Guidelines for Employees, Employers and Practitioners appearing before the Employment Appeals Tribunal

This is a guideline only and, as such, does not purport to give a full and comprehensive description of the work of the Tribunal. It should be read in conjunction with the legislation under which the Employment Appeals Tribunal hears cases.

1. Introduction

The Employment Appeals Tribunal (hereinafter the Tribunal) was established to provide a speedy, inexpensive and relatively informal means for the adjudication of disputes on employment rights under the numerous pieces of legislation that come within the scope of the Tribunal's work. All parties and representatives should bear these objectives in mind when preparing and presenting cases to the Tribunal and in particular they should strive to avoid "legalism" (the excessive use of court jargon and procedures). However, it must be borne in mind that the Tribunal deals with employment rights conferred on employees/workers by legislation and, accordingly, the Tribunal must abide by certain rules of evidence (see para. 7). Some claims can be made directly to the Tribunal and in other cases the Tribunal hears appeals from the recommendations or decisions of Rights Commissioners. Hearings before the Tribunal are in public. In exceptional circumstances, on the application of a party, the Tribunal may hear a case in private. The Tribunal deals only with employment rights and it must be distinguished from the Labour Court and Labour Relations Commission, both of which deal mainly with industrial relations issues.

Lists of the legislation under which the Tribunal hears claims, appeals and complaints are to be found in the attached appendix.

2. How a Case Arises

Claims may arise on the termination of the employment relationship or during the continuation of the employment relationship.

Claims that arise on the termination of the employment relationship are, in general, made directly to the Tribunal and include claims for unfair dismissal under the Unfair Dismissals Acts, claims for redundancy payment under the Redundancy Payments Acts, claims for minimum notice entitlements under the Minimum Notice and Terms of Employment Acts and claims for holiday entitlements under the Organisation of Working Time Act.

A claim for unfair dismissal can be made, in the first instance, either to the Tribunal or to the Rights Commissioners. However, the Tribunal cannot hear the unfair dismissal claim unless the employee or the employer objects to a hearing by a Rights Commissioner; this objection can be indicated on the relevant form (see paragraph 4). Where a claim for unfair dismissal is heard by a Rights Commissioner and either party does not agree with the recommendation of the Rights Commissioner, then that party may appeal it to the Tribunal where there will be a full re-hearing of the case. Finally, if an employer treats an employee so badly that s/he had to resign, that employee can bring a claim for constructive dismissal which is heard under the Unfair Dismissals Acts.

Claims that arise during the continuation of the employment relationship are made to the Rights Commissioners. If either party does not agree with the Rights Commissioners' recommendations or decisions s/he may appeal them to the Tribunal. See under for the relevant legislation:

(i) Unfair Dismissals Acts, 1977 to 2001
(ii) Payment of Wages Act, 1991
(iii) Terms of Employment (Information) Acts, 1994 and 2001
(iv) Maternity Protection Act, 1994 and 2004
(v) Adoptive Leave Act, 1995 and 2005
(vi) Protection of Young Persons (Employment) Act, 1996
(vii) Parental Leave Act, 1998-2006
(viii) Protections for Persons Reporting Child Abuse Act, 1998
(ix) European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003
(x) European Communities (Protection of Employment) Regulations, 2000
(xi) Carer's Leave Act, 2001
(xii) Competition Act, 2002

Where an employer has been declared insolvent and employees dispute the decision of the Minister for Enterprise, Trade and Employment on their claims (for arrears of wages, holiday entitlements, sick pay or pension contributions) they can refer a complaint to the Tribunal under the Insolvency Payment Acts.

An employee seeking to enforce/implement a recommendation or decision of a Rights Commissioner, where the employer has failed to carry out the terms of such recommendation or decision and where the time for bringing an appeal by the employer

has expired and no such appeal has been brought, may bring a complaint to the Tribunal. However in some cases the enforcement application is made to the Circuit Court. The table below shows the Acts and Statutory Instrument under which an employee must apply to the Tribunal in order to enforce the recommendation or decision of a Rights Commissioner.

(i) Unfair Dismissals Acts, 1977 to 2001
(ii) Terms of Employment (Information) Acts, 1994 and 2001
(iii) Protection of Young Persons (Employment) Act, 1996
(iv) Protections for Persons Reporting Child Abuse Act, 1998
(v) European Communities (Protection of Employment) Regulations, 2000
(vi) Competition Act, 2002

An employee who does not agree with the decision of the Minister and/or a Deciding Officer as to the identity of his/her employer, or an employer who does not agree with the decision of the Minister regarding a rebate under the Redundancy Payments Acts, can appeal the decision to the Tribunal.

