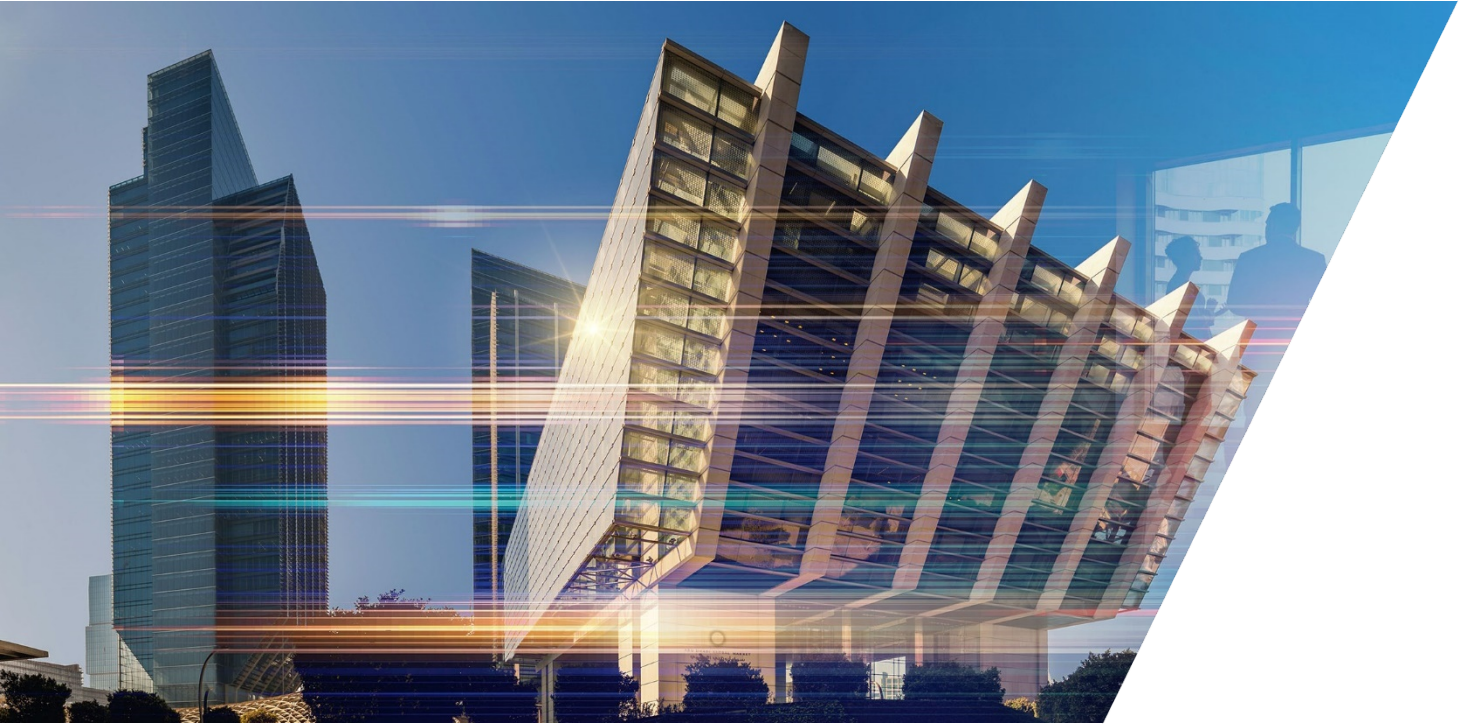




ADGM COURTS
محاكم سوق أبوظبي العالمي



ADGM COURTS
PRACTICE DIRECTION 4
EMPLOYMENT CLAIMS

**PRACTICE DIRECTION 4
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Table of Contents

A. MAKING A CLAIM [r.315]	3
<i>Requirements</i>	3
B. ANSWERING A CLAIM [r.317]	4
<i>Admission and request for time to pay [r.42, r.43 and r.319]</i>	5
<i>Response to request for time to pay [r.43]</i>	5
<i>Disputing jurisdiction [r.317]</i>	5
C. FILING A DEFENCE AND MAKING A COUNTERCLAIM [r.50 and r.317]	5
D. REPLY TO A DEFENCE [r.45]	6
E. DEFENCE TO ANY COUNTERCLAIM AND ANY SUBSEQUENT REPLY [r.45 and r.317]	6
<i>Application for default judgment [r.318]</i>	6
<i>Timetables</i>	7
<i>Order for specific disclosure [r.86]</i>	7
<i>Case Management [r.8]</i>	7
<i>Court-ordered mediation [r.306]</i>	8
<i>Experts [r.142(2)]</i>	8
<i>Conduct of the hearing [r.8, r.175]</i>	8
<i>Non-attendance of parties at hearing [r.174]</i>	8
<i>Interest [r.179]</i>	9
<i>Setting aside judgment and re-hearing [r.174(3)]</i>	9
<i>Remission or deferral of fees [r.10]</i>	10
F. APPLICATIONS	10
<i>Pre-claim applications [r.64(3)]</i>	10
<i>Post claim applications [r.64]</i>	11
<i>Without notice applications [r.64, r.65]</i>	11
<i>Hearing</i>	12
<i>Proceeding without a hearing</i>	12
<i>Particular Applications</i>	12

PRACTICE DIRECTION 4

EMPLOYMENT CLAIMS

Date re-issued: 1 September 2021

This Practice Direction is to be read with, and subject to, the ADGM Court Procedure Rules 2016 (“CPR”) and the Divisions and Jurisdiction (Court of First Instance) Rules 2015. Except as provided otherwise in this Practice Direction, terms have the meanings set out in the CPR and a reference to a Rule is a reference to the CPR.

APPLICATION

This Practice Direction must be read in conjunction with the following Practice Directions:

- **Practice Direction 1 – General**
- **Practice Direction 9 – Costs**
- **Practice Direction 10 – Offers to Settle**
- **Practice Direction 13 – Court-annexed Mediation**

To the extent to which the provisions of this Practice Direction differ from or are inconsistent with provisions of other Practice Directions, the provisions of this Practice Direction prevail in relation to all employment claims commenced in the Employment Division.

