

Practice Direction (Employment Appeal Tribunal – Procedure – Hearings) 2020

Paragraph 19 of the Practice Direction (Employment Appeal Tribunal – Procedure) 2018, concerning hearings (including sub-paragraphs 19.1, 19.2 and 19.3), is revoked and replaced by the whole of the new Paragraph 19 set out in the schedule below. This applies in respect of all hearings in the Employment Appeal Tribunal taking place on or after 12 June 2020. The remainder of the 2018 Practice Direction continues in force.

This amended Practice Direction will expire at the same time as The Employment Appeal Tribunal (Coronavirus) (Amendment) Rules 2020, although it may be reviewed prior to the expiry of those Rules and may be revoked at any time.

Schedule

19 Hearings

Hearings Before Judge and One Lay Member

19.1 Where the parties' consent is to be obtained, pursuant to s28(4) of the Employment Tribunals Act 1996 (ETA), to an appeal commencing or continuing to be heard by a Judge together with only one lay member, the following applies. Before the hearing starts or continues, a form containing the name of that lay member, and stating whether that member is a person falling within s28(6)(a) or (b) of the ETA, must be signed by or on behalf of all parties.

Hearings in Person

19.2 Unless otherwise directed by the Registrar or a Judge, all hearings will take place by the attendance of all participants in person at the designated hearing venue.

Remote Participation and Wholly Remote Hearings

19.3 A Judge or the Registrar may at any time, if they consider it to be in the interests of justice to do so, direct that:

- (a) where a matter is listed to be heard at a designated hearing venue, one or more individuals be permitted to participate in the hearing (in whatever capacity) remotely, instead of by attending the hearing venue in person. (This is known as 'a partially remote hearing'); or
- (b) a hearing (whether or not it has already been listed) will take place wholly by all participants (including the Judge or panel conducting the hearing) participating remotely, instead of attending in person at a hearing venue. (This is known as 'a wholly remote hearing').

Any such direction will state whether the participation of the person or persons concerned, or the conduct of the whole hearing (as the case may be), is to be by telephone, over the internet, by video link, or some other form of electronic or remote communication; and it may deal with any consequential matters.

- 19.4 Where a direction is given under paragraph 19.3(b) for a wholly remote hearing, reasonable arrangements must be made to enable a member of the public wishing to do so to attend the hearing remotely. Where a direction is given under paragraph 19.3(a) or (b), members of the public attending must be able to hear and/or see what the Judge or panel can hear and/or see.

Private Hearings

- 19.5 Any hearing which takes place solely for the purpose of giving directions, or dealing with any other interim matter that could have been dealt with without an oral hearing, may be held in private.

Recording of Partially Remote Hearings

- 19.6 Any partially remote hearing may be audio recorded, in whole or in part, by the EAT.
- (a) No other person may make any audio recording of a partially remote hearing (or part of one) without the express permission of a Judge. To do so without such permission would amount to a contempt of court.
 - (b) No video, photographic or other visual recording (whether with or without audio) of a partially remote hearing (or part of one) may be made at any time. To do so may result in criminal prosecution and would amount to a contempt of court.
 - (c) An application to be permitted, exceptionally, to make an audio recording of a partially remote hearing (or part of one), should ordinarily be made in writing, and at least seven days before the hearing. It should explain why it is being made; and it should, as appropriate, be accompanied by relevant supporting evidence. An application made in advance of the hearing may be considered in advance on the papers, or may be considered at the hearing itself.
 - (d) Any audio recording of any partially remote hearing (or part of one) so permitted must not be published or broadcast (including by uploading onto the internet) in any form.

Recording of Wholly Remote Hearings

- 19.7 Any wholly remote hearing may be audio and/or video recorded, in whole or in part, by the EAT.
- (a) No other person may make any audio recording of a wholly remote hearing (or part of one) without the express permission of a Judge. To do so without such permission would amount to a contempt of court.
 - (b) No other person may make any video, photographic or other visual recording (whether with or without audio) of a wholly remote hearing (or part of one) without the express permission of a Judge. To do so without such permission would amount to a contempt of court.
 - (c) An application to be permitted, exceptionally, to make an audio or video, photographic or visual recording of a wholly remote hearing (or part of one), should ordinarily be made in writing, and at least seven days before the hearing. It should explain why it is being made; and it should, as appropriate, be accompanied by relevant supporting evidence. An application made in advance of the hearing may be considered in advance on the papers, or may be considered at the hearing itself.

- (d) Any recording of any wholly remote hearing (or part of one) so permitted must not be published or broadcast (including by uploading onto the internet) in any form.

The Honourable Mr Justice Choudhury
President of the Employment Appeal Tribunal
12 June 2020