



Employment Tribunals (Scotland)

Presidential Guidance on seeking the postponement of a hearing

This Guidance is issued in accordance with the Rule 7 of the Employment Tribunals Rules of Procedure (“the Rules”). The Rules are set out in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

Employment Judges and Employment Tribunals are expected to have regard to this Guidance but are not bound by it.

This Guidance has effect from 1 February 2014.

1. Power to grant a postponement

Rule 29 of the Rules allows an Employment Judge to make case management orders. That includes the power to order that a hearing should be postponed.

2. Purpose of Guidance and the relevance of the overriding objective

2.1 The purpose of this Guidance is to provide parties with information about the practice of Employment Tribunals in Scotland in connection with requests (known legally as “applications”) for postponement of a hearing and what Employment Judges will normally expect of parties who make such an application. Parties can proceed on the basis that the information set out below is sought because it will normally be relevant and taken into account in the decision making process although a range of other factors, which will vary depending on the circumstances of the case, are also likely to be relevant.

2.2 The **overriding objective** of the tribunal is to deal with cases fairly and justly. If a party wishes a hearing to be postponed for any reason the Employment Judge who considers the request will have to be satisfied that it is in accordance with the overriding objective to order that the hearing be postponed.

3. How a request should be made and the information it should contain

3.1 While an application for a postponement may have to be made at the start of the hearing itself, that is unusual. Most applications of this type are made in advance of the hearing. What follows deals with postponement requests which are made before the start of the hearing when the party making the request is not actually present in the tribunal hearing centre. Any reference below to the “other party” is to be taken as referring to all other parties, where there is more than one other party in the case.

3.2 An application for a postponement should be made in writing as soon as it becomes clear that it is going to be necessary to make a request of this type. The application should be sent to the Employment Tribunal Office dealing with the case and should state:

- (i) the reason why it is made; and
- (ii) why it is considered that it would be in accordance with the overriding objective to grant the postponement

3.3 If possible supporting documents (see below for examples) should be provided at the time the request is made. The request (with supporting documents) should also be copied to the other party (or representative if there is one) who should be told that any objections to the application should be sent to the tribunal as soon as possible. When the application is sent to the tribunal the party making it should make it clear that the other party has been sent a copy and told of the right to object. If the request has not been copied to the other party, **it will not be considered, except in exceptional circumstances**. If a request is made which has not been copied to the other party then an explanation should be provided as to why that has not happened.

3.4 If the party applying for the postponement is legally represented then, unless it is not possible to do so, the application should be discussed with the other party/representative before it is made with a view to finding out:

- Whether the other party objects to the hearing being postponed;
- The earliest date(s) possible at which the hearing could proceed if the postponement was granted.

If this information is provided at the time the application is made it will mean that the request can be dealt with more quickly by the Employment Judge than might otherwise be the case.

4. Specific situations which may arise

The following Guidance deals with common situations that arise where a party may make an application for a postponement. It is not an exhaustive list.

4.1 Ill health

If the request is made because of the ill health of a party or a witness, the request should be accompanied by medical evidence (normally a medical certificate and a letter/document from the treating G.P. or hospital doctor) that confirms:

- The nature of the health condition concerned and
- **Importantly, that the doctor considers in his or her professional opinion that s/he is unfit to attend the hearing and the basis of this conclusion.**
This is important as the fact that a person has a medical condition does not necessarily mean s/he cannot attend a hearing.

If possible, the medical evidence should also indicate **when it is expected that the person *will* be fit to attend.**

An Employment Judge must be satisfied on the evidence that it is just to grant a postponement: s/he may ask for additional evidence in a particular case. Parties may wish to note that a medical certificate to the effect that a person is not fit to attend a hearing is not conclusive evidence of that fact.

The request for a postponement should be made as soon as it becomes apparent that the person will be unfit to attend. If the illness develops suddenly and so close to the start of the hearing that it is not possible to obtain the medical evidence before requesting a postponement, the request should be made at once with an undertaking to provide the necessary medical information within 7 days.

If the person who has become ill is a witness (rather than a party) the request should explain why the evidence of this witness is relevant and important in the context of the issues which will require to be decided by the Employment Tribunal.

