

The Government announced in November 2011 that it intended to introduce 'Early Conciliation' as the first step towards its stated aim of simplifying and streamlining the Employment Tribunal process. It has now issued a [consultation](#) document (which includes draft Regulations and Rules of Procedure) on how Early Conciliation should operate in practice.

Under the current proposals, the process is broadly as follows:

- All prospective claimants (with some limited exceptions) will be required to contact Acas to discuss Early Conciliation before they can lodge proceedings at the Employment Tribunal. They will need to provide a unique Early Conciliation reference number to the Tribunal before being able to proceed.
- Early Conciliation by Acas will be entirely voluntary and prospective claimants who do not want to settle the matter before the Tribunal will be able to decline it and proceed to lodge their claim (the prospective respondent will not be notified by Acas of the approach by the employee). Prospective respondents will also be free to refuse early conciliation, even if the employee is willing to go down that route.
- When prospective claimants contact Acas, they will need to complete and submit an 'Early Conciliation Form'. An 'Early Conciliation Support Officer' will then contact the prospective claimant to discuss the claim. Even if the prospective claimant decides not to proceed, Acas will still issue a certificate confirming compliance with the requirement to contact Acas, which will bear the necessary reference number for Tribunal purposes.
- The relevant details will then be passed to an Acas conciliator to establish formally whether the prospective claimant wishes to attempt to settle the dispute. If he does, the conciliator will then contact the prospective respondent to see if it is also willing to engage in discussions. If it is not, the conciliator will notify the prospective claimant and issue the certificate confirming compliance with the requirement to contact Acas pre-proceedings.

- When both parties agree to participate in Early Conciliation, the conciliator will have up to one calendar month (which may be extended by agreement by a further two weeks) from the date of receipt of the Early Conciliation Form in which to facilitate a settlement between the parties. If there is no reasonable prospect of achieving a settlement, or the discussions fail, or either party withdraws, the conciliator will end the process and issue a certificate. The conciliation period will "stop the clock" on the relevant limitation period(s). The clock starts running again from the date of the certificate.
- If Early Conciliation is successful, a legally binding settlement agreement would be signed by the parties.

Of particular interest for employers is that the procedure will also provide for prospective respondents to request Early Conciliation where they consider there is a matter that might give rise to Tribunal proceedings if it is not settled. Where early conciliation is requested by the prospective respondent, there will be no "stop-the-clock" provision and no specified time in which Early Conciliation must take place. Cases initiated by prospective respondents will be referred directly to a conciliation officer. If the prospective claimant declines the offer, or the conciliation is unsuccessful, the conciliator will issue a certificate to him or her confirming that the obligation to contact Acas has been satisfied. It remains to be seen how such an approach by the prospective respondent would fit with the proposed protected conversations concept and the various limitations to that. Clearly the system will need to make it apparent that any such first move by the employer would carry similar protections against disclosure to the Tribunal.

The consultation closes on **15 February 2013**.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

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