



An Binse Achomhairc Fostaíochta  
**Employment Appeals Tribunal**

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## **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.

*October 2015*

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# CHAPTER 1

## 1.1 Introduction

The Employment Appeals Tribunal (hereinafter the Tribunal) was established to provide an 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 the excessive use of court jargon and procedures. However, it must be borne in the mind that the Tribunal deals with employment rights conferred on employees/workers by legislation and, accordingly, the Tribunal must follow certain rules of evidence it is more flexible than the higher courts. 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.

## 1.2 Change in Tribunal procedures since 1<sup>st</sup> October 2015

Following the establishment of the Workplace Relations Commission on the 1<sup>st</sup> October 2015 the Tribunal no longer accepts direct claims or appeals from Rights Commissioners Recommendations/decisions. The Tribunal still accepts Implementation forms (T1D) which are available on the Workplace Relations website [www.workplacerelements.ie](http://www.workplacerelements.ie). This form must be completed to seek enforcement/implementation of a recommendation or decision of a Rights Commissioners

The Tribunal's current remit is to deal with all claims (direct, appeals and implementations) on hand and lodged prior to 1<sup>st</sup> October 2015 and implementations lodged after 1<sup>st</sup> October 2015. Following receipt of a T1D, an acknowledgment issues to the claimant. A copy of the implementation is sent to the other party (respondent) by the secretariat to the Tribunal. This will be sent with a form which is known as a notice of appearance (Form T2D). The respondent is given 14 days to respond to the claim and to complete the T2D form and following receipt of a completed T2D form, a copy will be sent to the claimant and, if applicable, their representative. All correspondence to and from both parties is acknowledged and copied between parties.

## CHAPTER 2

The following sets out the general procedure relating to all claims lodged with the Tribunal. It should be noted that it is vital that the correct full legal name and registered business address of the employer are checked and entered on the above forms. In the event of incorrect legal title appearing on the Rights Commissioners recommendation, it will be necessary to seek a correcting order from the Rights Commissioners.

### 2.1 Hearing Date

The Tribunal secretariat sets a date for a hearing and communicates this to the parties concerned by registered post. Hearings are held in Dublin at 65A Adelaide Road, Dublin 2 and in various locations throughout the country. Hearings are held in public unless the Tribunal, at the request of either party, decides to hear the evidence in private. A private hearing is only allowed in special circumstances and an application for an '*in camera*' hearing must be made at the beginning of a hearing.

On receipt of a hearing notice, applications can be made to, *inter alia*, postpone a case, or seek a witness summons. In the case of a witness summons, any costs or expenses incurred by a witness will be the responsibility of the party seeking the summons and that party will be required, to sign an undertaking to this effect when making the application. All applications must be made in front of a sitting Division of the Tribunal. (see Chapter 3.1)

There is a waiting period to have claims heard. Please contact the Tribunal secretariat at 01-6313006 for the current waiting period.

### 2.2 Preparing the Case

An important factor in the preparation of a case for presentation to the Tribunal is to arrange the facts 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 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 in issue should be recorded to assist the hearing and to avoid a more protracted hearing. The Tribunal does not have power to order discovery of documents or to order a party to produce documents to the other side but see 3.1 herein.

To prove a case a party should bring any printed documents that relate to the employment or to the dismissal; in particular, a copy of the contract of employment and the employers policies relevant to the dismissal. 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.

### **2.3 Hearing Day**

Parties should arrive in good time for the hearing and make their way to the EAT reception desk, if in Dublin or the relevant venue. The secretary to the Division will make her or himself known to the parties.

#### ***Lay-out of room for hearing***

A three-member Division of the Tribunal will hear the case. The division will consist of a chairman, one member nominated by an employers' group and one member nominated by a ICTU. These nominees/members are there to provide their knowledge and expertise in eliciting the evidence and assist in the decision making function. The Division is seated at the top of the room. The secretary to the Division will be seated beside the Division. Parties to the claim are seated on either side of the room with the witness table in the middle of the room. Members of the public, including observers, such as student, attending a hearing usually sit at the back of the hearing room.

#### ***Presenting the Case***

The Tribunal 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. Rules of evidence are applied in the taking the parties' evidence. Parties should remember that they must get all the facts across to the Tribunal in a chronological order to enable it to make a fair decision in their case.

