Birmingham Peoples Centre

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Amending a Claim

Rule 29 of the Employment Tribunals Rules of Procedure 2013, allows for a party to amend their claim or response.

Once an ET1 has been sent you cannot change anything on it unless you get permission from the tribunal. Tribunals can change something on the claim but it all depends on what the changes are and how significant they are to the case. The tribunal will have to determine whether the change(s) will cause 'prejudice' or difficulty for the other side and take into account when the change was made. You can also add or remove a party form a claim using this procedure.

An application for an amendment can be made at any time, including during the hearing. However, the later you make the request the less likely it is that the tribunal will allow it. If you try and introduce something completely new into your claim, that you have not previously stated, this will be very problematic. For example, your claim was originally for unfair dismissal and now you want to amend it and add discrimination into the claim. You will have to have very good reasons for doing this. The other side also has the right to object to any changes that you want to make when you make the aware.

Other types of amendments are more straight forward, for example, you might want to amend a typing error, or add some words that have been missed out. Substantial changes that change some important aspects of the case will almost certainly before objected by the other side. If this is the case then normally the tribunal will arrange a hearing so that both sides explain themselves. The tribunal then has to decide if the change would be fair or not.

There are two categories for substantial changes, the first is where you do not change the basis of the claim, but add something in that makes your case stronger. For example, your claim is for unfair dismissal but now you include that your employer failed to allow you to be accompanied to any meetings.

This first category of changes also includes something known as 'Re-labelling'. This has to be something that is linked to the original claim or 'arises out of' the original claim. For example, you claimed unfair dismissal but now you are also claiming a redundancy payment. The facts of your claim do not alter but you have re-labelled your claim.

The second category is changing the claim in such a way that it essentially means that it is a new claim based on new facts. Here you will have to make sure that you have met the time limits associated with the amended claim. The other side will almost certainly object to this. You will have to convince the tribunal that what you are doing is fair. In front of a judge at any hearing related to an amendment you will have to explain:

- Why you did not include all of this new stuff in your original ET1
- Why it would be an injustice for you if all of this new stuff was not included into the amendment
- How the respondent is not at a disadvantage because of the way you have changed things

Additional Information

Under schedule 1 rule 10(2)(b) an employment tribunal judge can order either the claimant or the respondent to give further information or details about the claim or defence. This can be done by the judge independently or after a request from one of the parties.

When you submit an ET1 a judge will look at it and make sure all the relevant details and fact are included. If anything is missing the judge may well order you to provide additional information.
This is one of the reasons why your ET1 needs to be as comprehensive as possible. So, practically what this means is that if you make any allegations without any supporting arguments then you will probably get a request for additional information from a judge.

This works both ways because if a respondent has merely stated that they did not do what is alleged without further discussion in their ET3 they will get a request from the judge for additional information.
If you do get an order to provide additional information there will always be a time limit attached to it; make sure you provide the information requested within the time limit. If for whatever reason you think you cannot do it in time make sure you write back to the Tribunal Service explaining why you cannot provide the information requested on time. Failure to comply with an order from a judge could result in sanctions imposed on you including your claim being struck out.

Disclosure of documents

A judge will expect that both sides in an employment tribunal claim have exchanged with each other all documents that are relevant to a case. This is known as 'disclosure' and is particularly important where you have made a series of allegations in your ET1 or in your witness statement. Ideally you should not make an argument or an allegation unless you can back it up with either documentation or witness collaboration.

In the Presidential Guidance on General Case Management you will normally find a section for disclosure of documents. The order usually states a date and a time, a deadline if you like, for when each side should disclose any documents. The documents can either be sent to the other side as photocopies or scanned copies via an e-mail.

You should send everything related to your employment history and everything related to your case. This includes (not an exhaustive list): Offers of employment, contract of employment, payslips, copies of pages of the employee handbook if it is relevant to your case, any letters, e-mails or anything else that has something to do with your job, your job history, your pay and other benefits and anything to do with your claims and allegations.

Do not fall into the trap where you do not want to disclose something because you want to surprise the other side with evidence that you have against them. Employment tribunal judges do not like surprises. Disclose everything!

You will also have to send proof of your attempts to find a new job. So for example, if you are claiming unfair dismissal then the judge would expect you to be looking for work. It is not a case of I have been dismissed and so I will sit around and claim compensation. You have to try and find a new job as soon as you lose your old job. The other side, at disclosure might send documentation that advertises jobs that are suitable for you. This is important because if they argue that, ok, they dismissed you, but you should have found a job then this could have an effect on the amount of compensation the judge awards you if you win your case.

If either side fails to disclose without good reason, sanctions can be applied, including the striking out of a case.

If you know that documents that support your case exist and are in the possession of another organisation or the other side you can request these documents from them. If they refuse you can apply to the tribunal for an order that the party disclose the documents that you require. However, you will have to demonstrate to the tribunal that the documents being ordered by them are very important to your case.

A 'Standard Disclosure' is for documents that are relevant to the issues of the case or supports the case in anyway, including anything to do with the determination of compensation or any other remedy. A party cannot withhold documentation just because it might damage their case.

If a document is required to back up or refute something that has been written in the ET1, the ET3 or any of the witness statements and you need this document then the request will be made for a 'Specific Disclosure'. Again you should first write to the other side or the organisation that hold the document(s). If they refuse or do not answer then you contact the tribunal for an order for specific disclosure. Again you will need to explain why this document is so important.

There are some documents that do not have to be disclosed by either side. These include any communication between the other side and their legal representative or any other privileged documentation. This is complicated; however, if you find yourself in this situation please contact us and we will help.

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Room 118, Gazette Buildings, 168 Corporation Street
Birmingham, B4 6TF
Birmingham Peoples Centre Ltd is a company limited by guarantee no. 08021913
Registered charity no. 1157384
trevor@bhampc.co.uk 07972 437396, 0121 6631224 www.bpcentre.org.uk