4.2 A party or witness is not available

The application for a postponement should be made as soon as it becomes clear that there is a difficulty and should:

- state why the person is not available;
- state when the difficulty first came to light;
- state, in the case of a witness, why his/her evidence is considered to be relevant and important to the case;
- if the hearing is scheduled to last for more than one day, state whether a change in the normal order in which evidence is heard might deal with the problem and
- include any supporting evidence available. For example, if a person is not available because s/he will be on holiday or abroad for some other reason then written confirmation of the travel booking should be provided. If the person is not available because s/he is required to attend a hospital appointment then written evidence of that appointment should be provided.

It should be noted that one of the factors which an Employment Judge will take into account is whether parties were consulted about the dates of the hearing in advance of it being fixed and, if so, whether the alternative commitment (e.g. the holiday) was known about at the time the date consultation took place or was booked after parties were informed of the date of the hearing. Generally parties are expected to give a tribunal hearing priority over most other matters.

4.3 A representative is not available

The application for a postponement should be made as soon as possible and should:

- state when the difficulty first came to light;
- explain why it is considered that any alternative commitment should take precedence over the Employment Tribunal hearing;
- if there was consultation on the date to be fixed for any alternative commitment, state when that took place relative to parties being informed of the date of the Employment Tribunal hearing and
- if there is more than one qualified representative in the firm, explain why it is not possible for someone else in the firm to appear at the hearing.

It should be noted that one of the factors which an Employment Judge will take into account is whether parties were consulted about the dates of the hearing in advance of it being fixed and, if so, whether any alternative commitment was known about at that time.

While the tribunal will normally seek to accommodate the availability of a representative within reason, there may come a point where the overriding objective requires that the hearing go ahead even if this means that the party has to find another representative.

4.4 A representative has withdrawn

If a representative has withdrawn from acting, the application for a postponement should state:

- when that happened and
- whether the party affected intends to seek alternative representation and, if so, what steps have been taken to obtain such representation and when it is anticipated that a new representative will be appointed.

4.5 Outstanding appeals to the EAT

If a party seeks a postponement of a hearing because there is an outstanding appeal from an earlier decision, the party making the application for the postponement should give the date the appeal is to be heard, if known, and also say why it is considered that the hearing cannot take place until the appeal is heard.

4.6 Related criminal proceedings

If there is a risk that evidence will be heard in the Employment Tribunal that overlaps with related criminal proceedings, the tribunal case will be delayed until the criminal proceedings have been concluded to avoid prejudice to the person involved in the criminal proceedings. This may be a party or another witness.

An application to postpone a hearing for this reason should include:

- the nature of the criminal proceedings and the connection between those proceedings and the issues which will be considered by the Employment Tribunal;
- the date of any hearing fixed in the criminal proceedings;
- the name and address of the police officer or procurator fiscal dealing with the case and
- a crime reference number if available.

4.7 Related civil court proceedings

An application to postpone a hearing on the basis that there are related civil proceedings ongoing should include:

- the nature of the proceedings which are said to be related to the Employment Tribunal proceedings and why it is said that the Employment Tribunal hearing needs to be postponed;
- when the court proceedings were commenced and when they are expected to be concluded and
- an explanation as to why it is said that the civil court proceedings should be progressed ahead of the Employment Tribunal proceedings.

4.8 Late disclosure of documents or information

If this is the reason for the application for a postponement, the request should set out:

- the nature of the evidence that has been disclosed;
- when it was disclosed and
- why it is said that the hearing cannot proceed as a result.

If the evidence has been disclosed as a result of a request from the party seeking the postponement then the date when the information was first requested should also be stated.

4.9 Failure to disclose documents or information

If this is the reason for the application for a postponement, the request should set out:

- what documents or other information have been sought but not provided;
- when the request for the documents or other information was first made and the dates of any subsequent requests;
- the relevance of the documents or information sought to the issues before the tribunal and
- the dates of any tribunal orders which are believed to have been breached by the failure to disclose.

5. What the Employment Judge will do

Compliance with this Guidance does not guarantee that a request for a postponement will be granted. The information referred to above will be taken into account by an Employment Judge when making a decision about whether to grant or refuse the postponement but the decision remains a matter of discretion for the judge concerned. S/he will take account of all relevant circumstances in the individual case (including the timing of the request) and may ask for more information than is set out above.

The President has no power to overturn or interfere with any decision made by an Employment Judge in connection with an application for a postponement.

Signed:



Date:

16 January 2014

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