



**An explanatory note for employers
appealing to an Employment Tribunal
against industrial training levy
assessments issued by the ECITB**



Introduction

This note is purely for explanatory purposes and should not be regarded as an authoritative statement of law or advice.

This note explains the procedure for appealing against levy assessments issued by the ECITB as laid down in The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (as amended).

The regulations and industrial training levy orders (which explain the methods and procedure of appeal) are obtainable from www.legislation.gov.uk. Employers are also referred to the “Presidential guidance – making a statutory appeal falling within the jurisdiction of the employment tribunal” dated 11 September 2017 attached to this note (the “Guidance”). For further information on appealing an assessment, please see HM Courts & Tribunals Service “Making a claim to an Employment Tribunal” (T420).

Appealing against a levy assessment

For the purposes of a levy appeal, references to a claim or claimant are also read as references to a levy appeal or to an appellant respectively. For ease of reference, we have referred throughout this note to an “employer”.

Time limit for appealing

In accordance with the applicable industrial training levy order, an establishment assessed to a levy may appeal to an Employment Tribunal against a levy assessment within one month commencing with the date of service of the levy assessment.

Extension of time

The ECITB may extend the time for appealing against a levy assessment or, where the ECITB has not allowed an extension of time for appealing, an employer may apply to an Employment Tribunal to extend the time for appealing.

Any application for an extension of time to appeal against a levy assessment should initially be made to the ECITB at the address stated on the levy assessment notice. If the ECITB does not grant an extension the employer may then apply, under the provisions of the applicable industrial training levy order, to the Employment Tribunal for an extension of time for appealing. If an appeal has not been lodged or an extension of time has not been granted by the ECITB or an Employment Tribunal, the levy to which an employer has been assessed will be recoverable in full one month after service of the levy assessment notice.

Early dialogue and request for further information

If an employer is considering appealing against a levy assessment the ECITB would recommend that it contacts the ECITB’s Levy & Scope Department (email: levy_scope@ecitb.org.uk) as soon as possible after receipt of the levy assessment setting out the grounds of appeal it anticipates including in any notice of appeal. It is hoped that any such early dialogue/correspondence/draft notice of appeal may resolve any issues or queries and possibly avoid the need to lodge a formal notice of appeal with an Employment Tribunal. Depending on the nature of the circumstances, it may also be possible for the ECITB to agree to an extension of the period of time in which the employer may lodge an appeal. This may enable the submission and consideration of relevant information and/or further discussions to occur between the parties in an attempt to obviate the need for formal appeal proceedings.



In order to assist in discussions and to enable the ECITB to understand the employer's position the ECITB may request the employer to provide additional information concerning matters such as the structure of the establishment, the nature of its activities, the composition of its workforce and/or other details.

Once an employer has lodged its notice of appeal with an Employment Tribunal the ECITB can apply to an Employment Tribunal for a case management order that the employer provides further information relating to its claim.

Appeal form

An employer does not need to submit its notice of appeal to an Employment Tribunal using a particular type of form. However, the Guidance states that to enable the Tribunal to deal with an appeal expeditiously and fairly, certain information needs to be provided by the employer and, to this effect, the Employment Tribunals have produced a form for use by employers if they so wish when submitting appeals. This form is attached to the Guidance (the "Form"). An employer is not legally required to use the Form. However, the Guidance commends using the Form which it considers to be a helpful tool which will guide an employer in connection with the information which an Employment Judge will need to know when considering the basis of the appeal and which the administration will need in order to serve the appeal on the ECITB.

As stated in the Form, the power of the Employment Tribunal in appeals against levy assessments is limited to considering whether the levy has been properly calculated and whether the employer's business falls within the scope of the applicable levy order. The Tribunal has no power to grant an extension of time for payment of the levy and the financial implications for the employer of the assessment to levy are not a valid ground of appeal.

An employer is no longer required to pay a fee when lodging its appeal with an appropriate Employment Tribunals Central Office.

Action by the Employment Tribunal on receipt of the notice of appeal

The appeal will be referred to an Employment Judge if it is considered to be one which the Tribunal has no jurisdiction to consider or it is in a form which cannot sensibly be responded to or is otherwise an abuse of process. An employer whose claim has been rejected may apply for a reconsideration.

The Employment Tribunal will send the ECITB a copy of the notice of appeal together with a prescribed response form. The ECITB has to present its response to the Employment Tribunal within 28 days of the date that the copy of the notice of appeal was sent by the Tribunal. If the case proceeds, the Tribunal will usually consider what case management directions are required to get the case ready for a hearing. An Employment Judge may decide that it is appropriate for the parties to attend one or more preliminary hearings in order to prepare the case for a final hearing.

