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## **How to assert employment claims?**

**If employment claims are asserted it is not always unambiguous prima facie as to which cases can be referred to employment tribunal and which ones to an ordinary court. It is useful for both employers and employees to be aware of which body is responsible for adjudicating a labour dispute and how the claim can be asserted.**

### **Labour disputes between employer and employee may result from various matters**

The enforceability of employment claims is a topic of outstanding importance in respect of which several aspects are worth highlighting. Firstly, it needs to be clarified as to what is considered as employment claim by legislation. Thereafter, we are going to inquire into the forums where these claims can be asserted. A separate analysis deals with the deadlines for the enforceability of employment claims and the methods of asserting such claims. Let us start at the beginning. The Labour Code states that employees and employers can enforce their claims arising from employment or the Labour Code, while trade unions and works councils may pursue their claims arising from the Labour Code, collective bargaining agreement or works council agreement, in court. By employment claim, we shall mean a claim arising from employment relationship, the Labour Code, collective bargaining agreement or works council agreement.

### **Cases where employment tribunals should proceed**

The category of employment claim and labour disputes differs from one another given that the latter one may also include several other elements. Labour disputes include lawsuits instituted in relation of the enforcement of employment claims [Subsection 285(1) of the Labour Code], arising from legal relationship of staff in posts governed by service regulations (government and public services, members in cooperative implying service and employment obligation) (hereinafter: employment relationship). But the list does not end here. In addition to the aforesaid, the law may also require the rules governing labour disputes to be applied to other cases. Moreover, claims based on the rights directly related to the employment relationship between employer and employee may also be asserted in labour disputes. It is important that the judicial review of the following decisions falls within the scope of jurisdiction of administrative courts and employment tribunals but already “qualify” as administrative



KOVÁCS RÉTI SZEGHEŐ  
ATTORNEYS AT LAW

lawsuit (Chapter XX of the Civil Procedure Code): any administrative decision passed within the framework of labour and occupational safety inspection, any decision passed in the subject matter related to the establishment of a sectoral dialogue committee, the participation and the rights exercised therein, any administrative decision passed by the Public Employment Service under Act on Job Assistance and Unemployment Benefits, as well as any social security decision.

### **Specific cases and exceptions**

As a general rule, employment claims are adjudicated by employment tribunals based on the statement of claim. There are exceptions though, and they will be mentioned separately. Labour disputes generally include in the broad sense the **litigations** between employers and employees **in relation of work performance** (termination of employment relationship, disciplinary action, order to pay damages etc.), and so the jurisdiction can also be established in respect of the parties of the **public sector** (BH2000.374.). However, it is particularly important to precisely identify the claim and its origin in order to determine the jurisdiction. Legal disputes between the university and the professors in connection with work performance falls within the jurisdiction of the employment tribunal, but for example a claim for material damages based on injury occurred in respect of the assessment by the university of scientific performance (**habilitation**) must be adjudicated by a court with general jurisdiction rather than an employment tribunal (BH2001.300.).

The employment tribunal proceeds in any disputes arising between an individual, required to perform **community services**, and the institution or economic organisation that employs him, arising from any rights and obligations in connection with liability for damages or work performance (MK71.).

In addition, any claim based on **negotiations prior to establishing employment relationship** can also be enforced through employment tribunal (BH2004.255). Please remember that the **requirement of equal treatment** also extends to the phase in advance of the employment relationship (e.g., job advertisement, recruitment procedure) under Section 21 of Act on the Equal Treatment and the Promotion of Equal Opportunities (Ebkvt.). In such cases, complaints may also be lodged with the Equal Treatment Authority or in court. The court is not authorised to establish the employment relationship but may order the payment of damages as compensation for an injury. It is impossible to do so within administrative proceedings.

Labour dispute may also arise from **violation of collective rights**, which will also be examined by the employment tribunal. In this context, it is worth emphasizing that the decision passed regarding the dispute arisen in connection with the election of the works council may also be appealed in court, and the employment tribunal will proceed in the legal



KOVÁCS RÉTI SZEGHEŐ  
ATTORNEYS AT LAW

dispute KGD.1993.273. Similarly, the employment tribunal will also decide in the subject matter of sufficient services (1/2013.IV.8.) KMK opinion).

There are cases when the employment tribunal proceeds but **applies the rules of civil law**. It is the case, for example, in legal disputes regarding the liability of the Managing Director of a Limited Liability Company (BH1993.492.). However, dividing lines cannot always be drawn precisely. In certain cases, employment tribunals are also allowed to adjudicate employment claims. It can take place when these claims are directly related to employment and no other proceedings are pending for their enforcement. It is the case for example in legal disputes arising from a loan borrowed from the employer arisen between the employee and the employer. Namely, the claim arising from a loan agreement may only be asserted before an employment tribunal if a labour dispute is pending (BH2004.1069.) and the claim is submitted within such dispute.

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