



# Glossary

**Winston Solicitors LLP**



<b>Acknowledgement</b>	<p>Acknowledgement of service or defence.</p> <p>If your employee issues proceedings against you, they will receive an acknowledgement of claim confirming that their claim has been accepted by the tribunal.</p> <p>You will also receive an acknowledgement if you submit a defence (ET3 Response) to the claim.</p>
<b>Adjournment</b>	<p>Postponing a fixed hearing date.</p>
<b>ACAS</b>	<p>Advisory, Conciliation and Arbitration Service; they offer a conciliation service for employment disputes.</p>
<b>Aggravated Damages</b>	<p>Are often awarded by the Tribunal in discrimination cases, where it can be shown that the discriminatory behaviour has been particularly offensive.</p>
<b>Basic Award</b>	<p>Is calculated by taking an Employee's age, years of service and average weekly pay (subject to a cap) to arrive at a figure.</p> <p>The number of year's service is capped at a maximum of 20 years.</p>
<b>Breach of Contract</b>	<p>When either an Employer or Employee breaks one of the terms of an employment contract. For example, if an Employer does not pay an Employee's wages, or if an Employee does not work the agreed hours.</p> <p>Not all the terms of a contract are written down. A breach may be of a verbally agreed term, a written term, or an 'implied' term of a contract.</p>
<b>Bumping</b>	<p>'Bumping' occurs where an Employee whose job is redundant 'bumps' another Employee out of their job so that the Employee who was 'bumped' is the one who is actually made redundant.</p> <p>This tends to happen when a more senior Employee is prepared to take a more junior role to avoid redundancy.</p>
<b>Preliminary Hearing - Case Management (CMD)</b>	<p>This is a discussion (either in person or by telephone) where an Employment Tribunal Judge gives specific dates on which certain key tasks must be done.</p>
<b>Claimant</b>	<p>The person who brings a Tribunal case.</p>



<b>Claim Lodged</b>	When a Claim form (ET1) has been received by the Employment Tribunal office.
<b>Compensatory Award</b>	<p>The maximum an Employee can be awarded currently is the lower of the current cap £76,574 or one years gross pay.-</p> <p>This award is intended to compensate the Employee for financial loss relating to their dismissal, including expenses and loss of benefits.</p> <p>When calculating a Compensatory Award the Employment Tribunal considers the following: Loss of wages, future loss of wages, loss of perks, how the Employee was dismissed, loss of employment protection and loss of pension rights.</p>
<b>Compromise Agreement</b>	Now known as settlement agreements. Please see settlement agreement for definition.
<b>Conciliator</b>	The ACAS officer who mediates between both parties in an attempt to negotiate settlement before the final hearing.
<b>Constructive Dismissal</b>	<p>Constructive Dismissal is where an Employer has acted in such a way towards the Employee that allows them to leave their job and treat themselves as dismissed.</p> <p>Whilst the Employer has not actually fired the Employee, the Employee is alleging that they have brought the employment to an end by their behaviour.</p>
<b>Consultation</b>	If an Employer fails to consult Employees (and their representatives if applicable) in a redundancy situation, the redundancy dismissals may be deemed unfair.
<b>Contributory fault</b>	<p>A Tribunal may reduce a Claimant's compensation if their pre-dismissal conduct was relevant in the dismissal.</p> <p>The Tribunal cannot take into account <b>post</b> dismissal conduct in determining contributory fault.</p>
<b>COT3</b>	The agreement used by ACAS and signed by all parties to record a settlement once it has been agreed.



