



# I want to appeal to the Employment Appeal Tribunal

The information in this leaflet applies to appeals from the Employment Tribunal only.

## I want to appeal

This leaflet is for guidance only and should be read in conjunction with the Employment Appeal Tribunal Practice Direction ([www.judiciary.gov.uk/publications/employment-appeal-tribunal-guidance/](http://www.judiciary.gov.uk/publications/employment-appeal-tribunal-guidance/)) and Practice Statement ([www.judiciary.gov.uk/publications/practice-statement-notice-of-appeal-and-skeleton-arguments/](http://www.judiciary.gov.uk/publications/practice-statement-notice-of-appeal-and-skeleton-arguments/)).

## What you can appeal

You can appeal any judgment, decision, direction or order of an Employment Tribunal (ET).

You can only appeal on a point of law – you must identify flaws in the legal reasoning of the original decision. The Employment Appeal Tribunal (EAT) will not normally re-examine issues of fact.

## How to lodge an appeal

The EAT Practice Direction sets out in full the appeal process. You can get copies of the Practice Direction, forms and leaflets referred to in this leaflet by visiting: [www.gov.uk/appeal-employment-appeal-tribunal/overview](http://www.gov.uk/appeal-employment-appeal-tribunal/overview).

	England & Wales	Scotland
By writing to:	Employment Appeal Tribunal 7 Rolls Buildings, Fetter Lane, London EC4A 1NL	Employment Appeal Tribunal George House, 126 George Street Edinburgh, EH2 4HH
By calling:	020 7273 1041	0131 225 3963
By faxing:	01264 785 028	01264 785 030
By emailing:	LondonEAT@justice.gov.uk	EdinburghEAT@justice.gov.uk

EAT offices are normally open from 09:00 to 16:00 each week day except for public holidays, but they may also be closed on days before or after some public holidays, so please check if making a special journey at those times.

## The next steps

Please read section 1 to 4 of the Practice Direction and the Practice Statement before sending your appeal to the EAT.

You must complete a notice of appeal (Form 1) or, if you do not use this form, you must provide the same information in some other way.

Return the completed notice of appeal to the EAT at one of the addresses above, with a clean (unmarked) copy of the judgment, decision, direction or order against which you are appealing.

You must also send clean (unmarked) copies of the following documents (if you omit any which are relevant then you must include an explanation of why you did not send them):

- **written reasons** – if your appeal is against a judgment (or an order which requires written reasons) and the reasons are not included with the judgment or order
- **claim (ET1)** – which the claimant sent to the Employment Tribunal
- **response (ET3)** – which the respondent sent to the Employment Tribunal
- **application for reconsideration** (and decision, if available) – if you have asked the ET for a reconsideration.

Please see paragraphs 3.1 to 3.4 of the Practice Direction.

A notice of appeal submitted without the supporting documentation, or a written explanation as to its omission, will be considered 'not properly instituted' (invalidly lodged).

**Do not send your appeal to an Employment Tribunal office**, they will send it back to you.

If you use email, the size of any one email, including attachments, should not exceed 10MB. This limit is very easily exceeded if scanned documents are included. If you attach scanned documents you should check that they do not exceed that size. If they do, you may need to rescan them at lower quality and/or send them in more than one email.

Attachments must be in a format which can be read by Microsoft Office 2016, Adobe Acrobat Reader DC, Internet Explorer 11 or Firefox ESR (e.g. .docx, .rtf, .pdf or .jpg). Files may be compressed (zipped) in a format which can be opened by Windows 10. The EAT cannot receive encrypted files – any email with an encrypted file attached will be blocked.

All documents lodged electronically must be sent to the EAT as attachments to emails. A document is not validly lodged by sending a link to its location (e.g. saved in the Cloud).

## Time limits

Please refer to section 4 of the Practice Direction.

An appeal is only commenced when it is received complete at an EAT office, whatever the method used to deliver it. Time limits are strictly enforced, including the 16:00 (4pm) deadline.

The usual rule is that your notice of appeal and supporting documentation must be received complete by the EAT no later than 16:00 (4pm) on the 42nd day after the date on which the ET sent you the judgment, decision, direction or order.

The 42nd day will be the same day of the week, six weeks later.

The judgment, decision, direction or order may include the reasons, or the reasons could be a separate document. You may need to ask the ET for the reasons, but (unless one of the circumstances below applies) you should not wait until you receive them before sending your appeal, or it may be out of time.

Under these circumstances you may count the 42 days from the date the reasons were sent to you – if:

- you requested written reasons at the Employment Tribunal hearing; or
- you wrote to request written reasons from the Employment Tribunal within 14 days of the date the judgment was sent to you; or
- the Employment Tribunal reserved its reasons and gave them subsequently in writing.

**These are the only circumstances where this exception applies.** So if, for example, you requested the reasons more than 14 days after the judgment was sent to you, even if your request was granted, then the 42 days must be counted from the date on which the judgment (not the reasons) was sent to you.

If a deadline falls on a day on which the EAT office is closed, it is extended to the next working day.

