

Eight Changes to the ET Rules for 2020

The Employment Tribunals (Constitution and Rules of Procedure) Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2020.

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(1) Cross Deployment of the Judiciary

Regulation 3 of the 2020 regs allows for cross deployment of judges (such as DDJs, DJs and CJs) to the Employment Tribunals – there are however a number of conditions attached to this as set out within the regulations.

(2) Use of Legal Officers

Regulation 4 provides for legal officers who may carry out functions such as: an application for extension of time for presenting a response (rule 20 old rule), an application for an extension of time to comply with a case management order; to which all parties agree, to amend a claim or response; for additional information about another party's claim or defence; and for different claims to be considered together (rule 30 old rule), postponements (rule 30A old rule) if made more than 7 days before the date on which the hearing begins and which all parties consent and whether to dismiss a claim following withdrawal (rule 52 old rule)

There is however an appropriate safeguard included that within 14 days after the date on which a Tribunal sends notice of a decision made by a legal officer to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by an Employment Judge.

(3) Multiple Claimants

Rule 9 currently reads “Two or more claimants may make their claims on the same claim form if their claims are based on the same set of facts. Where two or more claimants wrongly include claims on the same claim form, this shall be treated as an irregularity falling under rule 6”

The change made by the new regs is that “based on same set of facts” will change to “give rise to common or related issues of fact or law or if it is otherwise reasonable for their claims to be made on the same claim form”

(4) Amendment to Substantive Defects

The new regs add a new rule 12(2ZA) to allow a judge to accept a claim form with an error in relation to an early conciliation number where it would not be in the interests of justice to reject the claim.

(5) Multiple Respondents

As we were just discussing in relation to multiple claimants (probably less frequent than multiple respondents), another change is to rule 16 to allow a response form to include the response of more than one respondent or the response to more than one claim if the responses or the claims give rise to common or related issues of fact or law or if it is otherwise reasonable for the responses to be made on a single response form.

(6) Inspection of Witness Statements

Rule 44 currently reads that subject to rules 50 and 94, any witness statement which stands as evidence in chief shall be available for inspection during the course of the hearing by members of the public attending the hearing unless the Tribunal decides that all or any part of the statement is not to be admitted as evidence, in which case the statement or that part shall not be available for inspection.

The new regs add that where a hearing is conducted by electronic communication, inspection of witness statements may be otherwise than during the course of a hearing. There isn't any elaboration on how this will work in practice, however.

(7) Hearings by electronic means

Rule 46 currently reads that a hearing may be conducted, in whole or in part, by use of electronic communication (including by telephone) provided that the Tribunal considers that it would be just and equitable to do so and provided that the parties and members of the public attending the hearing are able to hear what the Tribunal hears and see any witness as seen by the Tribunal. The amendment provides for parties or member of the public attending the hearing to see any witness as seen by the Tribunal so far as practicable.

(8) Withdrawn claims no longer shown on Register

Judgments for withdrawn claims are exempted from the requirement to record on the Register.

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