<b>Cross examination</b>	The process of questioning your opponent's witnesses. The purpose of cross-examination is firstly to establish and advance your own case and secondly to attack the other side's case.
<b>Direct Discrimination</b>	Treating someone with a protected characteristic less favourably than others.
<b>Directions</b>	Case Management Orders issued by the Employment Tribunal, detailing set dates on which both parties must complete certain key tasks.
<b>Disclosure</b>	<p>The process by which each side must tell each other what relevant documents they have in their possession in relation to the case.</p> <p>This includes the disclosure of documents that could assist or adversely affect your case.</p>
<b>Default Judgement</b>	<p>Can be made if a defence is not submitted by the Respondent (you) within the prescribed time period.</p> <p>If a default judgement is issued, the court can hear the case and make a ruling without hearing your side of the story.</p>
<b>Disciplinary proceedings</b>	<p>If an Employer is concerned or unhappy about an Employee's work, they may look to take disciplinary action against them.</p> <p>Examples of why an Employer may be concerned or unhappy about an Employee's work include the standard of work or behaviour at work. They may also be concerned about the level of absence from work.</p>
<b>Deduction from Wages</b>	<p>If an Employer reduces or fails to pay wages without agreement in writing this amounts to an unlawful deduction from wages even if the Employee owes money to the Employer.</p> <p>The law does not of course remove an Employer's right to recover money properly due to him from an Employee (e.g. typically to recover an overpayment of expenses or wages). It does however (save in a few special cases) mean that the Employer is not allowed to recover the money by taking the law into his own hands and deducting it from future wages without consent of the Employee.</p>



<b>Demotion</b>	<p>Is a reduction in rank, often accompanied with a lower pay status.</p> <p>Most people view a demotion as a punishment, as it implies that the individual was incapable of performing at a higher rank.</p>
<b>EAT</b>	<p>Abbreviation for Employment Appeal Tribunal.</p> <p>The EAT is the court when any appeals from the Employment Tribunal are heard.</p>
<b>Employment Tribunal (ET)</b>	<p>The main forum in which Employment disputes are heard.</p>
<b>ET1 Claim form</b>	<p>Employment Tribunal Claim Form.</p> <p>Standard form on which the Claimant <b>MUST</b> submit their claim.</p>
<b>ET3 Response</b>	<p>Standard form on which the Respondent <b>MUST</b> submit their response.</p>
<b>Equal Pay</b>	<p>Equal Pay Claims can be brought by both Employees and self-employed people that have been contracted to execute work personally.</p> <p>If a person is considering making an equal pay claim they <i>must</i> have a real life comparator of the <i>opposite sex</i> that is earning more than them, but is doing (i) like work, (ii) work related as equivalent and (iii) work of equal value.</p>
<b>Ex Gratia Payment</b>	<p>Sum of money paid where there is no obligation or liability to pay it.</p>
<b>Fixed Term Contract</b>	<p>a fixed-term contract is one which either:</p> <ul style="list-style-type: none"> <li>▶ lasts for a specified <b>time</b>, set in advance</li> <li>▶ ends with the completion of a specified <b>task</b></li> <li>▶ ends when a specified <b>event</b> does or does not take place</li> </ul> <p>Unless there are special circumstances that can be justified, fixed-term Employees must be treated the same as comparable permanent Employees.</p>



