

A Guide to Giving Evidence in the Employment Tribunal



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The aim of this guide is to ensure you are familiar with how an employment tribunal works and what is likely to happen when you give your evidence as a witness in a tribunal in England or Wales.

Please read this before you give your evidence in tribunal. If you have any questions or concerns, please speak to your solicitor before the hearing.

Top Tip!

Before you go into the hearing, ensure your mobile telephone is turned off. The tribunal will get very irritated if it goes off during the hearing, and more so if you answer it.

The Employment Tribunal

Employment tribunals are responsible for resolving disputes between employers and employees over employment matters, such as whether somebody has been unfairly dismissed, subjected to discrimination, etc. Compared to the ordinary courts, employment tribunals still operate fairly quickly and informally. Nobody wears gowns or wigs and the parties remain seated throughout.

In certain cases, e.g. unfair dismissal claims, an employment judge will hear the case alone. In other cases the matter will be heard by three people sitting together, known as the panel, or tribunal. The tribunal will consist of a legally qualified employment judge and two members, one from an employer background and one from an employee background. These "lay" or "wing" members are selected for their practical experience of employee relations and play a full part in decision-making. Together the tribunal will decide the outcome of the case, although if they cannot agree, the majority opinion prevails.

Before the Hearing

You should ensure you are familiar with your witness statement and the bundle of documents prior to the hearing so that you are confident about what you are going to say and do with all of the documents relevant to your evidence. Ensure you are also familiar with what the other witnesses are going to say, including the claimant. Preparation is key!

At the Tribunal

On the day of the hearing, ensure you dress smartly (business meeting not cocktail party!) and arrive at the tribunal on time. Tribunal hearings normally start at 10 a.m., but this is not always the case so check with your solicitor beforehand. You should aim to be there at least 30 minutes before the hearing starts. Tribunals usually take an hour for lunch at around 1 p.m. Hearings rarely go on beyond 4 to 4:30 p.m. each day. The exact timings depend on the tribunal on the day.

When you arrive at the tribunal you will normally be directed to the respondents' waiting room (which is separate to the claimants' waiting room). Your solicitor or barrister will meet you there and may want to go over some points with you. You will remain here until the hearing starts.

When you enter the hearing room, you will typically see a raised platform, which is where the tribunal sits. In front of them are desks and chairs, with rows of chairs behind them. There is also the witness stand and a table and chair for the clerk to the tribunal.

As you face the panel, the witness stand will generally be on your right hand side and the clerk's position on your left. Sometimes these may be reversed, owing to the shape of the room. Although it is referred to as the "witness stand", you will be sitting when you give your evidence. On the table in front of you will be a clean copy of the tribunal bundle and your witness statement. You are not allowed to take any notes or annotated versions of the bundle or your witness statement to the stand when you give evidence.

There are specific places for the parties to sit in the hearing room. The claimant will sit on the right hand side facing the tribunal and the respondent will sit on the left hand side. The public, any witnesses waiting to be called and those who have given their evidence sit in the chairs behind the parties. This may also include members of the press as an employment tribunal is a public forum.

Representatives

The party for whom you are giving evidence will be represented at the hearing by a solicitor or a barrister. You will have met your representative (or spoken on the telephone) prior to the day of the hearing. The other party may also be represented.

Who Goes First?

It is for the party on whom the burden of proof rests to present his or her case first. In discrimination cases that is usually the claimant. In unfair dismissal cases it depends on whether the dismissal is admitted or denied. If dismissal is denied, for example in constructive dismissal cases, the claimant normally goes first. If dismissal is admitted, it is normally the employer. Ultimately, however, it is for the tribunal to decide the order of the proceedings, so be prepared for all eventualities.

Whilst tribunal hearings are less formal than the civil courts, they still follow the same basic format. Each party is allowed to give evidence, to cross-examine the other party's witnesses and to make a closing speech at the end.

Giving Evidence

When it is time for you to give your evidence you will be asked to come forward to the witness stand. Before giving your evidence you will be required to take an oath or affirm that you will tell the truth. You will be required to stand during this process and you will be taken through what you need to say by the clerk. Then you can sit down.

Evidence-In-Chief

You will have prepared a written statement together with the solicitor representing you. This statement will represent the majority of your "evidence-in-chief", i.e. your main evidence. The tribunal will take your statement "as read", that is to say they will have read your statement already and they will not require you to read it out at the hearing itself. You may, however, be asked a few supplementary questions by your representative or the tribunal, and you may be taken to particular documents in the bundle – a copy of which will be in front of you on the witness stand.

Remember to speak slowly and clearly when giving your evidence.

You should refer to the employment judge as "Sir" or "Madam", as appropriate.

Top Tip!

When you are asked a question, you should always address your answers to the panel/judge and not the person who is asking the questions. This feels a little unnatural but if you point your feet in that direction you will find it much easier.



Cross-Examination

After you have given your evidence you will be “cross-examined” by the other side. This is where the other representative (or the claimant if he or she is unrepresented) is able to ask you questions.

The purpose of cross-examination is to test the truth or reliability of what you have said. During cross-examination you may be asked leading questions (questions that prompt or encourage the answer wanted), questions that just require yes/no answers or questions that require you to elaborate further or deal with a situation hypothetically.