3. Time Limits and Service Requirements

The various pieces of legislation under which the Tribunal hears cases set out the time limits for initiating claims or appeals with the Tribunal. Under some Acts the Tribunal has a discretion to extend the time for bringing a claim. In unfair dismissal cases the employee has six months from the "date of dismissal" to lodge a claim. However, if "exceptional circumstances" prevented the lodging of the claim with the Tribunal within that six-month period, then the Tribunal can extend the period for up to a year to allow for the lodging of the claim. Employees and employers should pay particular attention to the time limits, as a claim or appeal that is out of time will not be heard by the Tribunal. The "date of dismissal" does not necessarily mean the date on which the employee ceased working for the employer; if due notice (either under the contract of employment or statute) was not given then the "date of dismissal" is the date that notice, if given, would have expired.

The legislation also sets out the different lengths of service required with an employer to bring the various claims. To bring a claim for unfair dismissal, whether to the Tribunal

or Rights Commissioners, an employee must normally, but not in all cases, have at least one year's continuous service. However, there is no service requirement where an employee is dismissed for matters relating to trade union membership or activity; or for exercising or proposing to exercise a right to adoptive leave, carer's leave, parental leave or force majeure leave; or for exercising or proposing to exercise a right under the Maternity Protection Act, 1994 and 2004 or under the National Minimum Wage Act, 2000.

If an employee has less than the required service with the employer s/he will have to take the claim for unfair dismissal to the Labour Court. The finding of the Labour Court is not legally enforceable.

All determinations of the Tribunal are legally enforceable.

4. Completing the Forms for a Claim or Appeal or Enforcement/ Implementation

To initiate a claim or appeal or complaint with the Tribunal the relevant form must be completed.

Form T1-A must be completed and, to avoid any difficulties that may arise, ought to be signed by the person bringing a direct claim for unfair dismissal, redundancy, minimum notice or for holiday entitlements to the Tribunal. The details on this form will enable the Tribunal to process the claim. The form requires the employee to give a brief **summary of the facts** of the claim and how it arises. Once the relevant form is duly completed, signed and lodged with the Tribunal, the onus is on the Tribunal to process the claim and to serve a copy of Form T1-A on the employer. The regulations require the employer to submit Form T2-A to the Tribunal within two weeks of having received the copy Form T1-A. Form T2-A requires the employer to either concede the claim or to furnish a summary of the defence to the claim.

An employee/worker or employer who disagrees with the recommendation or decision of

a Rights Commissioner may initiate an appeal by completing and signing Form T1-B and lodging it with the Tribunal within the prescribed time limit. The onus is on the Tribunal to process the appeal and to serve a copy of Form T1-B on the respondent (the other side). However, there is an exception under the Payment of Wages Act, where the onus is on the person appealing the decision to serve the copy of Form T1-B on the respondent within the six-week period for lodging the appeal. The regulations require the respondent to submit Form T2-B to the Tribunal, responding to the appeal within two weeks of having received the copy Form T1-B. This form requires the respondent to either concede the appeal or to furnish a summary of the defence to the appeal.

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Form T1-C is used to refer a complaint against the decision of the Minister on claims arising when the employer has been declared insolvent.

Form T1-D is used to seek enforcement/implementation of a recommendation or decision of a Rights Commissioner.

Form T1-E is used to appeal against the decision of the Minister and/or a Deciding Officer under the Redundancy Payments Acts.

Once the steps outlined above have been taken, the Tribunal will enter the case on the list for a hearing date. Once a hearing date is allocated to the case, the Tribunal notifies the parties of that date and this usually occurs some four to six weeks prior to the date set for hearing.

Note: It is vital that the correct full legal name and registered business address of the employer are checked and entered on these forms.

5. Postponements

By their very nature, postponements cause delays to the schedule of hearings and are only granted for grave reason. However, the Tribunal will consider all applications for

postponements. It will give serious consideration to the following matters when deciding whether or not to grant the postponement:

- Is there a good cause for granting the postponement?
- Has the application been made within five working days of the receipt of the notification of the hearing date or at the earliest opportunity thereafter?
- Has the written consent of the other party been obtained?

Where the consent of the other side is not forthcoming, or cannot be easily procured, the Tribunal nevertheless requires the application to be made at the earliest possible date.

