

Early Conciliation and Time Limits



The new ACAS Early Conciliation ('EC') Scheme became mandatory on 6th May 2014, from which date a Claimant wishing to lodge Tribunal proceedings must first comply with the EC regime.

The Regulations putting the new procedures into place have failed to cover themselves with glory. Indeed, we already have two sets of amending Regulations to clarify drafting errors and omissions in the original.

We predicted some time ago that EC was liable to have worryingly similar unintended consequences to the ill-fated statutory dispute resolution procedures that it took the last Government altogether too many years to abolish.

It is no surprise to find now that there is already some official disagreement about how the time limit extensions will work in practice.

The theory is simple enough; the limitation timetable is frozen during the period of EC – lodging an EC form with ACAS 'stops the clock'.

In addition, if you refer your case to EC late in the limitation window, the Regulations operate so as to ensure that, when EC concludes, you have at least a month left in which to lodge your claim with the Employment Tribunals.

What does 'a month' mean in these circumstances?

There appears to be some disagreement.

When we calculate a time limit for limitation purposes, the approach is well known. In, say, an unfair dismissal case, if the effective date of termination of employment is 10th May, your three month time limit will expire on 9th August. We talk about 'three months less one day'.

That is because the statutory wording in question is 'before the end of the period of three months *beginning* with the effective date of termination'.

That is not how the time extension for EC purposes is phrased. It talks about a period 'ending one month after [the date the Claimant receives the EC Certificate]'.

There is (obviously) a big difference between the calculation of time 'beginning with' a certain date and a calculation 'after' that date.

Whilst BIS and the Employment Tribunal Service seem to be suggesting that the one-month extension of time in relevant EC cases will run from, say, 10th May to 9th June, it seems to us that, in fact, the better reading of the Regulations is that the time should run from 10th May to 10th June.

Only the Courts can decide, however.

Our advice is simple: if you are relying on the EC Regulations to give you an extension of time for limitation period then:-

- (a) For preference, don't! Try to use the standard limitation period – that way you cannot go wrong (we hope!);
- (b) Assume that the earlier date for the extension is the right one i.e. assume that the one month extension is really 'one month less one day' – at least until such time as Courts can clarify the position.

Of course, all this only comes into play if you are looking at a one-month extension under the EC Regulations. Where EC starts earlier in the limitation period, the one-month extension might not arise at all.

No doubt more complications will come to light once the Tribunals start getting to grips with the operation of the new system.

This is a general guide, and is not intended to be a substitute for legal advice. If in doubt, seek help from an expert.

For more information on Early Conciliation and other Employment Rights, please call our Employment Rights team on 033 3344 9603.

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