You should answer all the questions that are put to you. When doing so, you must tell the truth. If you know the answer, say so. If you don’t know the answer, say that you don’t know. You should not be criticised for not being able to remember or know something (unless it is something you could not reasonably have forgotten or which you really should have known). Do not guess or take a chance by claiming to be sure – if you are wrong, your credibility will be damaged when you could easily have avoided embarrassment by giving the same answer, but making it clear at the same time that you were not absolutely sure.

Try to avoid “second-guessing” questions – just answer the question you are being asked and don’t try to second guess where the representative is trying to take you. Ask for clarification if you are not sure what you are being asked.

Do not worry if you cannot remember all the details – it is not a memory test. You can always refer to your statement or the bundle of documents in front of you if you need to jog your memory or clarify anything. It is perfectly acceptable for you to ask for a minute to look through the papers in front of you or to ask the other side to repeat or rephrase the question if it is put in a confusing way.

Being cross-examined is unpleasant. It will feel like a personal attack on your honesty, your competence and your professionalism by someone who does not know either you or your job. It may be expressly designed to rile you, so that you say something unwise or inaccurate. Remember (i) don’t rise to it; (ii) don’t be deflected from your story; (iii) it is not personal – the other side’s representative is just doing his/her job.

Re-Examination

After cross-examination your representative may ask you some follow-up questions, for example to address any new matters that have come up during cross-examination.

Do not relax after re-examination since the tribunal may also ask you questions. This will generally be at the end of your evidence, but it may in fact be at any time. Any member of the tribunal may ask you a question or ask you to elaborate on an earlier answer.

If there is a break in your evidence, e.g. for lunch, you will still be under oath which means that you cannot talk about the case to anyone. It is sensible for you to stay away from any of your colleagues at the tribunal during this time to avoid the temptation to talk to them or the allegation that you have done so.

Once the employment judge is satisfied that there are no further issues which need to be explored with you, you will be asked to step down from the witness stand. Usually you will then be formally “released” by the employment judge, which means that you can leave the tribunal or, if you prefer, just return to your seat. Occasionally you may be specifically asked to remain for the rest of the hearing, but this will only occur if there is a particular point which may need to be re-addressed at a later stage. You may want to remain anyway, to see how the case is decided, but you do not have to do so.

The Tribunal’s Decision

The tribunal will generally give its decision at the end of the hearing, after it has considered the evidence, documentation and any submissions that have been made on behalf of the parties. In more complicated cases the tribunal will normally reserve its decision and send it to the parties at a later date.

Other Matters

You may be able to recover some of the expenses you incurred in relation to giving evidence at the tribunal. Compensation is available for loss of wages, travelling and other expenses, but not the cost of professional representation. These allowances are paid for by the Secretary of State on a fixed scale. Payment does not depend upon whether your side has been successful. Forms for claiming these allowances will be supplied, upon request, by the clerk to the tribunal at the end of the hearing (or when you leave, if earlier).

Occasionally, cases are subject to what are known as “reporting restrictions”. A tribunal may impose these in sensitive cases, such as sexual misconduct claims. If your case is subject to these restrictions, you will be informed accordingly.

Before or after you give evidence you may hear the evidence of other witnesses or the other side. Try not to react to this – overt expressions of disagreement will not be well-received by the tribunal. Similarly, if you meet the other side before or after the hearing or in the toilets, resist the temptation to say anything about the case or their role in it.

Top Tip!

If you have not been in a tribunal before, try and go along to sit in on a hearing or attend a mock tribunal so you know what to expect.

DO	DON'T
Make sure you know where the tribunal is and how you are going to get there. If you are driving, locate the car park in advance.	Guess – if you can't remember something, say so. If you do not understand the question, say so.
(Sorry about this) make sure you pay any necessary visits to the facilities before you start!	Try to avoid answering questions – you will come across as evasive and this will affect your credibility.
Look out for the old trick of receiving your answer in silence – this leads you to think that there must be more to say, and then you are just gabbling. Give your answer and stop.	Try to second guess the questions – answer the question you are being asked.
Be prepared to admit that you could have done things better – defending the indefensible will affect your credibility as a witness.	Rush – speak slowly, clearly and carefully.
Relax – if you are telling the truth as you see it, you can be confident in your story. Visible nerves imply anxiety about what you are saying.	Fidget, get angry or argue with the other side's representative or the tribunal panel!
Make it clear when your answer is speculation or hypothesis.	Try to help either your representative or the other side's. If your representative does not ask you about something there is probably a good reason for it.
Be prepared – ensure you have read through your statement the night before the hearing and on the morning of the hearing and ensure you are familiar with what it says and with all of the documents referred to in it.	Say "I don't remember doing X" / "I wouldn't have done X" – when what you mean is "I didn't do X".
Keep your answers brief and to the point.	Be pushed to give a yes or no answer where the truth is somewhere in-between – if you do not consider that it can be reduced to a bold yes or no, say so.
Listen to all the questions carefully and answer them truthfully.	Expect your representative to shout "Objection!" if you are in a tight corner during cross-examination. That only happens in American court dramas. In real life it indicates that you are in difficulty and that will encourage the other side in that line of questioning, not shut them down.
Keep calm, whatever the provocation.	Let yourself be interrupted by the other side's representative. If your answer is not finished, say so.
Address your answers to the tribunal panel/judge, not the person asking you the questions.	

We hope you find this guide helpful, but it should not be regarded as a substitute for taking legal advice.

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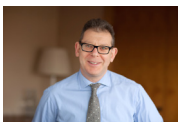


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