



Avoid an Employment Tribunal

Howard L Young

An employment tribunal is a judicial body established to resolve disputes between employees and employers over employment rights. Any worker or employee who believes that they have been treated unfairly can make a claim to a tribunal. In 2004/05, 86,181 cases were initiated in Employment Tribunal, of which only 18% (26,472) were successful.

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Claims are heard which arise from disputes about matters of employment which cannot be resolved at a local level between employee and employer. These issues include pay, discrimination, redundancy or dismissal.

The top ten reasons claims are:

- ▶ Unfair dismissal
- ▶ Working Time Directive
- ▶ Unauthorised deduction from wages
- ▶ Breach of contract
- ▶ Equal pay
- ▶ Sex discrimination
- ▶ Redundancy pay
- ▶ Disability discrimination
- ▶ Racial discrimination
- ▶ Redundancy – failure to inform and consult

There is anecdotal evidence of an increasing number of employment tribunal claims made by doctors (both at training and career grade levels). These include claims about failure to appoint. It is important that those involved in training and education are aware of how to minimise claims, as failing trainees can be terminated from training programmes. An employment tribunal claim should be expected in the case of termination from a programme.

Minimising the risk of a claim

Employers need to ensure that trainees have an up-to-date statement of terms and conditions, particularly if working hours or sites of employment have changed.

All trainees must be made aware of the discipline and grievance procedures of their employer and how they can access the relevant documents, and this should be part of an induction process.

Staff must be trained and up-to-date on racial equality, equality and diversity, disability legislation as well as the use of equality impact assessments. This includes those who participate in recruitment and selection. Refresher training should be undertaken and recorded on a three yearly basis.

Any specific training needs should be put in writing to the trainee (and signed off between trainee and trainer). These needs should be explicit and detail how they will be assessed as achieved and in what time frame. Written records (including e-mails) of meetings must be kept. Such documentation will be required to support a claim being contested.

Trainers must be able to demonstrate that they have been consistent and fair to trainees in the processes which have been undertaken. The processes themselves must also be fair and should not imply discrimination. Personality clashes between trainer and trainee can occur, and each should be aware of their employer's grievance procedure. Moving a trainee to another trainer and/or location may defuse the situation, but must be used constructively for the trainee in accordance with their training objectives (irrespective as to whether a grievance procedure is being pursued).

Remember that it is illegal to discriminate on the grounds of:

- ▶ Age
- ▶ Gender
- ▶ Race
- ▶ Religion or belief
- ▶ Disability
- ▶ Sexual orientation

Problems should not be ignored, but dealt with in a timely, fair and consistent manner.

There needs to be close liaison between those overseeing education and training and the employer. Employers are bound by the various employment acts and must adhere to relevant legislation and the timelines set within that legislation. These timelines may not correspond with those for the training and education component for a trainee and interim arrangements for the trainee may be required to fulfil employment law requirements.

Mediation:

Resolution of issues at a local level remains paramount, and might require use of a qualified mediator. The 2004 Dispute Resolution Regulations (part of the Employment Act 2002) was introduced to get parties to speak to each other rather than using an Employment Tribunal.

An independent mediator can defuse situations, help guide negotiations and can be given information which can be transmitted to each of the parties in the most constructive way. Mediators can move back and forth between the parties, helping to come to a negotiated settlement, which becomes binding on all parties once agreed. ACAS (Advisory, Conciliation and Arbitration Service) can also be of use at this time, and receipt of a claim will include advice about using ACAS in the first instance.

Summary

Avoiding Employment Tribunal claims must be related to having best practice in place, which treats individuals fairly, consistently and in a timely manner. It requires trainers to ensure that issues and plans of actions are recorded (and agreed with trainees), that the appropriate assessments against the actions are undertaken in defined timeframes and that the reasons for poor or lack of progress are evidenced and recorded. Use of disciplinary or grievance procedures may be required and trainees and trainers should be aware of how these can be accessed.

Mediation is recommended as early as possible if a dispute arises and should use properly trained mediators, independent of the process which has resulted in the dispute arising.

Trainees should have written educational agreements, updated regularly as they progress through their training scheme, and be aware of their obligations in training programmes. All written documentation must be explicit and evidenced accordingly. Employers need to be aware of those trainees who are not progressing, such that they can make necessary adjustments if required.

Implementation of PMETB (Postgraduate Medical Education and Training Board) generic standards is part of Deanery quality assurance of training and identifies where responsibility lies for each of its domains.

Finally should a claim be received the cited parties must respond within the stated deadline. It is imperative that corporate legal advice is obtained and that a response is lodged; otherwise the claim will be upheld by the Tribunal if no response is forthcoming.

Further Information

ACAS: www.acas.org.uk

Race and Equality Advisory Service: www.acas.org.uk

Equality Opportunities Commission: www.eoc.org.uk

Disability Rights Commission: www.drc-gb.org

Commission for Racial Equality: www.cre.gov.uk

PMETB: www.pmetb.org.uk

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