



# 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 2023 at: <https://www.judiciary.uk/guidance-and-resources/practice-direction-of-the-employment-appeal-tribunal-2023/>.

You can get copies of the Practice Direction, forms and leaflets referred to in this leaflet by visiting: <https://www.judiciary.uk/courts-and-tribunals/tribunals/employment-appeal-tribunal/employment-appeal-tribunal-guidance-and-information/>.

## What you can appeal

You may be able to appeal a judgment, order, direction or other decision 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.

## **You must read and consider Sections 1 to 3 of the Employment Appeal Tribunal Practice Direction 2023 before submitting an appeal.**

If you decide to submit an appeal, you must comply with the sections of the Employment Appeal Tribunal Practice Direction 2023 relevant to each step you take in the appeal.

You must also comply with the overriding objective and communicate with the EAT and the other party or parties in a respectful and appropriate manner.

## How to lodge an appeal

The preferred method for lodging an appeal is by the EAT's electronic filing system: E-Filing service. Please use E-Filing service unless there is good reason not to, such as inability to access a computer. Further information about using E-Filing service is set out below. If there is good reason not to use E-Filing service, then the appeal may be lodged by email or post at the addresses shown at the end of the guidance.

## The required documents

You must complete a notice of appeal (Form 1) (<https://www.gov.uk/government/publications/form-t444-notice-of-appeal-from-decision-of-employment-tribunal>) or, if you do not use this form, you must provide the same information in some other way.

Send the completed notice of appeal to the EAT using the EAT's electronic online filing system, E-Filing service. (Please see below for further information about E-Filing service). Your completed notice of appeal must be accompanied by a clean (unmarked) copy of the judgment, order, direction or other decision, against which you are appealing.

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 you must also send a clean (unmarked) copy of the **written reasons** (if you omit the written reasons you must include an explanation of why you did not send them):

Please read Section 3.7 of the Employment Appeal Tribunal Practice Direction 2023.

A notice of appeal submitted without the supporting documentation (or a written explanation for the absence of the written reasons for a judgment where permitted by the EAT Rules), will be considered 'not properly instituted' (invalidly lodged).

If you have applied to the ET for reconsideration, please also send the EAT a copy of your application for reconsideration (and the ET's decision on that application, if available). Please read Section 3.7.6 of the Employment Appeal Tribunal Practice Direction 2023.

Other documents, such as the bundle used for the hearing at the ET, are not required at this stage and **must not** be sent.

**Do not send your appeal to an Employment Tribunal office**, they will send it back to you and you will still have to send the completed notice of appeal to the EAT with the required documents within the time limit.

## Guidance on using E-Filing service

To use E-Filing service to send your appeal documents to the EAT, you must first register as an E-Filer. Details of how to access E-Filing service is contained in the EAT Guidance

Note - Electronic Filing of Documents Online – E-Filing service which can be found at: <https://efile.cefile-app.com/login>.

Users should note that the maximum capacity for uploading a single document is 50MB, E-Filing service is the EAT's preferred method of sending documents to the EAT, and you are urged to use E-Filing service unless there is good reason not to, e.g. inability to access a computer. The majority of prospective appellants will already have used the ET's electronic filing system and the use of E-Filing service should not present any difficulty.

The EAT will also accept documents sent by post or email. 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.

A document is not validly lodged by sending a link to its location (e.g. saved in the Cloud).

## **Time limits**

Please read Sections 3.3 and 3.4 of the Employment Appeal Tribunal Practice Direction 2023.

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 a judgment or on the 42nd day after the date of any other order, decision or other direction.

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

A judgment 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.

You may count the 42 days from the date the reasons for a judgment were sent to you only if:

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

**These are the only circumstances where this exception applies.** So if, for example, you requested the reasons for the judgment 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 and uploading to E-Filing service is not instantaneous; they may take many minutes to arrive and you should bear this in mind when lodging your appeal.

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.

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 – please read Section 8.16 of the Employment Appeal Tribunal Practice Direction 2023).

If we receive your appeal after the deadline then you must make an application for an extension of time. An application for an extension of time cannot be considered until we have received your complete appeal. Please read Section 3 of the Employment Appeal Tribunal Practice Direction 2023.

## **Frequently Asked Questions**

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

You should read Sections 3.3 and 3.4 of the Employment Appeal Tribunal Practice Direction 2023.

If you are appealing against a judgment of an Employment Tribunal the time limit is:

42 days from the date on which the written record of the judgment was sent to the parties; or

42 days from the date on which the written reasons were sent to the parties but only in one of the following circumstances:

- written reasons were requested orally at the hearing
- written reasons were requested in writing within 14 days of the date on which the written record of the judgment was sent to the parties
- the judgment and/or reasons were reserved (not given orally at the hearing) and given in writing by the Employment Tribunal

If you are appealing an order, direction or other decision of an Employment Tribunal, the time limit is 42 days from the date of the order, direction, or other decision.

The day on which a judgment or reasons for a judgment of an Employment Tribunal is sent to the parties (or the date of an order, direction or other decision of an Employment Tribunal) does not count when calculating the time limit for serving a notice of appeal. For example, if the decision was sent to the parties on a Wednesday the notice of appeal must arrive at the EAT before, or by 4pm on, the Wednesday 6 weeks (42 days) later.

All days count for calculating a time limit, but if a time limit would expire on a day when the central office of the EAT, or the EAT office in Edinburgh (as appropriate), is closed then it will instead expire on the next working day.

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 after the expiry of the 42 day appeal period 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 the EAT of your intention to withdraw your appeal (please read Section 8.16 of the Employment Appeal Tribunal Practice Direction 2023).

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

Please read Section 2 of the Employment Appeal Tribunal Practice Direction 2023.

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 Section 3 of the Employment Appeal Tribunal Practice Direction 2023) 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 Section 3.5 of the Employment Appeal Tribunal Practice Direction 2023 and use the form at Annex 2).

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

### **The 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 the 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 the EAT after 4pm on the 42nd day, then the notice of appeal is considered to be out of time.

### **The ET made an award 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 request 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?**

You will receive a letter of acknowledgment containing further information about your appeal.

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.

## **Addresses and email**

### **England and Wales**

Employment Appeal Tribunal (EAT)

5th Floor

Rolls Building

7 Rolls Buildings

Fetter Lane

London

EC4A 1NL

Tel: 020 7273 1041

Email: [LondonEAT@justice.gov.uk](mailto:LondonEAT@justice.gov.uk)

### **Scotland**

Employment Appeal Tribunal

George House

126 George Street

Edinburgh

EH2 4HH

Tel 0131 225 3963

Email: [EdinburghEAT@justice.gov.uk](mailto:EdinburghEAT@justice.gov.uk)