



PRESIDENTIAL GUIDANCE[♦]

RESPONSES

I. How do I respond to an Employment Tribunal Claim?

Your Response must be presented on the form set out [here](https://www.gibraltar.gov.gi/departments-employment) or which can be downloaded by visiting forms section of the website <https://www.gibraltar.gov.gi/departments-employment>. A printed Response Form will also have been sent to you by the Tribunal along with a copy of the Claimant's Claim Form.

You must complete and return your Response Form to the Tribunal office by the relevant time limit: ***within 21 days of the date we sent you a copy of the Claimant's Claim Form.***

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

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

In extreme cases, the Employment Tribunal may order you to pay the Claimant's legal costs if it thinks that your Response 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).

Should you decide not to engage a lawyer, you are strongly advised to devote as much time as you can to researching and understanding what you will have to prove to succeed with your Response to the Claimant's Claim.

You can also contact 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. Before your Response Form can be accepted

The Tribunal will reject a Response if:

- the Response is not on the correct form;
- the Response does not provide your full name and address;
- the Response does not state whether you wish to resist (defend) all or any part of the Claim;

[♦] 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.

The President's Guidance is not intended to be, and should not be relied upon as, legal advice or a full statement of applicable law.



- you do not send to the Tribunal the Response or an application for an extension of time, within the 21-day time limit; or
- after the 21-day time limit, you do not send to the Tribunal an application for an extension of time, with a draft Response or an explanation as to why it is not possible for a draft Response to be submitted.

If you do not present a Response Form, or you respond that no part of the Claim is contested or your Response Form is rejected, an Employment Tribunal Chairperson may decide the Claim and issue a judgment without the need for a hearing. If there is a hearing, you would only be entitled to participate to the extent permitted by the Chairperson who hears the Claim.

III. What can I do if I cannot meet the deadline for sending in the Response Form?

If you do not present your Response Form within the 21-day time limit and you have not applied for an extension of time, the Tribunal will reject your Response and return your Response Form.

You can make an application to the Tribunal for an extension of time for presenting the Response if there is good reason for you not being able to send in the Response in time. Applications for an extension of time must be in writing, set out the reasons why the extension is sought with any relevant evidence, and state whether a Hearing of the application is requested. If you apply after the 21-day time limit has expired you must, in addition, either send in a draft of the Response Form you wish to submit or explain why this cannot be done.

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

IV. Legal help

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

You can also get help and advice from:

- other professional advisers;
- Citizens Advice Bureau Gibraltar, email: www.cab.gi, Tel: +350 200 40006.

You may need to notify your insurance company of the Claim filed against you.

V. Will I have to pay the Claimant's costs?

Generally, no, even if you lose. However, the Tribunal can make an order for costs or preparation time if it believes that you or your representative have acted vexatiously,



abusively, disruptively or otherwise unreasonably in the way you have conducted the proceedings (including by breach of any Order made by the Tribunal or by breach of any of the Tribunal Rules) or thinks that your Response to the 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.

VI. Correspondence

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

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

You must let us know immediately if your contact details change. You must additionally advise us if you decide to change your legal representative.

VII. Can I correspond by email?

Yes – by filling in boxes 2.6, 2.7 (and/or 3.7) on the Response 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 every 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.

VIII. Completing the Response Form

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

Pointers for completing the Response Form:

Section 3

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 Response 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 Claimant.

Section 6

If you have ticked 'Yes' that you intend to defend the Claim (section 6.1 on the Response Form), provide in section 6.2 full details of your responses 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 Response. 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 Response Form.

Section 7

If a Claimant is no longer employed, they may make a contract claim against their employer. If they have done so, this entitles you, if relevant, to make an employer's contract claim against the Claimant (otherwise you may not).

IX. After your Response Form has been accepted

The Claim and the Response will be referred to a Mediator who will offer you and the Claimant 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.

X. 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 Claimant will have to take in the lead-up to the Main Hearing, for example, exchanging with the Claimant all materials and documents you have which are relevant to the Claim and the Response ('disclosure'), for example:

- the Claimant's contract of employment;
- pay slips;
- warnings and any other relevant correspondence;
- notes from relevant meetings;
- Department of Employment documents,



and 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 Claim Form was submitted to the Tribunal within the required time limit or whether the Claimant had sufficient continuity of employment for an unfair dismissal claim, these should be raised in advance of the Preliminary Hearing, so they can be considered.

XI. Preliminary Orders

If, for example, you think that the Claimant 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.

XII. What will happen at the Main Hearing?

If you or the Claimant (or somebody else acting for you or the Claimant) 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 Claimant and their witnesses, will give evidence on oath or affirmation. You can ask the Claimant 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 the Claimant should receive) if the Claimant is successful. If not, a further hearing may take place.

XIII. 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 that 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.



XIV. Data Protection

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

XV. Further information

All enquiries to the Employment Tribunal can be made by telephone on 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 nor advise you** if a Claim made against you is likely to be successful.

Gabrielle O'Hagan

President of the Employment Tribunal
30 April 2024