It goes without saying that employment disputes can be both disruptive and costly.

This short guide provides some useful advice to help your business avoid employment tribunal claims, and how to minimise the damage should the worst happen.
It goes without saying that employment disputes can be disruptive and costly, not to mention stressful for everyone involved.

Employment law compliance is not an option but the unfortunate truth is that in the majority of cases, a lack of up-to-date legal advice on employment documentation means there are issues to be resolved.

With the maximum award in unfair dismissal claims £111,100 and no cap in discrimination cases, when it comes to employment disputes prevention is always better than cure.

This short guide has been created to provide business owners, Managing Directors and HR professionals with some top-tips on how best to avoid employer/employee disputes, and how to deal with them should the worst happen.

Freeing you from the worry of employment claims, this guide aims to let you get on with what you do best – managing and growing your business.

*Includes award for failure to comply with reinstatement/re-engagement orders (2103)
Prevention is better than cure

In an ideal world, the easiest way to avoid an employment tribunal would, of course, be to ensure that all employees were happy and contented with no reason to make a compliant. In the real world however, even with the very best intentions, no matter how good your employment procedures, disputes may still happen.

While it isn’t therefore possible to guarantee that your business will never be taken to an employment tribunal, reducing the risk is simply a matter of good policy and practice. With this in mind this guide includes some quick pointers to help you stay on the right side of the law and out of court.

Common reasons for employment tribunal claims

There are numerous claims that can be brought against an employer including:

- Unfair dismissal (including ‘constructive dismissal’ where an employee resigns because they believe the employer has breached the contract of employment)
- Not being allowed to have someone accompany the employee to a disciplinary or grievance hearing
- Discrimination on the grounds of sex, race, disability, religion or belief, age or sexual orientation
- Not being consulted in a redundancy situation
- Failure to make reasonable adjustments in the case of disabled employees
1. Put the right employment documentation in place

The employment contract is the most important HR document your business should have. It is a legal requirement for employees to be given a written statement of the terms and conditions of their employment within two months of their start date. Failure to do so could result in an employee issuing a claim at any future tribunal.

Without a contract of employment, an employee only has to give one week’s notice of resignation and minimum notice in relation to holidays. In addition, without such a contract employers are not entitled to make deductions from employees’ wages, insist employees are examined by a specific medical expert should they be off work sick, or lawfully inspect employees’ emails/internet usage.

By setting out just what is expected from all parties, in writing, from the very start, the employment contract not only helps to prevent any future misunderstandings, but also makes dealing with them much easier should they arise.

In addition to the employment contract, it is also important to have a correctly drafted employment handbook covering issues such as the business’s equal opportunity, disciplinary, grievance, maternity/paternity, IT and whistleblowing policies and procedures.*

*Not a comprehensive list
The employment contract

Certain information must be contained within a contract of employment including:

- The name of the employer and the employee
- The employee start date and the date on which continuous employment began
- Salary amount and the timing of salary payments
- Hours of work
- Holiday entitlement
- Provision for sick pay
- Pension provision
- Employee notice period
- Job title
- Status of employment (i.e. permanent or fixed term – if the latter, the date when the contract will end)
- Place of work
- Collective agreement provision
- Provision for working outside the UK (if for more than one month).

In addition to the above generic information, as much information as possible should be included to ensure all parties have a clear understanding of their contractual obligations. It is also recommended that additional clauses such as specific clauses related to senior employees (for example post-termination restrictive covenants) are included.

Whenever a contract of employment is issued, you should ensure that the employee signs and returns a copy of the contract. However, you should bear in mind that the contract is still valid, even if the employee does not sign it, if they are working in accordance with its terms.
Top Tips

2. Regularly review your employment documentation

With changes to employment law coming into force in April and October each year it’s simply not good enough to put these documents in place and forget about them. Instead they need to be regularly reviewed to ensure compliance.

3. Keep your employees informed

It is important to communicate your employment policies and procedures to all staff and ensure they fully understand them.

Poor communication is the cause of many disputes with compromise difficult where there is a lack of understanding with regard to the other’s position and motives.

Where you wish to vary a contract of employment, the easiest way is to agree the variation with the employee and ensure the employee signs and returns either a copy of the new contract or at least, a variation letter setting out the new terms and conditions to avoid any future disputes.

Where agreement is not possible, one option is to consult with the employee and ultimately dismiss and re-engage on new terms and conditions. However bear in mind this brings the risk of a claim for unfair dismissal from employees with more than 12 months’ service.
Where an agreement can not be reached.

Where an agreement to an employee’s new terms and conditions cannot be made, as long as employers have followed the correct procedures they could avoid costly employment tribunals and disputes.

