



EMPLOYER GUIDE

**TOP TIPS FOR AVOIDING
EMPLOYMENT TRIBUNALS**

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Being taken to an Employment Tribunal is every employers worst nightmare. Not only might they be facing a crippling award by the tribunal, but also the cost of taking employees away from their work as they may be witnesses or involved in document preparation. Also, as hearings are open to the press there are allegations that might cause damage to business.

This is especially bad as, in our experience, all the press want are salacious stories and never report a case won by the employer.

In short, Employment Tribunals never benefit an employer so here are the top tips to avoid them.

01

BE OPEN MINDED

Approach every employment relations issue with an open mind. Predetermined decisions of grievance and disciplinary issues leads to tribunals and eye watering awards by tribunals. You may have the best employee who has been with you for 30 years who racially abuses someone. Taking their side and playing it down as 'banter' could be catastrophic. It is always better to involve someone who is not familiar with the parties to deal with issues. This could be internal or a specialist consultant.

02

BE PROACTIVE AND COMMUNICATE



Communication and proactive management can stop claims before they start. Management should be as transparent as possible when making decisions that might affect the workforce. Proactive management should mean that difficulties should be anticipated. This could be to avoid personality clashes by making employees work together, up to redundancies. Also, there are certain statutory legal requirements when dealing with change (eg TUPE and redundancy). Failure to follow the rules could put you in front of a judge without you even realising something was wrong.

03

HAVE CLEAR RULES AND PROCEDURES

Have clear rules and procedures in place and make sure all management and employees know what they are. Section 1 of the Employment Rights Act sets out the statutory minimum information that must be included in a contract of employment, and a written statement of these terms must be issued on or before the date on which employment starts, as they are now a day 1 right. In addition to this, there is usually a employee handbook and policies that both sides must follow.

04

HAVE A THIRD PARTY PRESENT

With disciplinaries and grievances, make sure you have a trained member of staff or an outside consultant to hear the issues and ensure procedures are properly followed. It will only take one slip when applying the Burchell test to make a procedure unfair and increase your risk of a claim. If someone does not know the difference in burden of proof between a disciplinary and grievance they should probably not be chairing hearings. Theses process are "quasi judicial" and require specially trained staff to undertake them effectively.

05

REMAIN CONSISTENT

Consistency is key when dealing with employee relations. Many cases are taken to tribunal because even if the employee was in the wrong they claim that they were treated differently to other employees in the same position; or that the 'punishment did not fit the crime'. These are usually coupled with allegations of discrimination that can add tens of thousands of pounds to a tribunal award. Your HR professional should be consulted on any decision regarding grievances or disciplinaries.

06

NOT EVERYONE IS A LAWYER

Not everyone is a lawyer. The amount of tribunals that have arisen from a limited knowledge of the law is huge. The phrases "not been employed two years so I can sack them", "I will get rid of them by making them redundant" or "its only a zero hours contract so they have no rights" is usually the precursor to a claim.



07

LISTEN TO THE PROFESSIONALS

Listen to your professional advisors. Just because there advice may be unpalatable or personally uncomfortable the advice will be in the best interest of your business.

08

JUSTICE WILL NOT ALWAYS PREVAIL

Justice will not always prevail, procedural flaws lead to most awards.