Part 38 of the CPR contains special provisions dealing with claims in the Employment Division

Unless the Court orders otherwise, the following provisions shall apply.

A. MAKING A CLAIM [r.315]

- 4.1. An “employment claim” is a claim or dispute:
- (a) brought pursuant to or in connection with the ADGM Employment Regulations 2019;
or
 - (b) relating to any other employment matter to which sub-paragraph (a) does not apply.
- 4.2. A claim form which commences proceedings in the Employment Division shall be in accordance with **Form CFI 3**.

Requirements

- 4.3. The claim form must:
- (a) state what final orders the claimant seeks;
 - (b) include particulars of the claimant’s case in numbered paragraphs within the form, which shall include:

- (i) particulars of the factual matters relevant to the claim;
 - (ii) any relevant calculations for the amount or amounts claimed; and
 - (iii) particulars of any sum sought by way of interest from a date earlier than the date of judgment;
- (c) include the details of, and attach, all documents which record any of the terms of employment between the claimant and the defendant, including letters of offer and acceptance of employment, contracts or agreements for employment and any variations to the terms during the period of employment and any other documents that the claimant seeks to rely on;
- (d) state the claimant's rate of remuneration prior to the commencement of the claim;
- (e) include the name and address for service of the defendant, together with any other available information. Where the defendant is a company, partnership or other entity the claimant shall state the defendant's registered office or any place of business of the defendant which has a real connection with the claim; and
- (f) where the claim form is to be served outside the jurisdiction, include the grounds on which the claimant is entitled to bring the claim against the defendant.
- 4.4. As a general rule, a claim form should not exceed 15 pages (excluding attachments). If the claim is of such complexity that it is necessary to exceed this page limit, the claimant must include an index of topics within the particulars of claim.
- 4.5. Rule 316 provides that the registry will serve the claim form on the defendant, unless otherwise directed by the Court.