If a party intends to use documents when presenting their 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 Division at the hearing for a decision. A general overview of the procedures is as follows;

Each party to the hearing is entitled to make an opening statement outlining their case;

- A witness then gives evidence (direct evidence) to the Tribunal. In general in Unfair Dismissal cases evidence is given under oath
- The evidence given must be relevant to the matters in dispute between the parties
- When a witness has finished giving evidence, the other side then questions the witness on that evidence given and also on other issues considered relevant to the events (cross examination)
- If a new matter arises in 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 the oral 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 parties will then, if they wish, give a closing statement and / or make legal submissions on the case to the Tribunal. On occasions the Tribunal will ask for written submissions.

### ***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 they were in immediately prior to the dismissal, preserves all their statutory and employment entitlements and requires that 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 decided by the Tribunal.
- **Compensation** can be awarded as the remedy where the other two remedies are considered unsuitable. Compensation is limited to the actual financial loss attributable to the dismissal. The maximum compensation allowable is two years gross salary and this will include loss to date and into the future. Gross remuneration can include not only salary but also the cost to the employer of other benefits provided to the employee. There is a duty on the dismissed employee to seek alternative employment after the dismissal and the failure to do so will be taken into account when assessing compensation.

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

## **2.4 Determination**

Following the hearing of the case the Tribunal will make a determination, which is recorded in a document signed by the Chairman of the Division and sealed with the seal of the Tribunal. Written determinations are final and conclusive, subject only to the appropriate avenue of legal appeal to the Higher Courts. While the Tribunal has limited powers to correct or amend certain technical inaccuracies (see for example Section 39 of the Organisation of Working Time Act, 1997).

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. All determinations of the Tribunal are legally enforceable.

Along with a copy of the determination, parties also receive guidance notes (available on the [www.workplacerelations.ie](http://www.workplacerelations.ie)), which give an overview of the appeal and implementation procedures.

### ***Issuing Determinations***

The length of time it takes for a determination to issue can depend on a number of variables including, *inter alia*, the complexity of the case or receipt of written legal submissions from the parties. In light of this, determinations issue as soon as possible after the hearing.

### ***Register of Determinations***

In line with Statutory Instruments No. 24 of 1968, Redundancy (Redundancy Appeals Tribunal) Regulations and No 268 of 1977 Unfair Dismissals (Claims and Appeals) Regulations 1997, a copy of all determinations are in a Register. The Register is available for view by any person during office hours in Davitt House. A copy of any determination is available on request. The determinations in the Register include party details.

Determinations, from 2007, are also available on [www.workplacerelations.ie](http://www.workplacerelations.ie). From 1st April 2014 determinations are available on this site with party names.

## CHAPTER 3

### 3.1 Tribunal Applications

Applications must be made in front of a sitting Division of the Tribunal. Applications are taken twice a day in Davitt House (before 10am and 2pm daily) and relevant weekly locations. Late applications will go forward to the next sitting. Applications can be made for the postponement of a hearing, for witness summons and a summons for the production of documents, to expedite a hearing, to extend the hearing for longer period than initially allowed (half day), to withdraw a claim with liberty to re-enter where a settlement has been reached between the parties and extend the time for re-entry of the claim, if required.

#### *Postponements*

By their very nature, postponements cause delays to the schedule of hearings and are only granted for a 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 party is not present at the making of the application. Making an application within the five working days after the receipt of notice of the hearing and with the consent of the other party will not automatically secure a postponement for a party. The party applying for the postponement must undertake to inform all parties of the Tribunal's decision within one working day.

#### *Witness Summons*

The Tribunal may issue a notice (witness summons) to a reluctant witness to attend at a hearing and give evidence. It may also issue a notice to produce certain documents

The party wishing to compel a witness must apply to a sitting Division of the Tribunal. An application for any such 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 discretion of the Tribunal. 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.

### **3.2 Withdrawing a Case**

A case can only be withdrawn by the claimant or their representative. If you wish to withdraw a case you can do so by advising the secretariat by letter, fax or email and using the word 'withdraw' in the contents of the correspondence. A respondent cannot withdraw a case on behalf of a claimant. Where a party is seeking to withdraw a case with liberty to re-enter (in cases where the settlement may break down) must do so in front of a sitting division of the Tribunal.

### **3.3 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, 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.

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.

### **3.4 Special Facilities**

The Tribunal's offices at Davitt House in Dublin are fully accessible and one of the rooms is fitted with a hearing loop system. The Tribunal, on request, will take all practicable steps to

provide special facilities for a person with disabilities and/or other special needs. Parties are asked to notify the Tribunal secretariat well in advance of the hearing if special facilities are required.