The party applying for the postponement should have evidence of their endeavour to obtain the written consent of the other party if that other party is not at the hearing of the application. Making an application within the five working days after the receipt of notice of the hearing will not automatically secure a postponement for a party.

6. Preparing the Case

An important factor in the preparation of a case for presentation to the Tribunal is to arrange the facts of the dismissal in a straightforward and chronological order, so as to present the case to the Tribunal in a clear and comprehensible manner. To prove a case at the hearing a party may frequently bring a witness/witnesses to give their version of the facts to the Tribunal. Witnesses should be interviewed, prior to the hearing, by the party calling them and, if possible, a written statement of their version of the events should be recorded to assist the hearing. To prove a case may also require the bringing of any printed documents that relate to the employment or to the dismissal; in particular, if a written and signed copy of the contract of employment exists, it should be made available to the Tribunal at the hearing. Five copies of the documents to be used at the hearing should be made available at the hearing; where there are numerous documents these should be bound and paginated.

The Tribunal can issue a notice (witness summons) compelling a reluctant witness to

attend at a hearing and give evidence and/or produce documents. The party wishing to compel a witness must apply to a sitting division of the Tribunal for a notice compelling the witness to attend. An application for any such a notice should identify the witness and specify, in detail, the nature of the documents required. The issuing of a notice is a matter within the Tribunal's discretion. The application for this notice should be made to the Tribunal as soon as a party is notified of the date of the hearing but, in any event, in good time so as to allow the witness reasonable opportunity to make arrangements to attend and, where required, to gather the documents. Any costs or expenses incurred by such a witness will be the responsibility of the party seeking the notice and that party will be required to sign an undertaking to this effect when making the application. Professional witnesses and witnesses who are not closely involved with either party should not be unnecessarily detained at the hearing once they have given their evidence.

The Tribunal does not have power to order discovery of documents or to order a party to produce documents to the other side.

7. Presenting the Case

The Tribunal chairperson conducts the hearing and guides the parties as to the procedures to be adopted in the case. The hearing is conducted like any other meeting and there must be rules to ensure the proper management of the hearing. These rules are called the rules of evidence and are used in the taking of evidence by the Tribunal. The Tribunal is liberal it its interpretation of these rules and is not strictly bound by them. It may allow into evidence matters that may not be allowed in a court. The Tribunal will ensure that each side to a case is treated fairly and that fair procedures are applied.

Either before the hearing, or at its commencement, parties should endeavour to reach agreement on uncontroversial issues of fact (e.g. wages, length of service). In similar fashion, if possible, parties should also try to reach a wider agreement so as to limit the issues for decision by the Tribunal.

If a party intends to use documents when presenting his/her case, these should be exchanged between the parties and, where possible, agreed by them prior to the commencement of the hearing. If the parties disagree on any document, then the matter will be referred to the Chairman at the hearing for a decision.

The employer will usually give evidence first. However, in some cases the employee goes into evidence first. This occurs in cases of constructive dismissal and where, for whatever reason, the jurisdiction of the Tribunal to hear the case is called into question by the employer.

- Each party to the hearing is entitled to make an opening statement to the Tribunal outlining the nature and extent of the case.
- A witness then gives evidence, usually under oath, to the Tribunal. It involves telling the Tribunal his/her version of the events.
- The evidence given must be relevant to the matter in dispute between the parties.
- When a witness has finished giving his or her evidence then the other party questions him/her on it and also on other issues s/he considers relevant to the events (cross-examination).
- If a new matter arises in the cross-examination of a witness, then the witness may be asked questions arising from that matter, by his or her representative (re-examination).
- The members of the Tribunal may then ask questions of the witness in order to clarify the evidence or to establish facts that they consider relevant.
- Each witness is then examined in the same way.
- On the completion of all the evidence, the Tribunal will ask the parties their attitude to the various remedies. A party must not infer from this that a decision has been made in the case.
- The remedy granted is at the discretion of the Tribunal.
- The parties will then be allowed to give a closing submission to the Tribunal. On occasions the Tribunal will ask for written submissions.

8. The Determination

When the hearing has concluded the Tribunal will consider the evidence given at the hearing and makes its determination. In some cases a determination will issue from the Tribunal in four to six weeks. However, sometimes the Tribunal members will need time to consider the evidence and in these, and some other, cases the Tribunal may have to await written legal submissions from the parties.