You are strongly advised not to leave the sending or transmission of appeals to the last minute, but to leave enough time to allow for delays, or to correct errors.

Receipt of emails is not instantaneous, they may take many minutes to arrive.

If you send your appeal by fax, the transmission must be completed by 16:00 (4pm) to be in time.

If an appeal is sent by either email or fax, you may telephone the EAT to check that it has arrived. Please wait at least 20 minutes after sending an email or completion of the fax transmission.

If you use the post you should bear in mind the likelihood of delay or loss and should contact the EAT if you have received no acknowledgment after five working days.

For appeals delivered by Royal Mail only, if the deadline falls on a day on which there is a national postal strike, then it is extended to the next working day.

The 42 day time limit applies even if remedy has not yet been decided or if you have asked the Employment Tribunal to reconsider its decision (but if your reconsideration is successful and you intend to withdraw your appeal, please tell us immediately – see section 17 of the Practice Direction).

If we receive your appeal after the deadline then you must make an application for an extension of time. An application cannot be considered until we have received your complete appeal. See paragraphs 4.5 to 4.9 of the Practice Direction.

## **Frequently Asked Questions**

### **How do I calculate my 42 days?**

Time starts from the date the ET judgment, decision, direction, order or reasons was sent to parties. This is given on an official stamp normally found on the last page of the document. An example of calculating time: if the date on the official stamp is a Wednesday, your Notice of Appeal must be lodged on the Wednesday 42 days (six weeks) later. Please be aware that it is your responsibility to work out the time limit for lodging an appeal. EAT staff will not do this for you (see paragraphs 4.1 to 4.4 of the Practice Direction).

Any document received after 4pm will be considered as received the next working day. If submitted after 4pm on the 42nd day, your notice of appeal will be treated as received on the 43rd day and therefore out of time.

### **I have applied to the ET for a reconsideration. Does this affect my intention to appeal?**

Even if you are applying to the ET for a reconsideration, your appeal must be sent within the 42 day time limit. If your reconsideration is successful, you should immediately notify EAT of your intention to withdraw your appeal (see paragraph 17.1 of the Practice Direction).

### **I understand I can only appeal on a point of law. What is a point of law?**

Broadly, a point of law is one which concerns the interpretation of the legislation and its application to the facts of the case. Where the tribunal has made findings of fact based on the evidence it has read or heard, for example, where the ET sets out what they believed actually happened, or why someone acted as they did, this will be a finding of fact which cannot be challenged by way of appeal even if you think that the ET was wrong to make those findings.

Please be aware that EAT staff are not permitted or qualified to give legal advice on your appeal and can only explain points of administrative procedure. If you do not understand whether there is a point of law, you may want to consider seeking legal advice from a solicitor, Citizens Advice or a Law Centre.

### **I think my appeal is out of time. What can I do?**

You can make an application to the EAT for an extension of time but only at the time of, or after, lodging a notice of appeal. Applications for an extension of time cannot be considered until a notice of appeal (in accordance with paragraph 3.1 of the Practice Direction) has been lodged with EAT.

You must make a formal request, addressed to the Registrar, giving full reasons for the delay. The application will be determined by the Registrar after consideration of the papers (see paragraphs 4.5 to 4.9 of the Practice Direction).

However, only in the most exceptional circumstances will time be extended.

### **EAT has said my notice of appeal is not properly instituted. What does this mean?**

If your Form 1 is incomplete and/or received without the correct supporting documentation, it will be considered not properly instituted (NPI) and the EAT will write to you explaining what is missing and what you still need to do.

If your notice of appeal is NPI, the 42 day 'clock' continues to tick so it is imperative you comply with the request made by EAT as soon as possible.

For example, if a notice of appeal received on day 30 is NPI, and the appellant sends the missing documents which are received by EAT on day 43, then the notice of appeal is considered to be out of time.

### **The ET awarded against me and I have received a letter from the county court ordering me to pay. I have appealed – do I still have to pay?**

The requirement to pay the ordered amount does not automatically stop because you have appealed. It is your responsibility (and not the EAT's) to contact the county court and negotiate a stay of proceedings pending the outcome of the appeal.

### **I won at the Employment Tribunal but my employer has appealed – can I make them pay me before the appeal is decided?**

You may be able to. If you apply to the county court to enforce the Employment Tribunal's judgment you should tell them that your employer has appealed and what the appeal is about. You should contact the county court for more information.

## **What happens if I do not have legal representation?**

You may represent yourself or you may be represented by a friend, relative or anyone else you wish.

You may be eligible for pro bono (i.e. free) advice at some stages in your appeal. The EAT will tell you about this when and if it applies to you.

## **What happens after I have lodged my notice of appeal?**

The EAT aims to acknowledge every notice of appeal within 48 hours of receipt. If you do not receive an acknowledgement within five working days of posting (or three working days of emailing or faxing) the notice of appeal, it is advisable to contact the EAT to confirm that it arrived safely.

Your appeal is then allocated a case manager who will have responsibility for the case and you will be kept informed of proceedings at every stage.