



Taking the heat out

Introduction of early conciliation in Northern Ireland

Early Conciliation comes into effect in Northern Ireland on 27 January 2020. This means that anyone who wishes to lodge a claim with the Industrial or Fair Employment Tribunal must first notify the Labour Relations Agency (“LRA”) and discuss the option of Early Conciliation. Potential claimants will not be able to proceed to Tribunal without at least considering this option.

The introduction of Early Conciliation marks a significant change to the process in Northern Ireland whereby claims can be lodged with the Tribunal before contact is made with the LRA, and even sometimes in situations where the employer is not expecting a claim to be filed.

Although the timing may suggest otherwise the introduction of Early Conciliation now (although it was first referenced in the Employment Act (NI) 2016) is not connected to restoration of Stormont.

In brief: what is Early Conciliation?

Early Conciliation is a process which seeks to help resolve workplace problems and disputes without the need for the parties to become embroiled in litigation in the Industrial or Fair Employment Tribunal.

Early Conciliation has been in place in England, Scotland and Wales since 2014. The process in Northern Ireland from 27 January 2020 will mirror the GB rules, albeit Early Conciliation will be managed by the LRA in Northern Ireland rather than ACAS.

In detail: what will the process to look like

Broadly speaking, anyone who wishes to bring a claim in the Tribunal will have to contact the LRA before their claim will be accepted by the Industrial Tribunal or Fair Employment Tribunal (“OITFET”).

Commencing Early Conciliation

A prospective claimant, or their representative, will be required to present a completed Early Conciliation notification form and submit it to the LRA. This can be done online, in person, by post or over the telephone.

Once the form is received, the LRA will contact the prospective claimant. This will usually be within five working days. The LRA officer will explain the process and seek consent from the prospective claimant that they can make contact with the other party to ascertain whether or not there is a willingness to try Early Conciliation.

Conciliation, and impact on Tribunal time limits

If both parties agree the conciliation officer will try to help find a mutually acceptable solution to the problem which, if agreed, would be a legally binding settlement.

The Early Conciliation period will be a period of one calendar month. This period can be extended by the conciliation officer if he or she believes there is a reasonable prospect of achieving a settlement within an additional 14 days if the parties consent.

Tribunal claims in Northern Ireland usually have to be presented within three or six months of the alleged incident, act or omission, depending on the type of claim. However, when an individual makes an Early Conciliation notification this 'clock' will stop for a period up to one calendar month during which conciliation can take place.

Early Conciliation certificate

If, during the one month conciliation period, the conciliator concludes that settlement of the dispute (or part) is not possible, or once the conciliation period comes to an end, the LRA will issue an Early Conciliation certificate with a unique reference number. The certificate will be dated and will also specify the date the LRA received the Early Conciliation form. The parties with whom the LRA has been in contact will be sent a copy of the certificate.

Comment

The intention of Early Conciliation is to increase the number of cases where parties reach an agreed settlement before proceedings are issued; to ensure the claimant and respondent benefit from contact with the LRA in terms of information and understanding, even where they do end up in the OITFET; and to improve overall satisfaction with the employment dispute resolution system. In essence the hope is to drive a cultural change of talking about the disputes in advance with a view to resolving them before the parties become immersed in what can sometimes be bitter, stressful and costly litigation.

Although actual participation in Early Conciliation is voluntary, employers should give thought now to how they will respond to contact received from the LRA going forward. For example, employers might want to consider nominating one member of staff to whom all calls from the LRA in relation to Early Conciliation should be directed. This might be, for example, someone in HR so that they might conduct a brief risk analysis and seek advice, where the circumstances are more complex or sensitive. It will also be important for employers to be aware of the Early Conciliation period so as to appreciate when Tribunal time limits expire.

Importantly for employers, issues identified during the Early Conciliation process will not restrict or bind claimants in terms of future allegations, if they do go on to commence proceedings. The Early Conciliation process will accordingly give employers an indication of the issues in dispute in advance of proceedings being issued but may not be comprehensive. Care should be taken during this period in relation to the retention and creation of documentation which may ultimately need to be disclosed as part of Tribunal proceedings.

The LRA's already existing conciliation services will also remain available for the life of the Tribunal proceedings.

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