B. ANSWERING A CLAIM [r.317]

- 4.6. For the avoidance of doubt, a defendant is not required to file an acknowledgment of service in relation to an employment claim.
- 4.7. Rule 317 provides that within 14 days after a defendant is served with a claim form, a defendant must file in accordance with the relevant practice direction:
- (a) an admission and any request for time to pay in accordance with Rules 42 and 43;
 - (b) an admission and any request for time to pay in accordance with Rules 42 and 43, and a defence, together with any counterclaim, if the defendant admits only part of the claim;
 - (c) a defence, together with any counterclaim, if the defendant disputes the whole of the claim; or
 - (d) an application to dispute the Court's jurisdiction to try the claim.

Admission and request for time to pay [r.42, r.43 and r.319]

- 4.8. The defendant may file and serve an admission, together with any request for time to pay, in accordance with **Form CFI 34** which must include:
- (a) whether the admission is for the whole or part of the claim;
 - (b) details of the timing (which shall not exceed 3 years), amounts and frequency of payments requested;
 - (c) reasons for the request for time to pay, and the reasonableness of the request; and
 - (d) information about the employment and financial circumstances of the defendant.
- 4.9. Unless otherwise directed by the Court, an order for time to pay shall be limited to 3 years from the date the first payment is due and payable.

Response to request for time to pay [r.43]

- 4.10. A claimant must respond to a defendant's request for time to pay in accordance with **Form CFI 45**.
- 4.11. If the claimant does not file a response within 14 days after an admission and request for time to pay is served on him, the claim will be stayed until he files a response.

Disputing jurisdiction [r.317]

- 4.12. An application to dispute the Court's jurisdiction to try the claim must be made by filing application notice in accordance with **Form CFI 12C**.
- 4.13. If a defendant makes an application to dispute the Courts' jurisdiction, he need not, before the hearing of the application, file a defence.

C. FILING A DEFENCE AND MAKING A COUNTERCLAIM [r.50 and r.317]

- 4.14. A defence must set out the defendant's answer to the particulars of the claim advanced by the claimant. A defence shall be in accordance with **Form CFI 8**.
- 4.15. A defendant who wishes to make a counterclaim must:
- (a) state what final orders the defendant seeks by counterclaim;
 - (b) include particulars of the counterclaim in numbered paragraphs within the form, which shall include:
 - (i) particulars of the factual matters relevant to the counterclaim;
 - (ii) any relevant calculations for the amount or amounts claimed; and
 - (iii) particulars of any sum sought by way of interest from a date earlier than the date of judgment

- 4.16. As a general rule, a counterclaim should not exceed 15 pages (excluding attachments). If the counterclaim is of such complexity that it is necessary to exceed this page limit, the claimant must include an index of topics within the particulars of claim.
- 4.17. A counterclaim shall be in accordance with **Form CFI 9**.
- 4.18. A copy of any document referred to in the defence or a counterclaim must be attached to the defence or the counterclaim unless that document has previously been uploaded to the eCourts Platform.

D. REPLY TO A DEFENCE [r.45]

- 4.19. The claimant may, if invited by the Court to do so, file a reply to a defence within 7 days after service of the defence and must set out the claimant's reply to the particulars of the defence.
- 4.20. A copy of any document referred to in the reply must be attached to the reply unless that document has previously been uploaded to the eCourts Platform.
- 4.21. A reply shall be in accordance with **Form CFI 10**.

