representative. ACAS prefer to make initial contact via email and text (SMS), so it is advisable to include both phone and email details for the representative when completing the form. The form does not ask for details of the case, ACAS will ask for case details over the phone or by email.

ACAS will insist that all internal procedures relevant to the case (grievances, disciplinaries, capability, sickness monitoring, workplace assessments etc...) and their appeals have been completed before pre-claim conciliation starts, so if there is a valid reason why internal procedures are not complete, you will need to have an explanation ready for the Conciliator. Reasons could be, for example, the employer refused to hear a grievance or undertake a workplace assessment.

Be mindful of time limits, Employment Tribunal claims have strict deadlines. It is also worth remembering that you can only make a claim to an Employment Tribunal in the first three months (90 days) from the when incident happened, dismissal in particular. If the employer is taking too long to complete the procedure, then a claim can be submitted on this basis (.e.g. nearing the 90 day deadline). One of the benefits of the new system of pre-claim conciliation is that the 90 day deadline to make a claim is paused while ACAS is dealing with the claim (minimum one month), so if the claimant was nearing the 90 day deadline since being dismissed, they now have an extra month to prepare their claim. If the claimant doesn't submit a pre-claim conciliation application within 90 days of dismissal, the claimant will be considered as "timed-out" and it will be extremely difficult for them to win a successful Tribunal claim as they missed the deadline. The employer will be mindful of the dates and will most likely refuse to negotiate knowing that a late claim is easy for an employer to win.

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Pre-claim conciliation is different than the usual ACAS advice service. It is a negotiation service so you need to be clear on what you are claiming (unfair dismissal, wrongful dismissal, automatic unfair dismissal due to discrimination on the basis of disability or gender, failure to make reasonable adjustments in the workplace etc...). Remember, you are not trying to "win" the case, you are just demonstrating that you know the case and that the case is arguable. The conciliator will ask standard questions, so have standard information like the member's employment start date, dismissal date, date of refusal to make reasonable adjustments, or other relevant information ready when ACAS phone.

If your member has a reasonable suggestion of what would remedy the claim, whether it be practical (.i.e. redeployment to a building with disabled access, demotion instead of dismissal) or monetary (.e.g. the member wants £6,000 and agrees not to make an Employment Tribunal Claim), do put the proposal forward as ACAS will most likely ask what outcome you are seeking anyway. Of course the employer will not agree to all, or even any of the arguments you make on behalf of your member, in fact the employer would have ruled against you member in the outcome(s) of the internal processes by this stage, but entering pre-claim conciliation shows that your member is seriously considering making an Employment Tribunal Claim and the employer may wish to settle on this basis, either to save legal costs or that your member has a chance of being successful at Tribunal (or both).

Lastly, ACAS pre-claim conciliation is an independent and confidential service. The Conciliator does not take sides, they only seek a resolution that would prevent a claim going to an Employment Tribunal. Also, negotiations are confidential so any information about negotiations (.e.g. settlement offers) will not be passed on to the Employment Tribunal.

You can access information about ACAS pre-claim conciliation and online submission form via this link <http://m.acas.org.uk/index.aspx?articleid=4028>.