Where a party applies in writing to an Employment Tribunal for a case management order they should notify the other party that any objections to the application should be sent to the Tribunal as soon as possible.

Preliminary hearings

Preliminary hearings will be dealt with solely by an Employment Judge.

A preliminary hearing may be required for the following (this list is not exhaustive):



- to clarify the issues the Tribunal will need to determine the final hearing;
- to determine the steps the parties will need to take to prepare the claim for the final hearing for example, the disclosure of relevant documents, whether expert evidence is required and exchange of witness evidence; and
- to determine a preliminary issue ie any substantive issue which may determine liability or consideration to striking out a claim or response.

Disclosure of documents and information

The Tribunal will usually order the parties to disclose to the other relevant documents (by providing copies or otherwise) or to allow a party to inspect such material as might be ordered by a county court or, in Scotland, by a sheriff.

Witnesses

It is generally necessary for both the employer and the ECITB to call witnesses to give evidence in support of their claim or response. This is usually achieved by both parties preparing witness statements and the witnesses giving oral evidence at the final hearing. The witnesses will usually be cross-examined by the other party and questioned by the Tribunal members.

The Tribunal may order a person to attend a hearing to give evidence, produce documents or produce information.

Withdrawal of claim

An employer may inform the Tribunal either in writing or in the course of a hearing that a claim or part of it is withdrawn at which point the claim or part of it comes to an end subject to any application that the ECITB may make for a costs, preparation time or wasted costs order. The ECITB may also withdraw the assessment.

Notice of the final hearing

Both parties will be advised by the Employment Tribunal of the date, time and place of the final hearing at least 14 days before the date of the hearing. In the event of failure to attend by either party, the Tribunal, after considering any written representations, may dispose of the appeal or adjourn the final hearing to a later date.

The final hearing

A final hearing relating to a levy appeal will always be heard by an Employment Judge (a solicitor or barrister of several years standing) plus two lay members with experience in dealing with work-related matters. Both parties may appear at the final hearing of the appeal and be heard in person or be legally represented. Parties are entitled to call witnesses in support of their case, and each party may cross-examine witnesses called by the other side. The employer may be represented by counsel, solicitor or by any other person. Witnesses shall be required to give their oral evidence on oath or affirmation.

The decision

A copy of the document containing the decision of the Tribunal and, if applicable, the reason for the decision is sent to the parties by the Secretary of the Employment Tribunals. A copy of the decision will also be available on-line at www.gov.uk/employment-tribunal-decisions.

It is only possible to appeal to the Employment Appeal Tribunal against a Tribunal's decision on a question of law.



In the event that the ECITB is unsuccessful:

- The employer's establishment may be removed from the ECITB's Register of Leviable Establishments;
- If appropriate, there may be a refund of levy paid; and
- If appropriate, training grants paid in respect of training activities undertaken in the base period under appeal may be refunded by the employer.

In the event that the employer is unsuccessful, the levy assessed will be payable together with accrued interest. The rate of interest is set by the Tribunal, and this generally exceeds base rate.

Costs

Costs do not "follow the event" as they do in civil courts. The decision of the Tribunal may include an order for payment of costs (expenses in Scotland) by one party to the other in accordance with sections 74-84 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.



TRIBUNALS
JUDICIARY

JUDGE BRIAN DOYLE
PRESIDENT
EMPLOYMENT TRIBUNALS
(ENGLAND & WALES)



EMPLOYMENT TRIBUNALS
(SCOTLAND)
Judge Shona Simon
President

**PRESIDENTIAL GUIDANCE:
MAKING A STATUTORY APPEAL
FALLING WITHIN THE JURISDICTION
OF THE EMPLOYMENT TRIBUNAL**

This guidance is issued in accordance with Rule 7 of the Employment Tribunals Rules of Procedure ("the Rules"). The Rules are set out in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

Employment Judges and Employment Tribunals are expected to have regard to this guidance but are not bound by it.

Both Presidents issued separate, identical guidance on this topic which had effect from 23rd June 2014, but we have concluded it is appropriate to issue this amended Guidance in a single document on a joint basis. Our original Guidance is now amended to remove references to Employment Tribunal Fees following the decision of the Supreme Court in *R (on the application of UNISON) v Lord Chancellor* (2017) UKSC 51 and to include guidance on making a statutory appeal under section 37G of the Employment Tribunals Act 1996 (financial penalties for failure to pay sums ordered to be paid or settlement sums).

