

## **EMPLOYMENT TRIBUNALS – MEMBERS’ RIGHTS OF ACCESS**

### SUMMARY

This briefing contains details of members’ legal entitlements to take complaints to an Employment Tribunal on a wide range of employment-related issues. **It is important all senior branch and field officers absorb its contents. Failure to observe these procedures could be extremely costly and embarrassing for the branch and union.** The Branch Secretary is responsible for all administration of such cases within his/her branch, unless another named official is notified to my department.

### GUIDANCE UPDATE

This is an update of a previous briefing (especially SB 270/99), incorporating the latest changes in the law. The advice contained has the authority of the NEC and must be followed by all union representatives handling potential or actual Employment Tribunal cases. The briefing therefore provides guidance, which should enable Branch and other representatives to make members aware of their rights.

However, as these legal rights are often difficult to enforce, members should also be made aware that going to a Tribunal is not an easy option. It is certainly not a step that the Union will automatically support in every case. Whilst safeguarding members’ rights, it also stresses that the Union’s internal procedures must be followed before any promise of support for any Employment Tribunal application will be given. This support can only be given by the National Officer responsible, on behalf of the NEC, in accordance with our Rules and Conference policy.

### RIGHTS OF ACCESS

The Union has a legal duty to ensure that members know their rights. Failure to do so can give rise to legal action against the Union by aggrieved individuals and it can have serious and costly consequences for the Union. A standard letter for issue to the member (which can be adapted with branch details), is attached. **It is vital that this letter is issued to all members who find themselves in dismissal or discrimination situations and that a dated copy is kept on file.** This can be issued at the time of the initial branch consultation or by the person representing at the formal stage of disciplinary or grievance proceedings. A suggested form of words for notice boards is also attached.

### THE STRICT 3 MONTH DEADLINE

When advising members of their right to go to a Tribunal they must also be advised of the strict time limit by which applications have to be lodged. This is usually **three months** from the last day of paid service or of the incident being complained of. The Tribunals are very strict about this time limit and will normally refuse to entertain any application even a day outside it. The standard letter covers this requirement also.

**Do not wait until an internal appeal has taken place before advising your member of his/her rights by issuing the standard letter.** This does not mean that you should encourage every member to submit an Employment Tribunal application once they receive a dismissal decision. That is their decision and responsibility. Once you have issued the Branch’s standard letter of advice, your main responsibility is to deal with any internal aspects, if that is what the member wants.

## BRANCH REPORTS AND DOCUMENTATION

The question of whether a member can expect Union support for an Employment Tribunal application usually rests with the appropriate HQ Officer, currently myself, on behalf of the Legal Services Committee and National Executive Council. However, we value the experience and judgement of the Branch Officer or field representative concerned in a case to advise us frankly about its merits. Having represented at the internal disciplinary stages, there is nobody in a better position to know the merits of the case. That is why, in coming to a decision on the question of support for an Employment Tribunal application, we like to have a full report from the person who represented internally. In any case, in order for us to consider any request for assistance adequately, we will need to receive the following documentation:

- Dismissal letter
- Initial interview notes and appeal decisions
- Notes and any relevant correspondence
- A copy of any ET1 form or other Tribunal/legal correspondence in member's possession.

**CWU representatives who are conducting appeals against dismissal must tell the individual they are representing to request a copy of the appeal notes and conclusion at the beginning of the appeal.** This documentation is essential for our panel of Employment Tribunal representatives and solicitors. In discrimination cases where a person must prove their allegations, such evidence may have to be obtained by serving a statutory questionnaire. There are time limits in which these forms must be issued, either before or after the lodging of an ET1 form. There is therefore a particular urgency in notifying my department of such cases if we are to become involved. We can then liaise with the Equalities Department, where appropriate.

## MEMBERS RESPONSIBILITY

It must be stressed that responsibility for the lodging of an Employment Tribunal application rests firmly with the individual member concerned. Forms and an explanatory booklet are available from local Job Centres and other government agencies. The short legal time limit of three months in which to lodge an ET application does create a pressure, particularly if delay has occurred since the dismissal. In those cases where the time limit is approaching, the individual member should be advised in writing of the time limit and **his/her responsibility** for lodging the ET1 form within that time. The following forms of words can be inserted in the appropriate box 3 of the form: "I have requested representation from my Trade Union and my request is being given consideration. Until a decision is made, all correspondence should be addressed to me at my home address."

## CONCLUSION

Much of the advice contained above is already the practice of most Branches. However, we all need to be reminded and updated periodically on these procedures because of the serious legal consequences which can arise for the Union. That is why we have a slot in the Union's induction training courses for all representatives, so that we can all better serve members in what are always difficult circumstances.

Yours sincerely

**Jim Moher**

**Assistant Secretary**

## STANDARD LETTER TO MEMBERS

**THIS IS AN IMPORTANT LETTER**  
**PLEASE READ IT CAREFULLY**

To

Dear

### **EMPLOYMENT TRIBUNALS – YOUR RIGHTS**

Following your consultation with us recently, you should be aware of your rights.

1. Employees (full or part-time) who think they have been unfairly dismissed may seek a legal remedy by complaining to an Employment Tribunal. To bring an unfair dismissal claim, there is normally a service qualification of one year. There is no such qualifying period in certain types of dismissal e.g. on pregnancy grounds.
2. However, there must be strong evidence to support any case, which goes to an Employment Tribunal. These Tribunals can now be quite legalistic and employers do not have to prove "guilt" as in a criminal trial. Tribunals consider the reason for the dismissal and whether the manager acted reasonably in all the circumstances "within a band of reasonable responses". This means that one manager could take a more strict view than another in similar circumstances and still escape a finding of unfair dismissal. In this regard, managers are allowed considerable scope and discretion. Employers invariably engage lawyers to defend such actions. In accordance with Conference policy and our rules, the Union will consider representing your case very carefully at CWU Headquarters, but it may not be able to assist if it does not believe that there are realistic prospects for a successful application because of factual or legal difficulties.
3. Although there is no service qualification, discrimination cases are usually even much more complex and in these cases the employees must prove their allegations. They often require the issue of specialist questionnaires to employers before a decision can be made whether to issue a Tribunal application. All the businesses where our members work have special internal grievance procedures, which must be followed before a Tribunal will intervene. Branches and representatives will be involved in these internal procedures primarily and assistance is also available from the Equalities Department at Headquarters.
4. Any application to the Employment Tribunal **MUST** be received at the Office of the Tribunal within strict time limits. In the case of unfair dismissal, the form must be lodged with the Tribunal Offices not later than three calendar months starting the date your employment ends. In discrimination cases, it is 3 months from the date the last incident complained of occurred. A form ET1 and an explanatory booklet "*How to apply to an Employment Tribunal*" for this purpose can be obtained from your local Employment Office. If you wish to make any application, **please act now**.

Please let me know if you do decide to make an application the Employment Tribunal and require Union assistance. Please include all relevant correspondence and other papers so that the matter can be fully considered in the very short timescales permitted. Any communication from the Tribunal office, ACAS or the employer's solicitors must be forwarded as soon as received.

**However, no promise of assistance with the Hearing can be given at this time, nor must this letter be seen as any commitment to represent or assist you. A request for assistance will be considered on its merits by the Union.**

Yours sincerely  
Branch Secretary