No mercy for claimants who fail to submit Acas Early Conciliation certificate numbers when filing Employment Tribunal claims

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In the recent case of Pryce v Baxter Storey Ltd, the Employment Appeal Tribunal decided that it could not hear a claimant’s sex and race discrimination claims because she had not obtained an Acas Early Conciliation certificate before submitting her Employment Tribunal claim form.

What happened in this case?

On the day the employee was dismissed, she submitted race and sex discrimination claims to the Employment Tribunal, using the “ET1” form. She ticked the box on the ET1 form stating that she did not have an Acas Early Conciliation (**EC**) certificate number.

Later that day, the employee notified Acas of her claim. Acas told her that she would need an EC certificate and certificate number in order to proceed with the claim. The EC certificate was issued to the employee on 27 August 2019, and she emailed the Employment Tribunal to provide them with the Acas EC certificate number.

The claim was initially accepted by the Employment Tribunal, and the employer submitted a response form. However, during a preliminary hearing, the judge spotted that the EC certificate had been issued after the ET1 form had been submitted. He concluded the claim must be dismissed.

The employee appealed, arguing that the Employment Tribunal should have treated her email of 27 August 2019, enclosing the EC certificate, as a re-presentation of her claim.

What was decided?

The EAT rejected the employee's appeal. It noted that, as laid down by an Act of Parliament, certain specified proceedings cannot be submitted without an EC certificate (including race and sex discrimination claims). The Employment Tribunal should have rejected the claim as soon as it had been submitted without the EC certificate.

The email enclosing the EC certificate was not considered to be a sufficient re-presentation of the claim.

What does this decision mean for employers?

Employers should be vigilant to procedural errors from claimants in the early stages of litigation. You may be able to argue that a claim should not be heard on the grounds of such errors.

If the employee's three-month deadline for submitting a claim has passed at the date the error is discovered, the employee may be prevented from submitting a new claim altogether. However, there is still a chance that an Employment Tribunal might accept resubmission of the claim at a late date, on the grounds that it is just and equitable (i.e. fair) to do so.

Pryce v BaxterStorey Ltd

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss Acas early conciliation, or any issues relating to the content of this article, please contact employment lawyers Rebecca Rubin (rebeccarubin@bdbf.co.uk), Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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