



PRESIDENTIAL GUIDANCE[♦]

CLAIMS

You can make a Claim to the Employment Tribunal if you think your employer, previous employer or potential employer ('the Respondent') has treated you unlawfully. Unlawful treatment can include:

- Unfair dismissal
- Constructive unfair dismissal
- Discrimination/harassment at work
- Bullying at work
- Whistleblowing detriment
- Breach of contract

I. Before you make a Claim

You are encouraged to try other means of resolving your dispute by agreement and should make use of avenues available such as using your employer's grievance procedure or contacting the Citizens Advice Bureau, where you will be able to have a 30-minute consultation, free of charge and be provided with advice and guidance.

II. Making a Claim

Should you decide not to engage a lawyer, it is strongly advised that you devote as much time as you can to researching and understanding what you will have to prove to succeed with your Claim.

Please bear in mind that it is likely that you will be stopped from continuing with your Claim at some stage (including right from the start when completing your Claim Form) if you are unable to present understandable and arguable complaints under the relevant law supported by the facts relevant to your case.

In extreme cases, the Employment Tribunal may order you to pay the Respondent's legal costs if it thinks that it was not reasonable of you to bring your Claim at all or that your Claim has no reasonable prospect of success or that the way in which you have conducted the proceedings has been unreasonable (or vexatious, abusive or disruptive).

[♦] Rule 9 of the Employment Tribunal (Constitution and Procedure) Rules 2016 (the 'Rules'), 'Guidance by the President of Chairpersons', provides for the President to publish guidance as to matters of practice and as to how the powers conferred on the Employment Tribunal may be exercised. The aim of the President's Guidance is to enable parties to better understand what is required of them, what to expect of the Tribunal and to improve consistency in the way the Tribunal manages cases. It is not binding but should be followed where possible.
Presidential Guidance is not intended to be, and should not be relied upon as, legal advice or a full statement of applicable law.



Your Claim must be presented on the Claim Form set out [here](#) or which can be downloaded by visiting the forms section of the website <https://www.gibraltar.gov.gi/departments-employment>.

You should keep a copy of your Claim Form for your records.

You must complete and return your Claim Form to the Tribunal office by the relevant time limit: within 3 months of your employment ending or the problem happening.

III. Time limits

You usually have to make a Claim ***within 3 months of your employment ending or the problem happening.***

If you think you have lost your job unfairly (including by constructive dismissal), the 3-month period begins from the date your employment ended.

If your Claim is about discrimination/harassment, bullying or whistleblowing detriment, the 3-month period begins from the date the incident or dispute (last) happened.

If your Claim is a contract claim, the 3-month period begins from the date your employment ended (contract Claims cannot be made whilst still in employment).

If your time limit has passed, you can still make a Claim to the Employment Tribunal. It will be for a Tribunal Chairperson to decide whether they will accept your Claim. In most cases, the time limit will be enforced unless you can persuade the Chairperson to extend the time limit by reference to the relevant laws supported by relevant facts. When deciding whether to grant such an application, the Chairperson will consider factors such as the length of the delay, the reasons for the delay and the prejudice caused to the Respondent.

IV. Before your Claim Form can be accepted

The Tribunal will reject a Claim and return your Claim Form if:

- the Claim is not on the correct form;
- the Claim is not made within the relevant time limit;
- the Claim Form does not provide your full name and address; or
- the Claim Form does not provide the full name and address of the Respondent.

V. What can I do if my Claim is rejected?

You may make an application for reconsideration of the rejection on the basis that either the decision to reject was wrong or the defect can be rectified.



The application must be in writing and presented to the Tribunal within 21 days of the date that the notice of rejection was sent. It must provide full details of the reasons for the application explaining why you say the decision is said to have been wrong or rectify the defect, and include any relevant evidence (for example, medical certificates), and state whether you wish to request a hearing of the application.

A decision will be taken by an Employment Tribunal Chairperson based on the individual circumstances of the case and application of the relevant law.

VI. Legal help

You do not need to take legal advice or assistance before you make your Claim, but if you can, it is likely you will find it helpful to do so.

You can also get help and advice from:

- your trade union if you are a member;
- other professional advisers;
- Citizens Advice Bureau Gibraltar, email: www.cab.gi, Tel: +350 200 40006.

VII. What it costs

You do not have to pay a fee to make a Claim to the Employment Tribunal. If you have retained legal representation, then you will have to pay their fees.

Generally, you do not have to pay the Respondent's costs, even if you lose your case. However, the Tribunal can make an order that you pay the Respondent's costs or preparation time if it believes that you or your representative have acted vexatiously, abusively, disruptively or otherwise unreasonably by bringing your Claim or in the way you have conducted your Claim (including by breach of any Order made by the Tribunal or by breach of any of the Tribunal Rules) or thinks that your Claim has no reasonable prospect of success.

The Tribunal does not meet the expenses or allowances of parties, witnesses or representatives attending an Employment Tribunal hearing.

VIII. Correspondence

Whenever you contact us, please quote the Claim Number. When we write to you, we may refer to you as the 'Claimant'.