E. DEFENCE TO ANY COUNTERCLAIM AND ANY SUBSEQUENT REPLY [r.45 and r.317]

- 4.22. A party who wishes to defend all or part of any counterclaim must file and serve a defence to counterclaim within 14 days after service of the counterclaim and must set out that party's answer to the particulars of counterclaim.
- 4.23. A copy of any document referred to in the defence to counterclaim must be attached to the defence unless that document has previously been uploaded to the eCourts Platform.
- 4.24. A defence to counterclaim shall be in accordance with **Form CFI 8**.
- 4.25. A party, if invited by the Court to do so, may file and serve a reply to a defence to counterclaim. Such reply shall be in accordance with **Form CFI 10** and must attach a copy of any document referred to in the reply unless that document has previously been uploaded to the eCourts Platform.

Application for default judgment [r.318]

- 4.26. An application for default judgment shall be in accordance with **Form CFI 12B** and must include:
 - (a) the order or orders that the applicant seeks from the Court; and
 - (b) the witness statement evidence that the applicant relies on in support of the application.
- 4.27. The application must contain sufficient detail of any claim for costs having regard to Practice Direction 9.
- 4.28. An application for default judgment may be made without notice.

- 4.29. A default judgment will be made available to the applicant through the eCourts Platform and will be served by the registry on all other parties to the proceeding.
- 4.30. A default judgment may include interest at the rate agreed between the parties or, if there is no agreed rate, at the rate of 5 per cent per annum from the date the money was due.

Timetables

- 4.31. If or when the Court sets a timetable for the taking of procedural steps in a case, the parties must comply with it.
- 4.32. If the parties agree that the timetable should be adjusted, the claimant (unless otherwise agreed by the parties) must file a written consent to the adjusted timetable using **Form CFI 22**.
- 4.33. If the parties cannot agree to make an adjustment which is sought by either party, and the adjustment sought will not affect or have a consequential impact on the dates fixed for a hearing or a trial, the party seeking the adjustment should file and serve a statement using **Form CFI 36** setting out its justification for the adjustment it seeks. The other party or parties shall file and serve any response using **Form CFI 36** within 4 days of receipt of such statement. The Court will ordinarily resolve that dispute on the papers.
- 4.34. If the parties cannot agree to make an adjustment which is sought by either party, and the adjustment as sought will affect or have a consequential impact on the dates fixed for a hearing or a trial, the party seeking the adjustment must make an application in accordance with **Form CFI 12C**.

Order for specific disclosure [r.86]

- 4.35. Where a party has good reason to believe that documents held by the other party would likely support their case or adversely affect the other party's case, they may seek an order from the Court for the specific disclosure of such documents, and the Court may make an order for specific disclosure of those documents if it is satisfied that disclosure is necessary in order to dispose fairly of the claim or to save costs. An application for specific disclosure must be made by application notice in accordance with **Form CFI 12C**.

Order for disclosure against non-party [r.88]

- 4.36. Any application made to the Court for disclosure by a person who is not a party to the proceedings must be made in accordance with paragraphs 2.98-2.103 of Practice Direction 2.

Case Management [r.8 and r.79(1)]

- 4.37. The Court will convene an initial case management conference within 14 days of the close of pleadings (which in normal course will be after the filing of a defence). Case management conferences will ordinarily be conducted by video or telephone conference as arranged by the Court.
- 4.38. At the initial case management conference, the parties' legal representatives (or any party appearing in person) should be in a position to inform the Court of the following:
- (a) whether the parties wish for the matter to be referred to court-annexed mediation;
 - (b) the issues likely to arise in the proceedings;

- (c) the number of witnesses, if any, and the provision of witness statements;
- (d) the directions which each party seeks in relation to the pre-hearing steps and any other relevant matters, including any agreement reached between the parties in regard to those directions; and
- (e) any other matter which the parties may wish to bring to the Court's attention to achieve the efficient management of the case to hearing.

4.39. At the initial case management conference, the Court may:

- (a) decide a timetable for the pre-hearing steps necessary to be taken; and
- (b) fix a hearing date or a provisional hearing date.

4.40. The Court may make any order, give any direction or take any step it considers appropriate for the purpose of managing the proceedings.

Court-ordered mediation [r.306]

4.41. The Court may, of its own initiative or upon the request of any party, make an order referring the dispute or any part of the dispute to court-annexed mediation, where in the opinion of the Court such order appears appropriate.

