

Problem resolution

Under the Employment Relations Act 2000 (ERA)

The Employment Relations Act 2000 (ERA) aims to provide information and mediation services as the primary means of resolving problems that you cannot resolve with your employee or employees, in a speedy, informal and flexible way. As part of this, employers are required to have a plain language explanation of the services available for the resolution of employment relationship problems, including reference to a 90-day period for raising a personal grievance. Such an explanation should be written into all individual and collective agreements, and non-compliance can result in penalties and/or an employee could raise a personal grievance outside of the 90-day period.

An employment relationship problem includes a personal grievance, a dispute about the interpretation, application or operation of any employment agreement, and any other problem relating to or arising out of an employment relationship, but does not include any problem with fixing new terms and conditions of employment.

The following is a sample of a plain language explanation of services available for problem resolution which members can adopt and write into any employment agreement. In addition, to ensure employers are complying with the Act the NZMA recommends that this or a similar version be distributed to existing employees so that they are aware of their rights in this regard.

If required employers can also develop further internal processes within their business which employees and employers would be required to follow where an employment problem arises.

Sample clause

1. The employer and employee can save time and help preserve their working relationship by solving their own problems as far as possible.

The following are suggestions for what the employee might do if they think there is a problem, and what help is available.

1.1 Clarify the problem

- (a) The employee should make sure there really is a problem by checking facts and ensuring nothing has been assumed or misunderstood. The employee might discuss the apparent problem with family, friends or advisers and find out what the laws and/or what this employment agreement says.
- (b) The employee can:
 - Contact Employment Relations Infoline
 - call free 0800 800 863
 - visit the website at www.ers.dol.govt.nz

- Get pamphlets/fact sheets from Employment Relations Service offices.
- Talk to a Union, a lawyer, community law office, industrial relations consultant, or other adviser.

1.2 Discussion with the Employer

The employee can arrange to discuss the facts with the employer to clear up any assumptions or misunderstandings, and try and find a solution. The employee may bring a friend, relative, or colleague to support them in the discussion at any time.

1.3 What are the Next Steps?

If the problem cannot be solved by discussion, either the employee or the employer can do some or all of the following things:

- (a) Contact Employment Relations Infoline, who may provide information and/or refer both parties to mediation;
- (b) participate in mediation provided by the Employment Relations Service (or the employer and employee can agree to use their own private mediator);
- (c) if there is agreement, a mediator provided by the Employment Relations Service can sign the agreed settlement, and that will be binding. Otherwise both parties can choose to have the mediator provided by the Employment Relations Service decide the matter, and if so, that decision will be binding;
- (d) if mediation does not resolve the problem, either or both parties can take the problem to the Employment Relations Authority for investigation;
- (e) the Employment Relations Authority may direct both parties to mediation or it can investigate and make a determination about the problem;
- (f) any party dissatisfied with the determination of the Authority, can take the problem to the Employment Court for a judicial hearing. (The Court may also tell both parties to go back and have more mediation).

1.4 Personal Grievances

- (a) If the employee considers that there are grounds for raising a personal grievance (for unjustified dismissal, unjustifiable disadvantage, discrimination, duress, sexual or racial harassment), the employee must notify the employer within 90 days of the action occurring or coming to the employee's notice, otherwise the claim may be out of time.
- (b) The employee must let the employer know what the grievance is about, by either telling the employer, or putting the grievance in writing, so the employer can respond to the claim.

- (c) If the grievance is raised out of time, the employer may reject it, in which case the employee can ask the Employment Relations Authority to allow the grievance to be raised out of time but only if there are exceptional circumstances.

Need more help?

Contact the NZMA:

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