Whenever you write to us, you should send a copy to the Respondent. If the Tribunal accepts your Claim Form, we will send a copy to the Respondent.

You must let us know immediately if your contact details change.

You must additionally advise us if you decide to change your legal representative.



IX. Can I correspond by email?

Yes – by filling in boxes 1.8, 1.9 (and/or 2.7) on the Claim Form or if you notify us at any stage later. You should make sure you quote the Claim Number in any correspondence and in the title bar of all emails.

When you ask us to communicate with you by email, you agree that you will check for incoming email regularly, preferably at least once a day and, that we may provide your email address to all parties involved in the Claim. You remain responsible for making sure that the Tribunal/other parties receive any communications sent by email within the relevant time limits.

X. Completing the Claim Form

Guidelines for completing the Claim Form can be found by clicking on the link [here](https://www.gibraltar.gov.gi/departments-employment) or by visiting the forms section of the website <https://www.gibraltar.gov.gi/departments-employment>.

Pointers for completing the Claim Form:

Section 2

A person you ask to act on your behalf is known as your ‘representative’. Please do not give the name of a representative unless they have agreed to act for you. (Do not give the name of a person or organisation who is only assisting you with filling in the Claim Form.)

If you have a representative acting for you, we will send all communications about the case to them – we will not deal directly with you; and you must communicate and pass any requests through them and not straight to us or the Respondent.

Section 3

If you do not provide the correct name and address for the Respondent, then the Claim Form may be rejected. You may be able to find employer details on your Department of Employment Notice of Terms of Engagement, employment contract or your Income Tax/Social Insurance documentation.

Section 6.1

If you have a Claim for bullying or victimisation under the Employment (Bullying at Work) Act 2014 or for whistleblowing detriment under the Employment Act, then please state this in the box “Other type of claim”.

If relevant, so long as you are no longer employed, you may also make a contract claim against your employer. If so, please tick ‘yes’ in the box ‘indicate whether you are including a claim for breach of your employment contract’. If you do make a contract claim, this entitles your employer to make an employer’s contract claim against you (otherwise they may not).



Section 6.2

Please provide here full details of your claims with information and evidence to support them, as well as, if possible, the relevant law which you think applies. If the claims are about more than one issue, you will need to provide full details in respect of each issue.

At this stage, you should not send any documents or other evidence to support your Claim. However, you will have to produce them if the Claim goes to a hearing.

If there is not enough space, please continue on a separate sheet and attach it to the Claim Form.

Types of Claims:

Unfair dismissal/constructive unfair dismissal

For unfair dismissal, you must state why you consider the dismissal was unfair e.g. the reason for the dismissal was not one of the fair reasons under the Employment Act or the disciplinary/dismissal procedure followed was not reasonable.

If you are claiming that the Respondent's actions led you to resign and leave your job (constructive dismissal), please explain in detail the circumstances surrounding this.

Please provide explanations on the background leading to the dismissal and all relevant information. Describe the events which led up to the dismissal and describe how the dismissal took place, including dates, times and the people involved. If you disagree with the reason the Respondent gave for dismissing you, say what you think the reason was.

Discrimination/harassment

Discrimination law covers all areas of employment including recruitment, training, promotion and dismissal.

Discrimination/harassment can take place on the grounds of:

- sex,
- pregnancy or maternity leave,
- gender reassignment,
- racial or ethnic origin,
- sexual orientation,
- religion or belief,
- age, or
- disability.

Discrimination also covers 'victimisation' - because you (or the Respondent thought that you) complained about discrimination/harassment or assisted someone else to do so or you did something else connected to your rights arising under the Equal



Opportunities Act 2006. Events that happen after you have left employment can also be covered.

Please describe the incidents which you believe amounted to discrimination/harassment, the dates of these incidents and the people who were involved. Explain in what way you believe you were harassed/discriminated against.

If you are complaining about more than one type of discrimination/harassment, provide separate details of the acts you complain about. If you are unable to give the dates of all the incidents you are complaining about, you must at least give the date of the last incident or tell us if the discrimination/harassment is ongoing. You should also describe how you have been affected by the events you are complaining about.

Bullying

Under the Employment (Bullying at Work) Act 2014, bullying is 'conduct' which has the purpose or effect of causing a person to be alarmed, distressed, humiliated, or intimidated. Conduct means (a) persistent behaviour which is offensive, intimidating, abusive, malicious or insulting, (b) persistent unjustified criticism, (c) punishment imposed without justification or (d) changes in duties or responsibilities to a person's detriment without reasonable justification (and for the purposes of (b), (c) and (d), includes behaviour which is offensive, intimidating, abusive, malicious, or insulting).

Bullying does not include reasonable action taken by an employer relating to the management and direction of an employee or an employee's employment.

The Act also entitles employees to bring claims for victimisation - because the Claimant (or the Respondent thought that the Claimant) complained about bullying or assisted someone else to do so or the Claimant did something else connected to their rights arising under the Act.