Experts [r.142(2)]

4.42. No expert may give evidence, whether written or oral, at a hearing without the permission of the Court.

Conduct of the hearing [r.8, r.175]

4.43. The Court may adopt any method of proceedings at a hearing that it considers to be fair.

4.44. The Court may decide the claim on the papers without a hearing:

- (a) if the parties agree as to the terms of any order or direction to be made or given by the Court;
- (b) if the parties agree that the Court should dispose of the claim without a hearing; or
- (c) where the Court considers that the claim can be fairly determined on the papers without an oral hearing and, in all of the circumstances, it would be appropriate to do so.

4.45. The Court may give permission to a party who is not a natural person to be represented by an employee or director who is not a lawyer, on being satisfied that the person is likely to be able to present the party's case efficiently and to assist the Court in reaching a just result in accordance with the overriding objective set out in Rule 2(2).

Non-attendance of parties at hearing [r.174]

4.46. If a party who does not attend a hearing:

- (a) has given written notice to the Court and the other party at least 7 days before the hearing date that the party will not attend; and

(b) has, in a written notice, requested the Court to decide the claim in that party's absence, the Court will take into account that party's statement of case and any other documents that party has filed and served when it decides the claim.

- 4.47. If a claimant neither attends the hearing nor gives notice under paragraph 4.46 of this Practice Direction, the Court may strike out the claim.
- 4.48. If a defendant neither attends the hearing nor gives notice under paragraph 4.46 of this Practice Direction, but the claimant either attends the hearing or gives notice under paragraph 4.44, the Court may strike out the defence or counterclaim or both and decide the claim on the basis of the evidence of the claimant alone.
- 4.49. If neither party attends or gives notice under paragraph 4.46 of this Practice Direction, the Court may strike out the claim and any defence and counterclaim.

Interest [r.179]

- 4.50. Where interest is payable on a judgment debt and there is no agreed rate, it shall be at the rate of 5 per cent per annum from the date that judgment is given until payment.
- 4.51. Subject to any ADGM enactment, where interest is payable on all of any part of a debt or damages in relation to a period prior to, or as at, the date of judgment and there is no agreed rate, it shall be at the rate of 5 per cent per annum.

Setting aside judgment¹ and re-hearing [r.174(3)]

- 4.52. A party who was not present at the hearing of the claim may apply for an order that a judgment be set aside and the claim re-heard.
- 4.53. A party who applies for an order that a judgment be set aside must file an application notice in accordance with **Form CFI 12C** not more than 7 days after the day on which notice of the judgment was served on him.
- 4.54. The Court may grant such application only if the applicant:
- (a) had a good reason for not attending the hearing; and
 - (b) has a real prospect of success at the hearing.
- 4.55. If a judgment is set aside:
- (a) the Court will fix a new hearing date for the claim;
 - (b) the hearing may take place immediately after the hearing of the application to set aside the judgment; or
 - (c) the Court may make directions in regard to a new hearing.

¹ A reference to "judgment" in this section means "judgment or order".

- 4.56. A party may not apply to set aside a judgment:
- (a) if the Court dealt with the claim without a hearing under paragraph 4.44 of this Practice Direction; or
 - (b) if a party provided written notice under paragraph 4.46 of this Practice Direction.

Remission or deferral of fees [r.10]

- 4.57. Where a party applies for full or part remission, or deferral of payment, of any court fees:
- (a) that party must set out in the relevant application form a statement of the grounds on which that party seeks full or part remission, or deferral of payment, of the court fees;
 - (b) a person appointed by the Registrar to decide on a party's application for remission or deferral of court fees shall decide without any hearing whether to grant that party's application;
 - (c) if a party wishes to dispute a decision on any such application, the party may apply to have the decision reviewed by the Registrar;
 - (d) the Registrar's decision on review shall be final and not subject to further administrative review; and
 - (e) ordinarily, an application for remission or deferral of court fees will not be granted post judgment at the enforcement stage.

