

Presidential Guidance – Seeking a Postponement of a Hearing

The Guidance is issued on the Fourth day of December 2013 under the provisions of Rule 7 of the first schedule to the Employment Tribunals (Constitution and Rules of Procedure) Regulation 2013 (“the Rules”).

Note:

Whilst the Tribunals in England and Wales must have regard to such Guidance they will not be bound by it.

Background:

1. Rule 29 of the Rules permits an Employment Judge to make Case Management Orders. That includes the power to order that a hearing be postponed.
2. In applying the provisions of that Rule the procedure that will normally apply is as set out below.

Action by Parties:

1.
 - 1.1 Whilst any application for a postponement can be made either at the hearing or in advance of the hearing it should ordinarily be made in writing to the Employment Tribunal office dealing with the case. That application should state.
 - 1.2 The reason why it is made; and
 - 1.3 Why it is considered that it would be in accordance with the overriding objective to grant the postponement
 2. Where a party applies in writing, they shall notify the other parties that any objections to the application should be sent to the Tribunal as soon as possible. Here the expression “the party” is referring to all parties in the case.
 3. All relevant documents relevant to the application should be provided.
 4. If any of the requirements set out above are not complied with the application will ordinarily not be considered unless there are exceptional circumstances. If however the matters as set out above are not complied with then an explanation as to why it has not been so complied with and the exceptional circumstances should be given.
 5. The party wishing to make the application for postponement of hearing should wherever possible try to discuss the proposal either directly with the other parties or through their representatives. If that discussion has taken place then the detail should also be

provided to the Tribunal. If the other parties are in agreement that also should be indicated in the application to the Tribunal.

6. Where the hearing concerned has been fixed with agreement by the parties that matter will be taken into account by the Employment Judge considering the application.
7. Set out below are some specific examples of additional information that would be of assistance depending on the nature and the basis upon which the application for postponement is made.

Examples

1. When a party or witness is unable for medical reasons to attend a hearing. All medical certificates and supporting medical evidence should be provided in addition to an explanation of the nature of the health condition concerned. Where medical evidence is supplied it should include a statement from the medical practitioner that in their opinion the applicant is unfit to attend the hearing, the prognosis of the condition and an indication of when that state of affairs may cease.
2. Where parties and witnesses are not available this should be notified to the Tribunal as soon as possible stating the details of the witness or party concerned; what attempts have been made to make alternative arrangements; the reason for the unavailability and in the case of a witness the relevance of their evidence. Any supporting documents should also be provided.
3. Similar information should be provided where a representative has become unavailable or a newly appointed representative is unavailable.
4. If a representative has withdrawn from acting details should be given as to when this has happened and whether alternative representation has been or is being sought.
5. Where there is an outstanding appeal to the Employment Appeal Tribunal or other Appellate Court full details of the dates of the appeal and the matters being appealed should be provided.
6. Where there are other court proceedings, be they civil or criminal, details should be given as to when these proceedings were commenced; what they entail; and how it is said that they will affect the Employment Tribunal case or how the Employment Tribunal case will be said to affect those other proceedings.
7. Where the basis of the application is the late disclosure of information or documents or the failure so to disclose then details of the documents or information concerned should be given; how they are relevant to the issues in the case; the terms of any Orders that already have been made by the Tribunal or requests made by the parties for such information or documents; and the response of the other party concerned.

Action by the Employment Judge

1. Where the appropriate information has been supplied then the Employment Judge will deal with the matter as soon as applicable. If the information has not been supplied any application may become the subject of further enquiry from the Employment Judge for relevant information which will have the effect of delaying the consideration of the application.
2. Once all the relevant information is available to the Employment Judge he/she will take into account all matters and information now available to them and consider whether to grant or refuse the postponement. The decision however remains in the discretion of the Employment Judge concerned.
3. The decision of the Employment Judge will be notified to all parties as speedily as possible after the decision has been made.

4th December 2013

A handwritten signature in black ink that reads "David Latham". The signature is written in a cursive style with a large initial 'D' and 'L'.

David J Latham
President