



## Making an Employment Complaint

### Introduction

This document provides general guidance to Applicants on how to make complaints under:

- The Employment Protection (Guernsey) Law, 1998, as amended
- The Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001
- The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005
- The Minimum Wage (Guernsey) Law, 2009
- The Prevention of Discrimination (Guernsey) Ordinance, 2022

This document sets out the criteria and the steps you, as a potential Applicant, would need to follow in order to make a complaint if you believe you have experienced any of the following:

- you have been unfairly dismissed from your job
- your employer has, following a request from you (in writing), failed to provide you with written reason(s) for your dismissal
- that the reason(s) given by your employer for your dismissal is/are inadequate or untrue
- you have suffered a detriment for refusing, or proposing to refuse to work in a shop on a Sunday
- you have suffered a detriment/less favourable treatment which you believe was based on your gender, marital status or because you intend to undergo, are undergoing or have undergone gender reassignment

- you are a worker who has been paid at less than the prescribed minimum wage
- you are a worker who has been refused proper access, by your employer, to relevant records in order to establish whether or not you have been remunerated at a rate that is less than the minimum wage; or
- you have suffered a detriment which you believe resulted from exercising your rights under the Minimum Wage Law
- you have suffered a detriment where you believe you have been discriminated against on one of the five protected grounds: Disability, Race, Carer Status, Sexual Orientation, Religion or Belief
- you have suffered victimisation (relating to raising a complaint or supporting someone who has done so)

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## Qualifying Period

Under the Employment Protection (Guernsey) Law, 1998, an Applicant is eligible to make a complaint after one year's continuous service. However, it is important to note that in the event an Employer dismisses an Employee within one week of their one year's service, the law allows for the statutory notice period to be added (whether the Employee is required to work through it or not), which means they could be eligible for the Qualifying Period.

Please note the Qualifying Period isn't required in cases where:

- You were dismissed for an automatically unfair reason (please see below)
- You suffered a detriment or less favourable treatment for a reason connected to your race, religion or belief, disability, carer status or sexual orientation
- You are not paid minimum wage
- You are a shop worker who has suffered a detriment or less favourable treatment due to refusing to work on a Sunday (please refer to the relevant guidance document [here](#))

## **Automatically Unfair reasons to dismiss**

There are reasons to dismiss which are considered to be automatically unfair. An Applicant does not have to meet the qualifying period if they believe there have been dismissed for any of the following reasons:

- pregnancy or for any reason connected with your pregnancy
- trade union activities, or in relation to trade union membership
- health and safety e.g., you were dismissed because you were asked to perform an unsafe or unlawful task, and refused
- asserting a relevant statutory right
- refusing, or proposing to refuse to work in a shop on a Sunday (or any related detriment for refusing)
- gender, marital status or because you intend to undergo, are undergoing or have undergone gender reassignment
- being paid at less than the prescribed Minimum Wage and/ or suffering a detriment from exercising your rights under the Minimum Wage Law
- you have suffered a detriment/ less favourable treatment which you believe was based on one of the five protected grounds: Disability, Race, Carer Status, Sexual Orientation, Religion or Belief
- you have experienced Discrimination by Association (unfavourable treatment due to being linked to a person with a protected ground)

## **Time limit**

Complaints should be received within three months of the effective date of termination, and/or the date when the last act of discrimination took place.

The '**effective date of termination**' is:

- the date on which the notice period ends
- the last day at work (if the dismissal was without notice or with pay in lieu of notice)
- if you are employed on a fixed term contract for one year or less, and this contract is not going to be renewed under the same contract, the 'effective date of termination' is the day the contract expired

- If you were dismissed within one week of achieving 12 months service, it will be the date on which the statutory period would have ended (see qualifying period above).

This means for example, that if your employment ended or the discrimination took place on the 30 March, your application should be received by the 29 June at the latest.

Once EEOS receives your Intent to Complain form - the clock stops during Pre-Complaint Conciliation (PCC) process. This means that should PCC not be successful for any reason, you will still have the remainder of the initial three-month period (minus PCC) to lodge your formal complaint.

### **'Out of Time' Complaints**

If you wish to apply for further time on the basis that it was not reasonably practicable for you to do so, you should either request this in writing or complete the appropriate complaint form accompanied with a request in writing. However, you may benefit from discussing this further with an Advice and Conciliation Officer.

If you choose to submit your complaint outside of the timescales, please be mindful that you may be asked by the Respondent or Employment & Discrimination Tribunal (E&DT) to evidence why you have not been able to submit the form within three months of the effective date of termination, or the date when the discrimination took place.

The Tribunal will ultimately decide if the matter can be accepted.

### **Complaint Forms**

If you wish to make a complaint under the Minimum Wage (Guernsey) Law 2009 and / or The Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, you will need to complete what is called an ET1 form. You can obtain this here ([link](#)).

For all other Employment related complaints before you can lodge this formally with the E&DT, you must notify EEOS of your intent to complain. You can do this by completing what is called an ITC1 form, which you can access here .

[ITC1 form.pdf](#)

Should you be unsure which form to complete, or wish to obtain a physical copy, please contact us.

### **Next steps**

Once your complaint has been received, a Conciliation Officer will be appointed to your case. Where relevant, they will discuss the conciliation process with you, and align the next steps.

If none of the parties wish to engage, or the process fails to reach an agreement, then a certificate (known as the ITC3) will be issued to you allowing you to raise a formal complaint with the Employment and Discrimination Tribunal if you wish to do so. This will require you to complete an ET1 form which can be found [here](#).

The Conciliation Officer appointed to your case will provide you with further advice, as required.

More information about our conciliation services can be found [here](#).

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### **Making a Complaint to the Employment & Discrimination Tribunal**

As explained in the '[Complaint Forms](#)' section above, should pre-complaint conciliation fail you will be provided with a certificate (ITC3) which will then enable you to submit a formal complaint. Visit our '[Making a Complaint to the Employment & Discrimination Tribunal](#)' page for more information on how to make complaints to The Employment & Discrimination Tribunal