



## oneHR Guidance

### Responsibilities for Line Managers - Acas Early Conciliation

**Important changes** to the law on employment tribunal claims took effect on 6 April 2014. You need to be aware of these changes and **your responsibilities** if you receive any contact from Acas via phone or in writing as it could ultimately result in employment tribunal claims if not resolved.

The introduction of early conciliation means that, from **6 May 2014**, before being able to submit a relevant claim to an **employment tribunal**, a prospective claimant must contact Acas (the body that conciliates in large-scale industrial disputes and most individual employment disputes).

While a potential employment tribunal claimant must contact Acas (and he/she cannot proceed with a tribunal claim without an early conciliation certificate showing that he/she has done so), please understand there is no obligation on either party to participate in early conciliation.

#### What early conciliation means for the Trust

Traditionally, the Trust may hear for the first time about a potential employment tribunal claim when a manager, senior member of staff or the HR department receives the employment tribunal claim form (known as an ET1) setting out the details of the claim or correspondence from the individual's legal representatives showing what legal action the individual is taking.

The individual raising the complaint could be a current employee, but is also commonly an ex-employee (for example, claiming unfair dismissal or discrimination over the way in which he/she was dismissed) or a job applicant (for example, claiming discrimination in relation to our Trust's recruitment selection process).

A **fundamental difference** for the Trust under the early conciliation regime is that the Trust may first be alerted to a potential employment tribunal claim through an approach from Acas, rather than through receiving an ET1 or legal correspondence.

#### Why managers, senior members of staff need to know about early conciliation

It is very important that anyone within the Trust who is contacted by Acas through the early conciliation regime about an employment dispute understands the importance of dealing with the initial contact properly. **Managers, senior members of staff must treat an informal approach from Acas as seriously as they would take a formal legal communication.**

In the first instance, the initial recipient must contact the HR Department without delay. This is important as we must be involved as early as possible in the process so they can assess the merits of the complaint and decide whether or not to participate in early conciliation. It may be that it is a dispute that others in the Trust are already aware of, and are taking steps to resolve.

The purpose of early conciliation is to prevent a workplace dispute that may be resolved swiftly from escalating into potentially costly and time-consuming employment tribunal

proceedings. It is therefore **vital** that the individual who receives first contact from Acas about early conciliation passes the details of the dispute on to the individuals who would be responsible for managing any subsequent tribunal claim. **At this stage, the initial recipient must not discuss the details of the dispute with anyone other than these individuals.**

### **What happens after Acas makes contact about early conciliation**

Once the individual who received first contact from Acas about early conciliation has passed on the details of the dispute, the relevant parties within the Trust will:

- ✓ contact Acas for any further details that are needed of the complaint and to let Acas know when the Trust is likely to have made a decision about participating in early conciliation (Acas will expect a response from the Trust within a matter of days);
- ✓ assess the likely strength of the individual's potential employment tribunal claim and how much the employment tribunal might award the employee if he/she is successful in the tribunal;
- ✓ estimate the potential legal costs and management time of defending an employment tribunal claim, as opposed to reaching an early settlement;
- ✓ consider whether or not the individual is willing and able to bring an employment tribunal claim (particularly with the requirement to pay a tribunal fee or apply for remission of the fee);
- ✓ look into potential non-monetary solutions that the Trust could offer the individual to prevent a tribunal claim (for example, an action that could be taken quickly to fix the situation such as an amendment to one of the Trust's policies); and
- ✓ examine the wider impact that drawn-out employment tribunal proceedings could have on the Trust (for example, any potential damage to reputation).

Once the relevant parties have discussed these issues, a member of HR will contact Acas to let it know whether or not the Trust is willing to engage in early conciliation and, if it is, to discuss with Acas the next steps in the early conciliation process.

### **Your responsibilities**

- ✓ Don't ignore it
- ✓ Treat it as important and urgent
- ✓ Inform the HR Department who will decide what the Trust should do about the issue.
- ✓ At no stage should you take matters into your own hands and attempt to resolve the issue raised by Acas.
- ✓ Avoid any additional potential claim of victimisation, the individual seeking early conciliation should not be penalised in any way. If he/she is still an employee of the Trust, this includes any form of intimidation or other detriment on the basis of having contacted Acas with a complaint. If he/she is a former employee, this includes refusing to provide, or providing a poor, reference to him/her on the basis of having contacted Acas. Any such action could open the Trust up to a further claim of victimisation.