



Presidential guidance



Catherine Daw
Head of Employment Law
01622 655291
catherinedaw@brachers.co.uk

The new process for judicial assessment at preliminary hearings

Issued 3 October 2016, the Presidential Guidance creates a confidential (formal) process whereby an employment judge can offer early assessment of the strengths and weaknesses of the parties' cases.

The first point to note is that Employment tribunals must have regard to Presidential Guidance but they are not bound by it (Rule 7 of the Employment Tribunals Rules of Procedure 2013).

Rule 3 provides that the 'Tribunal shall wherever practicable and appropriate encourage the use by the parties of the services of ACAS, judicial or other mediation, or other means of resolving their disputes by agreement.'

With that in mind, there are several key features of the judicial assessment process:

1. It is voluntary.
2. It is generally only available at the first case management preliminary hearing.
3. It will only take place after the issues are clarified and case management orders made.
4. No evidence will be heard. It is purely based on the issues.
5. Most cases listed for a case management hearing will be suitable (bar multiple claimants, insolvent parties, high court or other proceedings exist/ are intimated).
6. It must be sought in advance.
7. Anything said can be used in subsequent

without prejudice discussions.

8. It is conducted with a view to assisting eventual settlement, which is encouraged.
9. The conducting judge will normally not then be involved in any part of the proceedings which determines the parties' rights.
10. It can take place by telephone or in person (if necessary).

Judicial assessment has quite clearly been stated as not to be the same as judicial mediation. It currently does not attract a fee. However they may be some additional costs if attending the tribunal in person or if the hearing overruns. Although if the assessment did result in settlement, overall costs would significantly fall.

It remains to be seen whether tribunals will hear deposit order applications and then conduct judicial assessment.

In terms of applying for judicial assessment parties in employment tribunal litigation should bear in mind:

- Parties should let the tribunal know as early as possible.
- Parties should let the other side know.
- Parties should have a clear list of issues to determine.
- It may be useful to draft a settlement agreement beforehand.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.