

# ACAS Early Conciliation - Guidance for Employers

## What is Early Conciliation?

Conciliation is a form of dispute resolution, similar to mediation, which is carried out by ACAS (the Advisory, Conciliation and Arbitration Service). New legislation has come into force which makes Conciliation prior to bringing a claim mandatory from 6 May 2014. Before the Employment Tribunal will accept a case, the matter must have been referred to ACAS and a Conciliation Certificate issued, confirming that the Early Conciliation requirements have been met. The Conciliation Certificate will have a unique reference number which the Claimant will need to put on their ET1 claim form before it will be accepted by the Tribunal.

## Does this apply to every case?

There are exceptions where it is not necessary for a claimant to follow the Early Conciliation procedure. However, the circumstances in which they apply are very limited. Most types of claim are affected by the Early Conciliation requirements, including claims for unfair dismissal, breach of contract, unlawful deductions from wages, discrimination and equal pay, protection from detriment and rights to time off. Most claimants will have to comply with the procedure - only those bringing a claim on the same claim form as another claimant who has complied with the Early Conciliation procedure and those in a very few other limited circumstances do not need to.

## How does the process work?

From 6 May 2014, potential claimants must follow the Early Conciliation process before they can make a claim to the Employment Tribunal. This can be done in a number of ways, but ACAS expect that in most cases, it will be done by the claimant themselves.

An individual will contact ACAS either by phone or by completing an Early Conciliation form online. Once the Early Conciliation form has been submitted to ACAS, ACAS will contact the prospective claimant to explain the process and take information about the claim. The usual process is for an Early Conciliation Support Officer (ECSO) to be appointed to that case and they will act as an impartial negotiator.

The ECSO will confirm whether the claimant wants to Conciliate and then try to contact the respondent. If both parties are willing to engage in the Conciliation process, the ACAS officer will try to effect a resolution to the dispute within one month of the Claimant having contacted ACAS. This period can be extended by ACAS by up to 14 days.

ACAS issue an Early Conciliation Certificate if any of the following happen: 1) The ECSO cannot contact the claimant 2) the claimant decides that they do not wish to Conciliate 3) the ECSO is unable to contact the

respondent 4) the respondent refuses to Conciliate 5) the claimant and the respondent are unable to reach an agreement within the Early Conciliation period. It should be noted that there is no requirement for the parties to engage in Conciliation; actually using the service is entirely voluntary.

### **Are there any benefits to employers in engaging in the Early Conciliation process?**

Yes, in most cases. ACAS provide an impartial service which can help parties to settle their dispute without having to resort to tribunal proceedings. The process is confidential, and information communicated to a Conciliation Officer cannot be used in any future tribunal proceedings without the permission of the person who communicated it. This means that Conciliation can be a very useful forum to discuss settlement options. In some circumstances, particularly where tensions are running high, it can be helpful to have a go-between who is completely neutral and can bring an element of objectivity to the discussions. The procedure is free, simple to use, informal and can be highly effective. That said, it is not mandatory and there may be reasons why a party can't or doesn't want to engage in Conciliation.

### **Can an employer initiate the Early Conciliation process?**

If you are concerned that proceedings may be issued against you in the Employment Tribunal, but you have not yet received a request for Early Conciliation, you can contact ACAS and request the services of an ECSO. In these circumstances, the ECSO will try to settle the dispute in the same way they would if a potential claimant had initiated the conciliation process. Potential respondents should be aware that where a claimant initiates the Early Conciliation procedure, time stops running for limitation purposes until the Conciliation process ends (or in some circumstances one month after it ends). The time limit for bringing a claim is not extended where the respondent contacts ACAS to explore Early Conciliation.

### **What should I do if I receive a request for Early Conciliation?**

It's expected that employers and employees will be able to use the ACAS Early Conciliation procedure themselves, without the need for representatives to be involved. However, as an employer it is important to be cautious when settling claims via ACAS. You need to ensure that any terms of settlement cover all potential claims brought by the employee and do not allow the opportunity for them to bring further claims about the same or related matters. You may wish to take legal advice before you agree any settlement. We would be happy to discuss this with you.

For further information on Early Conciliation, please see the ACAS guidance at:

<http://www.acas.org.uk/index.aspx?articleid=4028>