### 3.5 Interpreters

If you feel that an interpreter is essential to the hearing of the claim, you can apply to the Tribunal secretariat by letter or email ([EAT@djei.ie](mailto:EAT@djei.ie)) for an interpreter, indicating the language required. It would be appreciated if you could apply at least two weeks in advance of the hearing date.

### 3.6 Skype/Video conferencing

Approval to the use of Skype/Video Conferencing at Tribunal hearings is not automatic. A formal application for the use of such a facility must be made and consent must be sought from the other side. You should also advise the other side of the date and time you intend making the application. The Tribunal may or may not approve the application. In the event that the application is granted you must arrange to have the proper equipment available or that this can be facilitated at the hearing venue. **The Tribunal does not supply or pay for these facilities and is not responsible for the operation of any such equipment.**

### 3.7 CCTV Evidence

If you wish to use a CCTV recording as part of your evidence you must seek the permission of the Division of the Tribunal at the beginning of the hearing. In the event that the Tribunal approve the use of CCTV evidence you must arrange to have the proper equipment available or that this can be facilitated at the hearing venue. **The Tribunal does not supply these facilities and is not responsible for the operation of any such equipment.**

### 3.8 Stenographers

Stenographers can be used at EAT hearings. On the day of the hearing, the party using a stenographer should inform the Tribunal that they intend using a stenographer.

## CHAPTER 4

### 4.1 Data Protection

The Employment Appeals Tribunal holds data on all applications received. Data Protection is the safeguarding of the privacy rights of individuals in relation to the processing of personal data. The Data Protection Acts 1988 and 2003 confer rights on individuals as well as responsibilities on those persons processing personal data. Personal data, as covered by the Data Protection Acts, relates to the information on individuals and or sole traders only.

### 4.2 Freedom of Information

The Freedom of Information Act 2014, which was signed by the President on Tuesday, 14 October 2014, has been extended to cover all public bodies including the Employment Appeals Tribunal. Section 1(3)(b) of the Act states that it shall come into operation *'in respect of any body or other person that, immediately prior to enactment, was not a public body within the meaning of the Act of 1997, but is a public body within the meaning of this Act, 6 months from enactment or on such later day, not later than 12 months from enactment, as the Minister may by order appoint.'* The Employment Appeal Tribunal was not covered by the Act of 1997; therefore the Freedom of Information Act 2014 applies to the Tribunal from 14 April 2015. From 14 April 2015, any requests under the Freedom of Information legislation can be made in writing or by e-mail to the Tribunal directly.

### 4.3 Archiving of Files

The Employment Appeals Tribunal is a scheduled body under the National Archives Act 1986. In general, records, which are more than 30 years old and held by scheduled bodies, must be transferred to the National Archives and be made available for inspection by the public. Following an inspection by officers of the National Archives on 6<sup>th</sup> April 2011, the National Archives have authorised, pursuant to section 7(3) of the National Archives Act 1986, that records referred to in the certificate (i.e. appeals under the relevant legislation) do not warrant preservation by the National Archives and have authorised their disposal in accordance with section 7(5) of the Act. The chairman of the Employment Appeals Tribunal has directed that case files completed 12 years ago or earlier can be destroyed annually. In 2015 the Tribunal was disposing of files completed prior to and including 2003.

### **4.3 General Information on Employment Rights**

For general information regarding employment rights please contact the **Information and Customer Service Unit**, Workplace Relations Commission, O'Brien Road, Carlow, R93 W7W2: Tel: 059 9178990; Lo call 1890808090 *(Note that the rates charged for the use of 1890 (local) numbers may vary among different service providers)* or FAX 0599178909.

**APPENDIX A****Implementation Legislation and Time Limits**

<b>The Act</b>	<b>Time Limit for lodging the claim</b>	<b>Claim form</b>
Unfair Dismissals Acts	After 6 week time limit for an appeal has expired	T1D
Terms of Employment (Information) Acts	After 6 week time limit for an appeal has expired	T1D
Protection of Young Persons (Employment) Act	After 6 week time limit for an appeal has expired	T1D
Protections for Persons Reporting Child Abuse Act	After 6 week time limit for an appeal has expired	T1D
European Communities (Protection of Employment) Regulations	After 6 week time limit for an appeal has expired	T1D
Competition Acts	After 6 week time limit for an appeal has expired	T1D
Consumer Protection Acts	After 6 week time limit for an appeal has expired	T1D
Chemicals Acts	After 6 week time limit for an appeal has expired	T1D