<b>Garden Leave</b>	<p>Garden leave is the term given to a situation whereby an Employee is required to serve out a period of notice at home.</p> <p>During this period the Employee continues to receive all salary and benefits but is prohibited from commencing employment with new Employers until the gardening leave period has expired.</p>
<b>Grievance</b>	<p>Put simply, a grievance is a complaint. If an Employee is having a problem at work, is concerned about an issue that has arisen at work, or wishes to make a complaint about a colleague or a manager, then they can raise a “grievance”.</p> <p>You should have formal grievance procedures in place to address the handling of such complaints.</p>
<b>Gross Misconduct</b>	<p>Conduct so serious as to justify summary dismissal of an Employee.</p> <p>Acts deemed to be classed as gross misconduct should be listed in your disciplinary procedure and can include theft, fighting, serious negligence, breaches of health and safety indecent behaviour, dishonesty and offensive behaviour.</p>
<b>Hearing</b>	<p>Employment Tribunal hearings are less formal than a court hearing, however, the decisions made by Employment Tribunals are legally binding and must be followed.</p>
<b>Human Resources (HR)</b>	<p>Is often the name of the department within an organisation charged with the overall responsibility for implementing strategies and policies relating to the management of individuals</p>
<b>Harassment</b>	<p>Unwanted behaviour linked to a protected characteristic that violates someone’s dignity or creates an intimidating, hostile, degrading humiliating or offensive environment for them.</p> <p>It is a term that is often linked to discrimination claims.</p>
<b>Holiday Pay</b>	<p>Most workers have the right to take a minimum amount of paid holiday. This is called <b>statutory holiday</b>.</p> <p>The rules about statutory holiday apply regardless of how long an Employee has worked and regardless of their age.</p> <p>All Employees’ are entitled to take 5.6 weeks’ pro rated paid holiday a year.</p> <p>A contract of employment may give additional rights to paid</p>



	<p>holiday, this is called <b>contractual holiday</b>, but it cannot give less than the statutory entitlement.</p>
<b>Health and Safety</b>	<p>Is an area concerned with protecting the safety, health and welfare of people engaged in work or employment. The goal of all occupational health and safety programs is to foster a safe work environment.</p> <p>In the UK employees are given protection under the Health and Safety at Work Act 1974.</p>
<b>Indirect Discrimination</b>	<p>Putting a provision, criterion or practice in place that applies to everyone, but to someone with a protected characteristic at an unfair disadvantage.</p>
<b>Injury to Feelings</b>	<p>Compensation for injury to feelings can be awarded by the Tribunal in discrimination claims.</p> <p>In general terms, the Employment Tribunal will consider the hurt and distress caused to the Employee and make an appropriate award.</p>
<b>Injunction</b>	<p>A Claimant or a Respondent can make an application for a court order to prohibit a person or company from doing or continuing to do a certain act.</p>
<b>Investigative Meeting</b>	<p>Employers should carry out a reasonable investigation, adhering to the Acas code, if they are considering taking disciplinary action against an Employee.</p> <p>Any investigatory meeting should not result in disciplinary action without a disciplinary hearing.</p> <p>If paid suspension is necessary during the investigation, this should be as brief as possible and kept under review. The employer should make clear that this is not in itself a form of disciplinary action.</p>
<b>Judgment</b>	<p>The final decision made by the Employment Judge following the consideration of all evidence in the case.</p>
<b>Jurisdiction</b>	<p>Is the practical authority to deal with and make pronouncements on legal matters.</p> <p>The Employment Tribunal usually has "exclusive jurisdiction" in the sense that the ordinary courts will not have jurisdiction over the same matters.</p>



	As a general rule Employment Tribunals have jurisdiction to deal with cases only if at least one Respondent, normally the Employer, resides or carries on business in England and Wales or Scotland or if the proceedings relate to employment performed in Britain.
<b>Just and Equitable</b>	A Tribunal has a discretion to allow certain tasks, for example, extend a time limit if they are convinced that it is “just and equitable” to do so.
<b>Lay off</b>	Broadly, laying off employees means that the employer provides employees with no work (and no pay) for a period whilst retaining them as an employee. Unlike dismissal, it is a temporary solution to the problem or no or less work.
<b>Limitation period</b>	The specific time-limit in which you must issue proceedings in your Claim.
<b>Listing</b>	When a hearing date has been fixed for a case.
<b>Litigation Risk</b>	The risk that all parties face in the possibility of losing their case.
<b>Maternity Leave</b>	<p>Employees that are expectant Mothers have the statutory right to a minimum amount of maternity leave. Employers may also offer their own maternity leave scheme in addition to this.</p> <p>Statutory Maternity Leave is for 52 weeks. Employees may also be entitled to receive Statutory Maternity Pay for up to 39 weeks of the leave.</p>
<b>Mediation</b>	A formal method of trying to resolve a dispute or negotiate a settlement.
<b>Medical Evidence</b>	In certain cases, such as Disability Discrimination claims, medical evidence may be required. This can be in the form of simply providing medical records, obtaining a medical report or calling an Expert witness.
<b>Misconduct</b>	<p>Term often used when referring to wrongful, improper, or unlawful actions taken by an Employee. An Employee can be dismissed on the grounds of misconduct if they have received previous warnings for misconduct.</p> <p>Dismissals on the grounds of misconduct would have to be with notice pay, unless the conduct is so serious it amounts to gross misconduct.</p>
<b>Mitigation</b>	Efforts by the Claimant to find a new job and reduce their claim for loss of earnings.