Describe the incidents which you believe amounted to bullying or victimisation, the dates of these incidents and the people who were involved. Explain in what way you believe you were bullied or victimised. If you are unable to give the dates of all the incidents you are complaining about, you must at least give the date of the last incident or tell us if the bullying or victimisation is ongoing. You should also describe how you have been affected by the events you are complaining about.

Whistleblowing detriment

Whistleblowing claims are made pursuant to Part IVA. of the Employment Act - "Public Interest Disclosures".

Contract Claims

These can be brought after employment has terminated for breach(es) of employment contract, for example, for unpaid wages, contractual holiday pay or a sum due under a contractual pay in lieu of notice clause.



Contract claims cannot be brought for statutory claims e.g. statutory redundancy pay, sick pay, minimum wage, nor during employment.

Section 7.3

In this Section, please provide full details of the compensation claimed and the basis of your calculations.

In dismissal cases, it is important to be aware that you are under a legal obligation to 'mitigate' (minimise) your wage losses by trying to get another job and if your Claim proceeds you will be asked to produce information about and evidence of your efforts to do so.

You should also note that the Employment Tribunal can reduce any awards to you if it concludes, on the basis of the evidence it hears, that you have contributed to (i.e. partially been to blame for) what has happened.

In unfair dismissal and contract claims cases, the Tribunal cannot normally award compensation for injury to feelings, although it can in discrimination/harassment, whistleblowing detriment and bullying/victimisation cases. The amount awarded will vary depending on how badly a person has been affected. Evidence will be needed so the Tribunal can assess this. In extreme cases, if there is medical evidence that a person has become ill directly caused by what happened, then compensation can also be awarded for personal injury.

XI. After the Claim Form is accepted

The Respondent is required to present its Response, generally within 21 days of the Respondent receiving the Claim Form from the Tribunal. Once a Response is accepted, the Claim and the Response will then be referred to a Mediator who will offer you and the Respondent the chance to try and settle the dispute without going to Tribunal ('conciliation'). If conciliation does not work, the Mediator will issue a Conciliation Certificate and the Claim will be referred to an Employment Tribunal Chairperson.

XII. The Preliminary Hearing

Once an Employment Tribunal Chairperson is appointed, they will usually arrange a Preliminary Hearing. Normally, a Case Management Order will be made which will set out the steps both you and the Respondent will have to take in the lead-up to the Main Hearing, for example, exchanging with the Respondent all materials and documents you have which are relevant to the Claim and the Response ('disclosure'), for example:

- your contract of employment;
- pay slips;
- warnings and any other relevant correspondence;
- notes from relevant meetings;



- Department of Employment documents,

sending in formal written witness statements from persons who can give factual evidence directly relevant to the Claim or the Response, exchanging skeleton arguments and relevant case law ('authorities') and preparing and filing bundles of documents for the Main Hearing.

If there are any preliminary issues which the Tribunal will need to decide, for example whether the Response Form has been submitted to the Tribunal within the required time limit, these should be raised in advance of the Preliminary Hearing, so they can be considered.

XIII. Preliminary Orders

If, for example, you think that the Respondent has not provided full disclosure – exchanged with you all materials and documents which are relevant to the Claim and the Response – or if you request a person to be a witness and they do not want to, you can ask the Tribunal to Order the further disclosure or the witness to give evidence. In these circumstances, you will need to make a formal written application to the Tribunal setting out your grounds for making the application and all the relevant facts.

XIV. What will happen at the Main Hearing?

If you or the Respondent (or somebody else acting for you or the Respondent) fail to appear at any Hearing, the Tribunal may make decisions or judgments in your or their absence.

Opening submissions (speeches) may be made by either party. The witness statements will already have been read by the Chairperson and will not usually be read out at the Hearing. You and your witnesses, and the Respondent and their witnesses, will give evidence on oath or affirmation. You can ask the Respondent and their witnesses questions (this is called 'cross-examination'). The Chairperson may also ask some questions. The same procedure will be followed for you and your witnesses. Closing submissions may be made by either party.

At the end of the Main Hearing, the Chairperson will usually reserve their judgment and this should generally be provided in writing in the 3-month period following the Main Hearing.

The Main Hearing may also deal with remedy (what award you should receive) if you are successful. If not, a further hearing may take place.

XV. Disability or Special Needs

If you or anyone attending a Tribunal Hearing has a disability or a particular need, you should contact the Secretary to the Tribunal so appropriate or suitable arrangements can be made.

The Tribunal may be able to arrange for an interpreter at Hearings if this is requested in advance.



XVI. Data Protection

The Tribunal processes personal information about you in the context of Tribunal proceedings.

XVII. Further information

All enquiries to the Employment Tribunal can be made by telephone on +350 200 46257 or via email to: employment.tribunal@gibraltar.gov.gi.

The Employment Tribunal staff can answer general enquiries, give information about Tribunal publications and explain how the Tribunal system works. They may be able to help you fill in forms, **but they cannot give legal advice or assistance**, including whether a Claim is likely to be successful.

Gabrielle O'Hagan

Gabrielle O'Hagan
President of the Employment Tribunal
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