• Provide evidence that substantial business reasons exist to justify the proposed changes. This could be by demonstrating that the business is currently in financial difficulty.
• Demonstrate that you have taken into consideration the negative impact of any new conditions on your staff – and that you have weighed up these disadvantages against the needs of your business.
• Ensure (and be able to prove) that a genuine and meaningful consultation has taken place with affected employees. If more than 20 employees are affected you will have to consult with a recognised Union or elected representatives of the workforce.
• Ultimately, it may be fair for the business to give notice of termination of employment to those who refuse to agree to the change, coupled with an offer of employment on the new reduced terms.

Following the correct procedure will help establish that you are a responsible employer, working hard to ensure the survival of your business. It will also place you in a better position to defend any claims that may be brought by employees dissatisfied with the changes.
4. **Follow the correct procedures**

No matter the precautions taken, disputes will arise. The key is to stop these disputes turning into costly and disruptive tribunal proceedings.

It is important to be aware of, and follow the ACAS code of practice on disciplinary and grievance procedures, as well as your own policies and procedures. By following the proper processes and procedures you not only reduce the chance of disputes escalating, but also reduce the risk of an employee’s compensation award being increased at any subsequent tribunal.

In particular keep written records of all employment decisions. Making sure that all conversations and meetings are minuted, include both sides of the story and are agreed between all parties will prove extremely important should a tribunal be unavoidable. Not only will they show that you have followed the correct procedures, they will also help demonstrate that you are a ‘reasonable’ employer.

5. **Don’t bury your head in the sand**

Ignoring a staff issue will not make it go away. Tackling an issue head on in the correct manner can stop the problem from escalating. In many cases undue delay in dealing with an employment dispute or grievance can lead to a claim for constructive dismissal.
6. Treat all staff fairly

Employment tribunal claims often arise where an employee feels they have been treated unfairly. This can be in the course of their day-to-day role or following action against them by their employer.

In the latter situation, the tribunal may find in favour of the employee, even if the initial action was entirely justified. If you feel an employee's conduct has fallen below an acceptable standard make sure you instigate the ACAS Code of Practice and follow your own contractual employment procedures. Remember to be consistent in your actions. It could be difficult to justify why you have taken disciplinary action against one employee and not another who committed the same offence.

7. Make sure your managers are trained

Ensure all managers and supervisors are correctly trained to deal with any issues that may arise. The business can be held liable if one of your managers doesn't follow the correct procedures. Pay particular attention to equality training. Many employers don’t realise that such training may be their only defence in a discrimination claim.
8. Consider reaching an agreement

Where a claim has been made, it may be possible to settle without a tribunal hearing. A legally binding agreement which offers the employee compensation in return for withdrawing their tribunal claim can reduce the expense and disruption for all involved. It is however vital for any employee to receive advice from an independent legal advisor prior to signing.

In addition in April 2014 the Advisory, Conciliation and Arbitration Service (ACAS) launched its ‘Early Conciliation’ service with the primary objective of resolving disputes in a timely and cost effective manner, avoiding an adversarial tribunal. This free and confidential conciliation process became a mandatory first step from May 2014 prior to a claim to the Employment Tribunal being made.

9. Don’t make the same mistake twice

Where the worst has happened and your business has been taken to an employment tribunal, learn from your mistakes.

Setting aside the financial and reputational damage that such tribunals can cost, future tribunals are not likely to find favour with employers who repeatedly make the same mistakes. Demonstrating that you have made changes will not only help protect you from subsequent claims, but will also help you demonstrate to the tribunal that have learned from past mistakes.
10. **Seek professional advice**

Where you are concerned about an employment situation, professional legal advice may resolve the dispute. At Linder Myers we work with businesses to deliver cost-efficient and practical legal advice, reducing the potential of costly litigation and removing the headache of dealing with difficult personnel issues.

With a focus on prevention rather than cure Employ-Line from Linder Myers provides specialist legal advice for a fixed fee monthly subscription. Including the drafting and review of employment contracts and procedures, Employ-Line delivers peace of mind while allowing you to manage your costs.

Tailored to the specific needs of your business, Employ-Line is also backed by optional insurance against employment tribunal compensation and legal costs, so you are protected whatever is round the corner.

When a tribunal claim is made, we can litigate, mediate and negotiate on your behalf. Steering you through the entire process to deliver the best possible result for your business.

**To find out more about how we can help you, or to sign up for a free, no obligation review of your employment contacts and handbook please visit:** [www.lindermyers.co.uk/employment-review](http://www.lindermyers.co.uk/employment-review)

Please note that this guide has been prepared as a general overview. It is for guidance only and should not be considered a substitute for legal advice.
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0844 984 6444
enquiries@lindermyers.co.uk
www.lindermyers.co.uk