<b>Negotiation</b>	The engagement in discussions between parties in attempt to resolve disputes that have arisen.
<b>Notice period</b>	Should be given by whichever party is bringing the Employment relationship to an end.  Notice periods can be either statutory or contractual.  If there is no contract of employment, an employer must give at least the statutory minimum period of notice, which is calculated from the length of employment.
<b>Off the record</b>	When an advisor is assisting you behind the scenes, but will not communicate with the other party and/or represent you at a hearing.
<b>On the record</b>	Your advisor is officially representing you.  They are likely to write and receive letters on your behalf and represent you at any hearings (unless they have specifically stated otherwise).
<b>Orders</b>	Notices given by the Employment Tribunal instructing one or both parties to do certain tasks, or advise of key dates in relation to the case.
<b>Particulars</b>	Word often used by lawyers, referring to the details of a Claim or Defence.
<b>P.I.L.O.N.</b>	PILON stands for Pay In Lieu of Notice.  Instead of placing an Employee on garden leave or making them work their notice, you can end an employee's contract of employment earlier by making a payment to the Employee that is equivalent to the amount they would have received had they worked their notice. Ensure that the contract of employment has a PILON provision before you exercise this option.
<b>Preliminary Hearings</b>	Are in effect mini hearings held at the Employment Tribunal.  They are as formal as a final hearing and generally all necessary documents and witness statements must be disclosed before the hearing takes place. It is also important that all witnesses are in attendance.  Preliminary Hearings are often held to: decide the preliminary issues in a case; decide whether the Claim or Response should be struck out; decide questions of entitlement to bring or defend



	a Claim; decide if either party’s case has no reasonable prospect of success.
<b>Protected characteristic</b>	<p>It is against the law to discriminate against someone because of:-</p> <p>Age Sex Disability Race, including colour, nationality, ethnic or national origin Religion, belief or lack of religion/belief Sexual orientation Being or becoming a transsexual person Being married or in a civil partnership Being pregnant or having a child</p> <p>These are called “protective characteristics”</p>
<b>Protected Conversations</b>	<p>“Off the record” confidential potential termination negotiations. Used where there are no prior disputes and where things are just not working out.</p> <p>These are inadmissible in any future tribunal hearings provided that they follow the criteria.</p>
<b>Pleadings</b>	The formal documents that set out each side’s case. For example, an ET1 Claim form submitted by the Claimant and the Employers’ response (ET3) and any additional information or further particulars.
<b>Quantum</b>	The amount of compensation that the Tribunal will award the Claimant if they win their case.
<b>Reasonable adjustments</b>	<p>The Equality Act 2010 places a duty on employers to make reasonable adjustments for job applicants and employees. The duty can arise where a disabled person is placed at a <b>substantial disadvantage</b> by:</p> <ol style="list-style-type: none"> <li>1. An employer's <b>provision, criterion or practice</b></li> <li>2. A <b>physical feature</b> of the employer's premises.</li> <li>3. An employer's failure to provide an <b>auxiliary aid</b></li> </ol>
<b>Redundancy</b>	Redundancy is a form of dismissal, caused due to an Employer needing to reduce their workforce or due to the business as a whole or the workplace closing down.
<b>Remedies</b>	Compensation or any other award that the Tribunal can make.



