

How the LRA can help

Pre-Claim Conciliation Explained

The Labour Relations Agency is an independent, publicly funded organisation.

Our job is to promote good employment relations in Northern Ireland.

If you have a disability, please let us know if we need to make any special arrangements for you to use our service.

If you need to use an interpreter, we can arrange for one to be available.

This booklet can also be made available in alternative formats.

Please contact the Conciliation and Arbitration Department on 028 9032 1442 (Option 2) or visit our website www.lra.org.uk

Pre-Claim Conciliation

Where a problem or disagreement in the workplace is likely to lead to a tribunal claim the Agency will often be able to help employers and employees¹ find a solution that is acceptable to both. This service is known as Pre-claim Conciliation.

Issues referred for Pre-claim Conciliation are dealt with by **Conciliation Officers** who talk through the problem, outline your options, discuss the benefits of the service and answer any questions you may have.

We do not impose outcomes or make judgements on the rights or wrongs of the matter in dispute; we simply try to help people settle their differences on their own terms.

This booklet explains how we can help.

¹ Most statutory employment rights apply only to employees who work under a contract of employment; but some rights also apply to certain workers engaged on a contract for services. References to 'employees' in this booklet should be taken to mean both employees and workers, where appropriate. It may be desirable to seek legal advice if you are in doubt about your employment status, or that of a person who works for you.

Key features of Pre-Claim Conciliation

Conciliation officers are **impartial**. They do not:

- Represent either the employer or the employee.
- Take sides or judge who is right or wrong.
- Give an explicit opinion on the merits of a claim or potential claim.
- Advise on tactics, or how to win at a tribunal.
- Pressurise people to settle or abandon a case.

Conciliation is **voluntary**.

- Employers and employees can opt in or out at any time.
- The conciliation officer has no power to compel anyone to take any course of action.
- There are no restrictions on what can be included in the terms of a settlement agreement (as long as it does not contain anything unlawful).

Conciliation is **confidential**.

- Nothing you say to us will be passed to other parties without your agreement.
- What you say during conciliation cannot be used as evidence against you at a tribunal hearing.

Conciliation is **independent**.

- It is entirely separate from the tribunal process and if a settlement is not reached a claim can still be pursued.

Conciliation is **free**.

- There is no charge for our service.

What are the options?

If an employee believes they could complain about their employment rights but has not yet made a claim to a tribunal, there are several ways to resolve the matter without going any further:

Use workplace procedures – Employers and employees should always try this before considering any other option. It's usually quicker, less stressful and less costly for all concerned².

² The 'LRA Code of Practice on disciplinary and grievance procedures' sets out the principles that employers and employees should follow when dealing with most workplace problems. This is available on the Agency's web-site.

Settle the matter through the **Labour Relations Agency** – We can conciliate in almost every type of potential claim about individual employment rights and most are resolved at this stage.

Settle the matter privately – you can choose to settle the matter privately in certain circumstances but a private settlement reached without the assistance of an appropriate adviser may not be legally binding. If you decide to explore this option you should take advice.

If an agreed solution cannot be found the employee may still choose to lodge a claim with the tribunal. Claims must be made within a specified time of the events they concern. In most cases this is **three months**.

In limited circumstances the tribunal can accept late claims but taking part in conciliation or any of the other activities described above does not provide grounds for this. It is the employee's responsibility to find out what time limits apply and ensure they do not lose the right to make a claim if the matter cannot be resolved before then.

Employers or employees who are in any doubt as to how this might affect a particular case should seek legal advice.

Why choose Pre-Claim Conciliation?

- **Saves time and money.** Preparing or responding to a tribunal claim takes a great deal of time, and if there is a tribunal hearing both employer and employee could have representational costs.
- **Minimises stress.** Almost everyone finds the process of pursuing or defending a case difficult, and appearing in tribunal can be a stressful experience.

- **Quick Solution.** Many cases can be dealt with in a few telephone calls or a short meeting, with agreed settlements implemented very soon afterwards.
- **Win-Win Outcome.** In a tribunal someone always loses and even the ‘winner’ will not always get what he or she wants from the process.
- **Control.** Settlements are reached by agreement on terms that suit the parties. In the tribunal the decision is taken out of the parties’ hands and there are restrictions on what the tribunal can award (e.g. they cannot order references to be given).
- **Avoids Formality.** Although the tribunal is less ‘stuffy’ and legalistic than most courts it is still a judicial process with which most people are unfamiliar and uncomfortable.
- **Can restore the employment relationship** – if that is what the employer and employee want to achieve.

What will the Conciliation Officer do?

To explore how the potential claim might be resolved the conciliation officer will talk through the issues with the employer and the employee.

Where appropriate, the conciliation officer will also:

- Explain the pre-claim conciliation process.
- Explain the way tribunals operate, and what they take into account in deciding claims in similar circumstances.
- Discuss the options.
- Ask questions to help clarify the employer's and employee's positions and concerns.
- Help each person understand how the other views the case.
- Relay any proposals for a settlement between the employer and the employee.

The conciliation officer **will not**:

- Make a judgement on the case, or the likely outcome of a tribunal hearing.

- Advise either the employer or the employee whether or not to accept any proposals for settlement.
- Act as a representative or take sides in any other way.

What happens if I settle the complaint through the Labour Relations Agency?

If you settle the complaint through the Labour Relations Agency, the agreement will be legally binding and no tribunal claim can then be made about the matter in question. Although agreements do not have to be in writing to be legally binding, the terms of any agreement reached will be recorded on a Labour Relations Agency form and signed by both parties as proof of the agreement.

What happens if agreement cannot be reached?

It will be up to the employee to decide whether or not they wish to submit a claim to the tribunal. If a claim is lodged, the Labour Relations Agency will continue to offer conciliation with the aim of resolving the matter without the need for a tribunal hearing.

What about representation?

If you appoint a representative to act for you we will conciliate through them and will not be able to deal with you directly. As any settlement reached through your representative would be legally binding it is important to ensure that they are fully aware of your requirements.

Where can I get more information or advice?

If you have already spoken to a Labour Relations Agency conciliation officer, you will find they can help you identify sources of advice and information

appropriate to your situation. If not, the following may be helpful:

- The Labour Relations Agency Helpline can give information and advice about employment rights, but is not able to assist with preparing or presenting a claim to the tribunal.
Telephone 028 9032 1442.
- The National Minimum Wage Helpline for free help and advice on the national minimum wage.
Telephone 0800 917 2368.
- The Equality Commission can give free help and advice on matters relating to equal pay and all aspects of discrimination.
Telephone 028 9050 0600 for more information.
- Trade Unions and employers' associations may be able to advise and support their members.
- The Citizens Advice Bureau, Solicitors, Law Centres and some specialist consultants can provide advice and representation on all matters concerned with employment rights and potential claims.

Data Protection Act 1998

The Labour Relations Agency holds some information to monitor progress and produce statistics.

And finally...

We do our best to provide a high standard of service at all times but if you are not satisfied with the service you have received, you should write to the Customer Complaints Officer. The addresses of the Labour Relations Agency offices are given on the back of this booklet.

Labour Relations Agency

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