

# General Guidelines for Preparation for Trial

Labour Tribunal

## Burden of proof

In most cases, the claimant bears the burden of proof. In cases of summary dismissal, the defendant bears the burden of proof. If the party on whom the burden rests fails to adduce sufficient evidence at the trial to discharge the burden of proof, his claim will most likely fail.

## The standard of proof required

The standard of proof in civil proceedings is “on a balance of probabilities”. This means you must prove your version of events is the more probable version. If your case involves any factual dispute, the presiding officer will only accept your version of events if he believes your version is more likely than not to be true.

## Forms of evidence

The presiding officer may receive any evidence he considers relevant to the case. The most common forms of evidence are witness statements and documentary exhibits (such as correspondences between the parties, wage slips, contracts, etc.). You must ensure that all evidence you wish to adduce is relevant to the case and relevant to the issues to be decided.

## How to adduce evidence

You should submit all documentary evidence together with your witness statement. You should ensure that any audio or video recording submitted is burned onto a disc and is saved in a format that can be played on the court’s computer. If audio recordings are submitted, you should ensure that a transcript of the conversation is attached. If you are unsure on how evidence should be submitted, you should contact the assigned tribunal officer.

## Your duty : to produce the originals of all relevant documents and exhibits at the trial

Sometimes the photocopy of the document submitted may be illegible and the presiding officer or the other party may want to see the original. To avoid any unnecessary adjournment caused by illegible copies of documents, you should bring the originals of all your documents to the trial hearing.

## General trial procedures

There are no formal trial procedures in the Labour Tribunal. The trial presiding officer will determine the appropriate and proper procedure to be adopted at the trial.

Generally, there are 3 parts to a trial: opening submissions; evidence from witnesses; closing submissions.

Usually, the claimant will give evidence first, followed by the claimant’s witnesses, then followed by the defendant or the representative of the defendant company and finally, the defendant’s witnesses.

## Examination of witnesses

Since the parties have a right to cross-examine the opponent's witnesses, you must arrange for your witnesses to testify at the trial.

The examination of witnesses will usually be done in three stages:

- Examination-in-Chief: The witness will give a full account of what he knows about the case. Normally this is done by the witness confirming the truth of his witness statement.
- Cross-examination: The witness will have to answer questions posed by the other party or by the presiding officer. If you do not agree to a witness' evidence, you must cross-examine on those disputed areas or point out the inconsistencies or discrepancies in that witness' evidence.
- Re-examination: The witness will be given an opportunity to clarify any ambiguity arising from the evidence that he has given during cross-examination.

## Your duty : to procure the attendance of your witnesses

You are required to ensure the witnesses you intend to call attend the trial hearing. If you fail to ensure the attendance of your witnesses at the trial, the presiding officer may refuse your application for adjournment. Alternatively, you may be liable for costs incurred by reason of any adjournment of the trial caused by your witness' absence.

## Your right : to apply for the issue of witness summons

You have a right to apply to the tribunal for the issue of witness summons to your proposed witnesses. If your application is granted, the bailiffs will endeavour to effect service of the witness summons on those persons. *Applications should be submitted to the tribunal as soon as possible and must be made not later than 21 days before the date of trial.*

## Your duty : to submit to the tribunal and the other party copies of all relevant witness statements, documentary evidence and exhibits before the trial hearing

In order to ensure the trial is dealt with in an efficient manner, you should ensure that all relevant documents (including witness statements) you intend to rely on at trial are submitted as early as possible. You should not purposely hide documents that may be prejudicial to your case but are crucial in resolving the issues.

The tribunal will give directions or orders on dates for submission of witness statements, documents and exhibits. You should also ensure that all deadlines given by the presiding officer are complied with. Any adjournments occasioned by a parties' failure to submit documents on time may have costs implications.

## Purpose, nature and format of witness statements

The main purpose of a witness statement is to set out all the relevant facts which the witness will testify to at the trial. You and your witnesses should observe the following when compiling your witness statements:

- Avoid making insulting and derogatory remarks against the other party
- Avoid adding your own speculation or opinion about the case
- Set out clearly the relationship between the witness and the claimant/defendant
- Narrate all the past incidents that are relevant to the case

- Narrate the incidents in chronological sequence
- Divide the contents into paragraphs
- Each paragraph should be numbered
- Narrate one incident only in one paragraph
- In narrating an incident, give details as to when and where it happened, who were involved, what was said and what was done etc. If documents are involved, copies of such documents should be attached to the witness statement as appendices and numbered
- If the contents of the witness statement are not derived from the personal observations of the witness, the source of information or belief of that witness should be explained
- A typed witness statement is preferable, though a handwritten one is also acceptable. Handwriting must be legible
- Documents/witness statements written in Chinese and/or English are both acceptable. If a document/witness statement is not written in Chinese and/or English, you should ensure that the document/witness statement is translated into Chinese or English. You must ensure the translation is correct. It is preferable that the document/witness statement is translated by a certified translator
- The witness should sign on the witness statement
- Set out the date of signing

## Final submissions

After the conclusion of all the witnesses' evidence, the presiding officer may invite parties to make final submissions. The purpose of closing submissions is to persuade the presiding officer that the evidence is in favour of your case. You may summarize the evidence and provide an analysis on why the evidence shows your version of events is the more credible version. You are entitled to comment on the evidence already received by the tribunal. You may also make submissions on points of law. However, the tribunal will not receive any new or further evidence during closing submissions.

## Settlement

The tribunal encourages parties to explore the possibility of settlement and will assist the parties in reaching settlement in cases where it is appropriate. However, any settlement must be voluntary. Parties may propose settlement any time before the presiding officer pronounces judgment.

## Conduct in court

You should always remember that the tribunal is a solemn place. Parties are expected to act in a civil manner when conducting the case. Unruly behaviour is strictly prohibited. If any party behaves in an insulting manner in the presence of the presiding officer, or uses a threatening or insulting expression towards, concerning, or in the presence of the presiding officer, the presiding officer has the power to summarily sentence the party to a fine at level 3 and to imprisonment for 6 months.