



University of Strathclyde  
**LAW CLINIC**

# 10E How to amend a claim in the Employment Tribunal

A guide for the general public

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# Introduction

Amending a claim in the Employment Tribunal can be quite complex. This slideshow will give a very general overview of the amendment process.

If you are considering amending your claim, we recommend you seek legal advice before doing so.

# Why do we have an amendment process?

The amendment process exists because sometimes Claimants, for a variety of reasons, do not make clear all the types of claim they wish to pursue in the ET1 claim form. Equally Claimants may not provide enough detail about the basis of the legal claims. If you use the amendment process, you are asking the Tribunal to allow you to go back and change the content of the ET1 claim form.

The Tribunal has rules about when an amendment will be allowed, so that Respondents have fair notice of the claims brought against them. It is also possible for Respondents to apply to amend their defence however this will not be considered here as this slideshow is aimed at assisting Claimants.

# When should an application to amend be made?



An application to amend should be made as soon as you are aware that you need to amend the original claim. The earlier the application is made, the more likely it is that the Tribunal will allow it.

# How to make an application to amend

An application to amend a claim can be made at any stage in proceedings. However, it is always good practice to make the application as soon as you become aware that it is necessary. If the amendment is made late in proceedings, the Tribunal is less likely to allow it.

An application can be made in writing or orally. For example at a case management hearing. While there is no requirement to make the application in writing, we recommend that you do so if you have the time and resources to do so. It is easier for everyone to see what the application is about if it is done in writing. You may be asked to convert an oral request into writing.

The application should take the form of the original claim form with tracked changes showing the proposed amendments and a cover letter containing the detail of the application. This is explained in more detail in the following slides.

# What should the application include?

1. Your original claim (see slideshows 3A and 10D). You should use tracked changes to show where you have inserted or deleted parts of the claim. It is important that the Tribunal can see at a glance exactly which parts of the claim you are asking to amend.
2. A cover letter explaining why the Tribunal should allow you to amend the claim. More information on what this letter should include is set out on the next slide.

# What should the application include? (2)

You should explain why it would be in accordance with the overriding objective for the Tribunal to grant your application. The overriding objective is to deal with cases “fairly and justly”. There are five ways in which the Tribunal defines fairly and justly:

- ▶ Ensuring the parties are on an equal footing;
- ▶ Dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- ▶ Avoiding unnecessary formality and seeking flexibility in the proceedings’
- ▶ Avoiding delay; and
- ▶ Saving expense.

You should explain why the application has not been made before. For example, you were ill or in hospital, did not have access to legal advice, put the application in at short notice, or you now understand the need to provide further clarification of the claim.

Factors the tribunal will take into account when considering the application to amend

# Nature of the amendment (1)

The smaller the nature of the amendment, the more likely it is that the Tribunal will allow it. For example, a typographical error or incorrect date is likely to be allowed.

The Tribunal draws a distinction between amendments that:

- ▶ Seek to add or substitute a new claim arising out of the same facts as the original claim; and
- ▶ Those that add a new claim entirely unconnected with the original claim.

## Nature of the amendment (2)

If the new claim arises from the same facts as the original claim, it is more likely to be accepted by the Employment Tribunal. This is described by the Tribunal as a 're-labelling exercise'.

If you are looking to make a more substantial amendment, for example including new factual allegations, the Tribunal will have to take into account the full circumstances of the case. The Tribunal will have to consider whether allowing the amendment would result in an injustice or hardship to the respondent.

# Time limits

If the effect of the amendment is to introduce a new claim, the Tribunal will have to consider whether that new claim is being brought within the time limit.

By way of example, say you have made a claim for unfair dismissal. You later realise that you also have an arguable claim for disability discrimination. However, more than three months have passed between the last act of discrimination and you making the amendment. This means you are introducing a new claim after the expiry of the time limit for bringing that claim. While the tribunal can decide to allow the amendment, it will have to weigh up all the factors set out in this slideshow.

# What if my application to amend is refused?

If your application to amend your claim is refused, there are alternatives. Firstly, you could apply for a reconsideration. This is where another Tribunal judge looks at their decision again to check whether they have made the decision in the proper way. If the judge at reconsideration does not allow your amendment, you can appeal their decision to the Employment Appeal Tribunal (EAT). However, it is very difficult to persuade the Appeal Tribunal to overturn the decision of the Employment Tribunal. Strict time limits apply to those procedures. There are very strict rules about submitting an appeal to the EAT, both of which you will need to study carefully.