9. Remedies

When the Tribunal finds that a claimant has been unfairly dismissed, it will grant one of three remedies:

- Re-instatement puts the claimant into the position s/he was in immediately prior to the dismissal, preserves all his/her statutory and employment entitlements and requires that the salary/wages be paid to that person from the date of dismissal.
- Re-engagement puts the claimant back into the same, or different, position on such terms and conditions as the Tribunal deems fit and from a date to be decided by the Tribunal.
- Compensation can be awarded as the remedy where neither of the other two remedies is considered suitable. It is limited to actual financial loss of up to two years gross remuneration; gross remuneration can include not only salary but also the cost to the employer of other benefits provided to the employee. The dismissed employee must seek alternative employment after his/her dismissal and failure to do so will be taken into account when assessing compensation.

The Tribunal has discretion to grant the remedy it considers most appropriate in all the circumstances. The views of the parties will be sought before the Tribunal will decide on the appropriate remedy.

10. Cost and Representation

Bringing a claim to the Tribunal is a free service.

A party to a hearing before the Tribunal may be heard in person (represent himself/herself), or may be represented by a trade union official, a representative of an employers' organisation, a solicitor, a barrister or, with the consent of the Tribunal, by any other person.

If a party chooses to be represented they will be responsible for all the costs of such representation.

The legislation does not require that a party be represented at a hearing.

No disadvantage will accrue to anyone who chooses to represent themselves.

The Tribunal may not award costs against any party unless, in its opinion, a party has acted frivolously or vexatiously. Such costs are confined to a specified amount in respect of travelling expenses and any other costs or expenses reasonably incurred by the other party in connection with the hearing, but shall not include any amount for the attendance of counsel or solicitors, officials of a trade union, or representatives from an employers' association.

11. What to do after the determination issues.

If a party does not agree with the determination of the Tribunal s/he may appeal it to the higher courts. If a determination, e.g. unfair dismissal, is not appealed within six weeks of the date of its receipt by the parties, then the employee can take steps to have it implemented. Implementation is effected by the Circuit Court.

APPENDIX

1. Making a direct claim to the Tribunal

The Act	Time limit for lodging the claim	The form
Redundancy Payments Acts	52 weeks from date of employment ended (extendable up to 2 years)	T1-A
Minimum Notice and Terms of Employment Acts	No specified time limit	T1-A
Unfair Dismissals Acts	6 months from date of dismissal (can be extended up to 12 months if "exceptional circumstances" exist)	T1-A
Organisation of Working Time Act	6 months from date of contravention (can be extended up to 12 months).	T1-A

2. Appealing a Recommendation or Decision of a Rights Commissioner

Unfair Dismissals Acts	6 weeks from recommendation of Rights Commissioner	T1-B
Payment of Wages Act	6 weeks from recommendation of Rights Commissioner	T1-B
Terms of Employment (Information) Act	6 weeks from recommendation of Rights Commissioner	T1-B
Maternity Protection Act	4 weeks from recommendation of Rights Commissioner	T1-B
Adoptive Leave Act	4 weeks from recommendation of Rights Commissioner	T1-B
Protection of Young Persons (Employment) Act	6 weeks from recommendation of Rights Commissioner	T1-B
Parental Leave Act	4 weeks from recommendation of Rights Commissioner	T1-B
Protections for Persons Reporting Child Abuse Act	6 weeks from recommendation of Rights Commissioner	T1-B
European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003	6 weeks from recommendation of Rights Commissioner	T1-B
European Communities (Protection of Employment) Regulations	6 weeks from recommendation of Rights Commissioner	T1-B
Carer's Leave Act	4 weeks from recommendation of Rights Commissioner	T1-B
Competition Act	6 weeks from recommendation of Rights Commissioner	T1-B

3. Making a complaint against the Decision of the Minister

The Act	Time limit for lodging the claim	The form
Protection of Employees (Employers' Insolvency) Acts	6 weeks from Minister's decision	T1-C

4. Seeking to enforce/implement a recommendation or decision of a Rights Commissioner

Unfair Dismissals Acts	After the 6 week time limit for an appeal has expired	T1D
Terms of Employment (Information) Act	After the 6 week time limit for an appeal has expired	T1-D
Protection of Young Persons (Employment) Act	After the 6 week time limit for an appeal has expired	T1-D
Protections for Persons Reporting Child Abuse Act	After the 6 week time limit for an appeal has expired	T1-D
Competition Act, 2002	After the 6 week time limit for an appeal has expired	T1-D
European Communities (Protection of Employment) Regulations	After the 6 week time limit for an appeal has expired	T1-D

5. Appealing from the Decision of the Minister or a Deciding Officer

Redundancy Payments Act	21 days from receipt of decision	T1-E