1. The jurisdiction of Employment Tribunals to hear appeals

Employment Tribunals have jurisdiction to hear appeals against:-

- An assessment to levy imposed under section 11 of the Industrial Training Act 1982;
- An Improvement Notice issued under section 21 of the Health and Safety at Work etc Act 1974 and a Prohibition Notice issued under section 22 of the same Act;

- An unlawful act notice issued by the Commission for Equality and Human Rights under section 21 of the Equality Act 2006;
- A notice of underpayment issued under section 19 of the National Minimum Wage Act 1998; and
- A financial penalty notice issued by an enforcement officer under section 37F of the Employment Tribunals Act 1996.

2. The position regarding how an appeal may be submitted

2.1 Regulation 12 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 makes it clear that it is not necessary to use a prescribed claim form (ET1) in connection with proceedings in which the tribunal will be exercising its appellate jurisdiction.

2.2 There are no other legal provisions which make it necessary, when making any of the appeals listed at paragraph 1 above, to submit the appeal on any particular type of form.

3. The provision of information to assist the tribunal

3.1 To enable the tribunal to deal with an appeal expeditiously and fairly certain information needs to be provided by the appellant. We have concluded that it would be of assistance to the tribunal and appellants if a form is made available, for completion by the appellant, in respect of each type of appeal identified at paragraph 1.

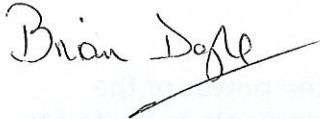
3.2 Accordingly, forms have been prepared by the Employment Tribunals for use by appellants if they so wish, when submitting appeals. These forms are attached as Appendices 1, 2, 3, 4 and 5.

3.3 The forms have been drafted to ensure that an appellant, who properly completes the form, will normally have provided all of the relevant information needed at the outset of an appeal to assist the tribunal in dealing with it expeditiously and fairly.


3.4 A form may be subject to minor amendments from time to time without the need to issue fresh Presidential Guidance. The latest version of any such amended form will be that available on the internet at the relevant time. Appellants and their advisers or representatives should always check that they are using the latest version of any particular form appended to the Presidential Guidance.

4. Guidance to appellants

While an appellant is not legally required to use the relevant form, we commend the forms for use as a helpful tool which, by their nature, will guide an appellant in connection with the information which an Employment Judge will need to know when considering the basis of the appeal, and which the administration will need in order to serve the appeal on the respondent.



Judge Brian Doyle
President (England & Wales)



Judge Shona Simon
President (Scotland)

11 September 2017

Appendices

Notice of appeal on health and safety matters
Notice of appeal against an unlawful act notice
Notice of appeal against NMW enforcement notice
Notice of appeal against training levy assessment
Notice of appeal against a financial penalty

For official use only	
Tribunal Office	
Case number	
Date received	

INDUSTRIAL TRAINING ACT 1982

NOTICE OF APPEAL AGAINST AN ASSESSMENT TO A LEVY

Before completing this form you should note that the power of the Employment Tribunal in appeals against levy assessments is limited to considering whether the levy has been properly calculated and whether the appellant business falls within the scope of the Levy Order. The tribunal has no power to grant an extension of time for payment of the levy and the financial implications for the appellant of the assessment to levy are not a valid ground of appeal.

You must complete all questions marked with an ‘*’

1.1 Appellant Details*

Name of Appellant	
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1.2 Address*

Number or Name	
Street	
Town/City	
County	
Post Code	

Telephone Number	
Fax Number	
Email address	

2.1 If a representative is acting for you please give their details below: (Note that all correspondence will be sent to your representative)

Name	
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2.2 Address

Number or Name	
Street	
Town/City	

County	
Post Code	

Telephone No		Fax No	
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Email address	
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3.1 Details of Training Board which made the assessment to a levy*

Name of Training Board	
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3.2 Address*

Number or Name	
Street	
Town/City	
County	
Post Code	

4. Information about the assessment

Date of Issue		Assessment Number	
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5. Grounds of Appeal*

The grounds of appeal are as follows:

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Signature	
**Capacity/Authority	
Date	

****Note:** If the notice is signed on behalf of the appellant, the signatory must state in what capacity or what authority he/she signs.

Once the form has been signed it should be sent to the appropriate Central Office where claims are first processed. The addresses of the Central Offices are:

Employment Tribunals Central Office (England and Wales)

PO Box 10218

Leicester

LE1 8EG

Or

Employment Tribunals Central Office (Scotland)

PO Box 27105

Glasgow

G2 9JR