**APPENDIX B****Glossary of Terms**

<b>Claimant</b>	the person or company bringing the case.
<b>Respondent</b>	the person or company against whom the case is brought
<b>Appellant</b>	the person or company appealing a decision.
<b>Division</b>	the Tribunal acts in divisions, each consisting of either the chairman or a vice chairman and two other members, one drawn from the employers' side of the panel and one from the trade unions' side; a vice chairman of the Tribunal, when acting as chairman (at the request of the Minister or chairman) has all the powers of the chairman.
<b>Withdrawn</b>	an application can only be withdrawn by the claimant or the claimant's representative.
<b>Settlement</b>	an agreement reached by the parties; this may happen before the hearing or at any time during the hearing; a determination will not issue in this case.
<b>Liberty to re-enter</b>	where the parties having reached agreement, the claim or appeal is withdrawn and a strict time limit is given by a division to re-enter the claim or appeal. This may be extended on application.
<b>Disposed of</b>	a case on which a determination issues, cases that are withdrawn prior to a hearing or cases withdrawn during a hearing.
<b>Representation</b>	a party may appear without representation, or be represented by counsel or solicitor, or by a representative of a trade union or an employers' organisation or with the leave of the Tribunal by any other person.
<b>Determination</b>	a determination is the decision of the Tribunal recorded in a document signed by the chairman and sealed with the seal of the Tribunal.
<b>Register</b>	determinations of the Tribunal are entered in a register, which is open for inspection by any person without charge during normal hours at the offices of the secretariat of the Tribunal.

This Glossary of the more common terms used in relation to proceedings before the Tribunal is not exhaustive or intended to be a complete glossary. It is the 'ordinary man's' guide to those common terms and is intended to assist understanding of the terminology.

**APPENDIX C****Advisory and Information Bodies****Information and Customer Service**

Workplace Relations Commission  
 O'Brien Road  
 Carlow  
 R93 W7W2  
 Tel: 059 9178990 or locall 1890808090  
[www.workplacerelements.ie](http://www.workplacerelements.ie)

**Adjudication Service**

Workplace Relations Commission  
 Davitt House  
 65A Adelaide Road  
 Dublin 2  
 D02 TW27  
 Tel: 01 6313380

**The Labour Court**

Tom Johnson House  
 Haddington Road  
 Dublin 4  
 Tel: 01 6136666 or locall 1890220228  
[www.workplacerelements.ie](http://www.workplacerelements.ie)

**The Companies Registration Office**

Parnell House  
 14 Parnell Square  
 Dublin 1  
 Tel: +353 1 8045200  
[www.cro.ie](http://www.cro.ie)

**Redundancy Section**

Department of Social Protection  
 Block C  
 The Earlsfort Centre  
 Lower Hatch Street  
 Dublin 2  
 Tel: 1890 800 699  
[www.welfare.ie](http://www.welfare.ie)

**Citizens Information**

Tel: +353 12 452 1600 or LoCall 1890 777 121 or +353 21 452 1600  
 Check [www.citizensinformation.ie](http://www.citizensinformation.ie) for your nearest information centre

**Inspection and Enforcement Service**

Workplace Relations Commission  
 O'Brien Road  
 Carlow  
 R93 W7W2  
 Tel: 059 9178800 or locall 1890220100  
[www.workplacerelements.ie](http://www.workplacerelements.ie)

**Conciliation and Mediation Services**

Workplace Relations Commission  
 Tom Johnson House  
 Haddington Road  
 Dublin 4  
 D04 AE64  
 Tel: 01 6136700 or locall 1890220227  
[www.workplacerelements.ie](http://www.workplacerelements.ie)

**Department of Jobs, Enterprise and Innovation**

23 Kildare Street  
 Dublin 2  
 Tel: +353 1 6312121 or LoCall 1890220222  
[www.djei.ie](http://www.djei.ie)

**The Courts Service**

15 - 24 Phoenix Street North  
 Smithfield  
 Dublin 7  
 Tel: + 353 1 888 6000  
[www.courts.ie](http://www.courts.ie)

**Insolvency Section**

Department of Social Protection  
 Block C  
 The Earlsfort Centre  
 Lower Hatch Street  
 Dublin 2  
 Tel: 1890 800 699  
[www.welfare.ie](http://www.welfare.ie)

**Revenue Commissioners**

Check [www.revenue.ie](http://www.revenue.ie) for your local revenue office