<b>Remedy hearing</b>	Separate Tribunal hearing to consider how much compensation the Tribunal should award.
<b>Respondent</b>	Employer / the person the Claim is being brought against.
<b>Schedule of Loss</b>	A Claimant's opportunity to detail what they want to claim by way of monetary compensation in their Tribunal claim.
<b>Settlement</b>	The voluntary conclusion of any litigation by the parties involved. Settlement can be made at any time before a final hearing.
<b>Settlement Agreement</b>	A legally binding document usually prepared by an Employer setting out all the terms (including any financial settlements) on which the employment relationship with an Employee will come to an end.
<b>Skeleton Argument</b>	A skeleton argument is intended to identify both for the parties and the court those points which are, and those that are not, in issue, and the nature of the argument in relation to those points which are in issue.
<b>Summary Dismissal</b>	Is the termination of an Employee's employment due to a serious incident (usually gross misconduct) that can justify not providing any notice before the termination or any payment in lieu of notice.
<b>TUPE</b>	<p>When a business is transferred from one owner to another or where a client engaging a contractor to do work on its own behalf, reassigning such a contract or bringing the work "in house" (eg service provision change), the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) protects Employees' terms and conditions of employment.</p> <p>When the business changes hands, employees of the previous owner/provider automatically become employees of the new employer on the same terms and conditions.</p> <p>Employers are required to inform and consult employees affected by the transfer.</p>
<b>Trade Union</b>	<p>Is an organization of workers who have banded together to achieve common goals such as better working conditions.</p> <p>Trade unions often bargain with the Employer on behalf of union members and negotiate labour contracts (collective bargaining) with Employers.</p>



<b>Unfair Dismissal</b>	An Unfair Dismissal occurs when an Employer dismisses an Employee for an unfair reason and/or the Employer does not follow the correct procedure for the dismissal.
<b>Victimisation</b>	Is a specific term used in discrimination law.  A person is victimised if they are treated less favourably because they have complained of discrimination or harassment.
<b>Vexatious</b>	Vexatious litigation is when a claim is brought, regardless of its merits, solely to harass or subdue the other party.  Filing vexatious litigation is considered an abuse of the judicial process and may result in sanctions against the offender.
<b>Whistle Blowing</b>	The official name for whistleblowing is 'making a disclosure in the public interest'. If there is some form of wrongdoing in the workplace, it can be reported and the person's employment rights are protected and they cannot be victimised by their Employer.  Whistleblowers are protected for public interest, to encourage people to speak out if they find malpractice in an organisation or workplace.  Malpractice could be improper, illegal or negligent behaviour by anyone in the workplace.
<b>Wages</b>	Wages can include fees, bonuses, commissions, holiday pay, statutory sick pay, maternity pay etc.
<b>Witness order</b>	A Tribunal order forcing an unwilling witness to come to the Tribunal hearing.
<b>Witness statement</b>	Written statement containing a witness' evidence.
<b>Without Prejudice</b>	Phrase often used in settlement negotiations meaning "off the record".  Used where there is a pre-existing dispute, i.e. disciplinary or grievance proceedings.
<b>Wrongful Dismissal</b>	Wrongful Dismissal is based on contract law. Any claim for Wrongful Dismissal will therefore mean looking at an employment contract to see if the contract has been broken.  The most common breach is where an Employee is dismissed without notice or the notice given is too short. An Employer can



	<p>often justify dismissing an Employee without notice (Summary Dismissal) if the Employee commits a serious breach of their contract.</p> <p>Wrongful dismissal claims can be brought in the Employment Tribunal, county court or High Court depending on the value of the claim.</p>
<b>Zero Hours Contract</b>	<p>Is a day to day name for a contract under which an Employer does not guarantee to provide work to an Employee and pays only for work actually done.</p>