F. APPLICATIONS

Pre-claim applications [r.64(3)]

- 4.58. An applicant who wishes to apply to the Court for an urgent interim remedy prior to a claim being filed must file an application notice in accordance with **Form CFI 12A**, supported by witness statement evidence in accordance with **Form CFI 15**.
- 4.59. The application notice must include or attach:
- (a) the order or orders that the applicant seeks from the Court;
 - (b) all witness statements that the applicant relies on in support of the application;
 - (c) an undertaking by the applicant to file a claim within 2 days of the issuing of the application notice by the Court; and
 - (d) a statement as to whether the applicant requests a without notice hearing of the application and the reasons for the request.
- 4.60. Where the application is to be made upon notice, the application notice and witness statement evidence must be served by the applicant on each respondent within 7 days after the filing of such documents, and thereafter the applicant must file a certificate of service in accordance

with **Form CFI 31** within a further 7 days. For the purpose of this paragraph, service is to be effected by the claimant in accordance with Part 4 of the CPR.

- 4.61. A respondent to an application notice must file a notice of appearance in accordance with **Form CFI 23** within 7 days of being served with the application notice, if the respondent wishes to raise any matter before the Court in response to the application or in relation to the order(s) sought by the applicant.

Post claim applications [r.64]

- 4.62. Unless specifically provided for in this practice direction, any application to the Court is to be made in accordance with **Form CFI 12C**.
- 4.63. The application notice must include:
- (a) the order or orders that the applicant seeks from the Court;
 - (b) the evidence that the applicant relies on in support of the application;
 - (c) a statement as to whether the applicant requests:
 - (i) a hearing or that the application can be determined without a hearing; and/or
 - (ii) an expedited hearing of the application or for the hearing to be without notice, and the reasons for the request.

Without notice applications [r.64, r.65]

- 4.64. Post claim applications made without notice are to be submitted on the eCourts Platform. It is the responsibility of the party submitting the application to select the without notice filing option on the eCourts Platform.
- 4.65. An application may be made without notice if this is permitted by a rule, a practice direction or otherwise is with the Court's permission. The Court's permission will be granted only where:
- (a) there is exceptional urgency;
 - (b) it is otherwise desirable to do so in the interests of justice; or
 - (c) there are good reasons for making the application without notice, for example, because the notice would or might defeat the object of the application.
- 4.66. Where the Court is asked to make an order on an application without notice, the applicant must bring to the Court's attention any matter which, if the respondent was represented, the respondent would wish the Court to be aware of. This includes any matters which might tend to undermine the application.
- 4.67. Where the Court makes an order on an application without notice, whether granting or dismissing an application, the Court may make such orders as it considers appropriate in relation to the service of the order and any other documents on every person against whom an order was sought or made.

Hearing

4.68. The Court may give such directions regarding the hearing of an application as it considers appropriate.

Proceeding without a hearing

4.69. The Court may deal with any application without a hearing:

- (a) if the parties agree as to the terms of the order or orders that the applicant seeks from the Court;
- (b) if the parties agree that the Court should dispose of the application without a hearing; or
- (c) where the Court considers that the application can be fairly determined on the papers without an oral hearing and, in all of the circumstances, it would be appropriate to do so.

Particular Applications

4.70. Subject to paragraph 4.62, an application:

- (a) for further information is to be dealt with in accordance with the applicable provisions in Practice Direction 7;
- (b) for security for costs is to be dealt with in accordance with the applicable provisions in of Practice Direction 7;
- (c) to set aside a notice of discontinuance is to be dealt with in accordance with the applicable provisions in Practice Direction 7; and
- (d) for a freezing injunction, or to vary or discharge a freezing injunction, is to be dealt with in accordance with the applicable provisions in Practice Direction 7.

4.71. A claimant may apply for summary judgment following the filing of a defence in accordance with **Form CFI 12C**.