

## Early Conciliation before Employment Claims

Over the last year employment law has changed dramatically, the latest change is a mandatory Early Conciliation process from 6 May 2014 for those who wish to bring an employment claim.

An employee will require a certificate from ACAS that this stage has been complied with before they are able to bring an employment claim, although there are some exceptions and it is sensible to seek advice on this point. It is also possible for an employer to request early conciliation.

This process, together with the introduction of tribunal fees indicates what Anne Sharp, the Chief Executive of ACAS, is calling 'a move from adversarial legal process to conciliatory legal process'. The Government's stance is that Early Conciliation is aimed at reducing the costs and risks of claims for employers, their rationale being that employers' fear of employment claims may be a bar to them offering employment. The Government have also offered as reasoning for the process's introduction that claims can be costly and stressful to claimants.

### The process involves four steps:

1. The prospective claimant must fill out the proscribed ACAS Early Conciliation form, or telephone ACAS. There only needs to be brief details of the prospective claim provided.

2. ACAS appoint a conciliation officer to deal with the matter, who shall advise on procedure and discuss the claim, although it should be made clear that ACAS do not offer legal advice as to the merits of claims. The conciliation officer contacts the prospective claimant and gains consent to contact the employer. Failure to make contact will lead to a conclusion that settlement is not possible.

3. For one month, with a potential extension of 14 days settlement is promoted between the parties. During the conciliation process the time limit in which a claim can be brought is paused provided it was the prospective claimant who requested the conciliation. The start and stop date of this process depends on how the conciliation process was started (online, post, or telephone) and how the certificate was received (email or post), given the short time in which employment claims can be brought it is wise to seek advice on this point.



4. If the time period elapses without settlement or the conciliation officer concludes that settlement is not possible the officer will issue a certificate to that effect.

It is clear that this is part of a dispute resolution system for work place disagreements; however it is important to note that while beginning Early Conciliation is mandatory before most employment claims can be made it is not mandatory for the parties to engage in conciliation.

One of the prime aims of the introduction of tribunal fees was to eliminate the 'have a go' claims that lacked merit but which forced employers into settlement due to the cost and disruption of defending a claim. Since the introduction of fees the October to December 2013 The Ministry of Justice statistics show a 79% drop in claims versus the same quarter in 2012 and this has caused no little disquiet as to the access to justice. However, the Early Conciliation Process does have the potential to open a door again to unmeritorious claims, where employees attempt to get monetary settlement at no cost; conversely it is a potential tool for employers to settle meritorious claims cheaply.

Amid the unknowns it would be reasonable to conclude that over the next year we shall likely see ACAS inundated with early conciliation requests with the corollary of making legal advice at an early stage of a dispute all the more important.

Alex Atkins  
DGR Law