



PUMP COURT

CHAMBERS

Introduction to Employment Law
23rd September 2021
Alice Scott and Oliver Foy



Preparing a claim

- ACAS / Early Conciliation Certificate
- ET1 – grounds of claim
- ET3 – grounds of response

Time Limits

- 3 months less 1 day.
- Section 111(2) ERA 1996 –

*Subject to the following provisions of this section, an employment tribunal **shall not** consider a complaint under this section unless it is presented to the tribunal—*

*(a) before the end of the period of **three months beginning with the effective date of termination**, or*

*(b) within **such further period as the tribunal considers reasonable** in a case where it is satisfied that it was **not reasonably practicable** for the complaint to be presented before the end of that period of three months.*

- Section 123 EA 2010 –

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

*(a) the period of **3 months starting with the date of the act to which the complaint relates**, or*

*(b) such other period as the employment tribunal thinks **just and equitable**.*

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

*(a) **conduct extending over a period is to be treated as done at the end of the period**;*

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

- Equal pay – any time during employment or qualifying period. No discretion!

Acas early conciliation

- Stop the clock.
- Section 207(B) ERA 1996 –

(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”).

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.

- EC period occurring during limitation period will be added to the limitation period.
- If limitation period then occurs between Day A and 1 month after Day B, the deadline will be extended to 1 month after Day B.

Discretion to extend time

- Not reasonably practicable (and presented within a further reasonable period) – unfair dismissal and most other employment rights. More difficult to satisfy.
- Just and equitable – discrimination. Less difficult to satisfy.
- *Marks & Spencer plc v Williams-Ryan* [2005] EWCA Civ 470 (guidance on not reasonably practicable test) –
 - 1) Liberal interpretation in favour of the employee.
 - 2) What, if anything, did the employee know about the right to complain to a tribunal and of the time limit for doing so?
 - 3) What knowledge should the employee have had and had they acted reasonably in the circumstances?
 - 4) ***Where a claimant retains a solicitor and fails to meet the time limit because of the solicitor's negligence, the claimant cannot argue that it was not reasonably practicable to submit the claim in time.***
- Where the claimant's skilled advisers are at fault for failing to submit a claim in time, the tribunal will usually consider that it was reasonably practicable for the claim to have been presented in time (*Dedman v British Building and Engineering Appliances Ltd* [1973] IRLR 379).
- *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23 (recent guidance on just and equitable test) – broad general discretion, not a mechanistic approach. Assess all the factors in the case which are relevant to whether it is just and equitable to extend time, including the length of, and reasons for, the delay.

Preliminary Hearings

- Case Management Agenda
- Identifying witnesses
- List of Issues
- Timetable

Interlocutory applications

- Tribunal Rules – 30 and 92
- Extending time limits
- Amending claim or response
- Postponements, adjournments or stay
- Unless Order
- Deposit Orders
- Strike out

Final Hearing

- Reading time
- Evidence
- Cross-examination
- Closing submissions
- Judgment

Remedy Hearing

- When?
- Schedule of Loss
- Evidence of mitigation
- Oral evidence

Bundle

- Preliminary Hearing –

- 1) Notice of hearing.
- 2) Agenda (agreed if possible).
- 3) Acas certificate.
- 4) ET1.
- 5) ET3.
- 6) List of issues (agreed if possible).
- 7) Relevant correspondence/applications.

- Final Hearing –

- 1) Pleadings, including list of issues and schedule of loss.
- 2) Notices and Tribunal correspondence.
- 3) Disclosure and evidence.
- 4) Witness statements bundle.

Settlement

- COT3
- Settlement agreement
- Settlement in writing

Relevant statute

- Employment Rights Act 1996 –

- 1) Unlawful deductions from wages – s.13.
- 2) Whistleblowing – ss.43A to 43L.
- 3) Right not to suffer detriment – ss.43M to 47G.
- 4) Unfair dismissal – s.94.
- 5) Constructive dismissal – s.95(1)(c) / s.136(1)(c).
- 6) Automatically unfair dismissals – ss.98A to 107.

- Equality Act 2010 –

- 1) Protected characteristics – ss.4 to 12.
- 2) Discrimination – ss.13 to 19.
- 3) Adjustments – ss.20 to 22.
- 4) Harassment / victimization – s.26 / s.27.
- 5) Equal pay – ss.64 to 71.

Where to look for help

- Practical Law, Industrial Relations Law Reports on LexisNexis, ACAS, LAG Handbook
- Textbooks - Tolley's or Harvey's on LexisNexis
- Join Employment Lawyers Association

Contact details

Alice Scott

a.scott@pumpcourtchambers.com

Oliver Foy

o.foy@pumpcourtchambers.com

Clerks

clerks@pumpcourtchambers.com

020 7353 0711