



# Employer Guide: Personal Grievances

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**An employment relationship is built on trust and confidence. When an employer undermines this trust and confidence through lack of action or ineffective action, employees are entitled to legal relief. This guide addresses how an employer should respond when an employee has raised a personal grievance claim with them.**

Under s103 of the Employment Relations Act 2000, an employee can raise a personal grievance with their employer if they were:

- unjustifiably dismissed – this includes unreasonable or disingenuous redundancies;
- unjustifiably disadvantaged during their employment through an unreasonable action by their employer;
- discriminated against;
- bullied;
- sexually harassed;
- treated adversely on the basis that they were or were suspected to be a person affected by family violence;
- racially harassed;
- subject to duress in relation to membership or non-membership of a union or employee organisation;
- constructively dismissed; and
- not kept safe in their employment in terms of the Health and Safety at Work Act 2015.

An employee must raise the personal grievance with their employer within 90 days of the grievance arising or coming to the employee’s attention.

A grievance is considered to be raised once the employee has taken reasonable steps to make their employer aware that they are alleging a personal grievance.

The goal of any process responding to personal grievances is to resolve disputes quickly. A timely resolution of disputes is usually financially beneficial for business.

01

**Consider getting advice early**

Once a personal grievance has been raised, employers should consider hiring an employment lawyer to assist them in responding to it. An employment lawyer can assist in developing a good strategy early, which can prove more cost-effective for businesses.

If a lawyer is hired at a later stage, and the employer has made procedural errors, it will be more costly for the employer as the lawyer will have to fix mistakes made in the process while considering how to defend the employer’s decisions.

## 02

### Write a preliminary response

If the employee has raised a personal grievance – either verbally, by email or by letter – responding to it should be the employer’s priority.

The employer must consider what the employee has said and reply with a professional email detailing how they intend to manage the employee’s grievance. This email should include a projected timeframe of when the employee can expect a letter that substantively responds to the grievance raised.

If the employee has not given the employer sufficient detail to substantively respond to them, the employer can use this opportunity to ask for more detail.

Where appropriate, if the employee has not suggested a meeting, the employer should suggest a meeting time after the employee has received the employer’s letter.

The employer should be sure to give the employee sufficient time to read through the letter and inform them they can bring a support person with them to the suggested meeting time.

## 03

### Write a letter that substantively responds to the grievance raised

In responding to the employee’s grievance, the employer must ensure they have a firm grip on the facts. Where necessary, they may need to ask the employee for more information.

If the employee is wrong, the employer should gently correct them and provide clear evidence showing why they are wrong.

The tone of your response is important – It is important that the employee feels heard by the employer, even if they are wrong in some of their allegations.

If the employee is right, the employer should seriously consider seeking legal advice. Where there is a risk that the employer has acted wrongfully, the process needs to be handled carefully. The right approach, initiated early, could save the business a lot of money.

## 04

### Hold a 'without prejudice' meeting

Without prejudice means that the meeting will be off the record. Once marked 'without prejudice', discussions that occur at the meeting cannot be admitted as evidence before the Employment Relations Authority, or any other court without the consent of both parties.

The purpose of having a meeting with the employee is to discuss the contents of a substantive letter and to hear the employee's response to that letter.

The employer should come to the meeting prepared with possible solutions going forward. It is also important that the employer attends the meeting with an open mind to what the employee suggests. The employer and employee will need to work together to come up with a solution that benefits both parties.

## 05

### Mediation

If it is not possible to resolve the matter between the employer and employee, mediation is appropriate.

Mediation is a voluntary meeting between parties to a dispute. Parties are brought together to exchange positions concerning the issues and come to an agreement.

#### **To prepare for mediation, as with the informal meeting, the employer should:**

- Know the facts of the dispute.
- Know what outcome they are seeking from mediation. This should be tempered with attending mediation with an open mind, ready to work with any offer the employee makes.
- Bring in an employment lawyer to negotiate on the employer's behalf. Lawyers can be helpful to have at mediation as they have your best interests in mind and can help to steer the conversation when it goes off course.

The outcome of a successful mediation is an agreement, which will result in a record of resolution being drawn up. Once signed by the parties, the agreement is legally binding for both parties.

## 06

### Make or respond to an offer of settlement

At any stage in the process, either party can make a 'without prejudice' offer of settlement, which, if accepted, would bring an end to the grievance claim.

This option can be utilised before mediation where there is a reasonable chance of success. The option can also be utilised after a failed mediation.

As with the 'without prejudice' meeting, a 'without prejudice' offer will be off the record, meaning the offer cannot be admitted as evidence before the Employment Relations Authority, or any other court without the consent of both parties.

**An offer can include both financial and non-financial components.**

**Non-financial components could include:**

- Providing the employee with a written reference and promising that, if approached by the employee's possible future employer, the employer will answer the future employer's questions in terms consistent with the reference provided.
- A promise that both parties will not disparage the other.

It is imperative that employers know what they are signing. Employment lawyers can assist at this step to advise either party of the complexity around certain clauses, such as non-disparagement.

## 07

### Employment Relations Authority

If mediation is not successful, the matter will go to the Employment Relations Authority to be resolved. The Authority will make a determination by looking to the facts of the case and taking into account the test as set by section 103A(2) of the Employment Relations Act:

**"Whether the employer's actions and how the employer acted were what a fair and reasonable employer would have done in all the circumstances at the time a dismissal or action occurred."**

## Employment Relations Authority, cont.

**At this stage, it is helpful to appoint an experienced employment lawyer to help the employer navigate the Authority. A lawyer can:**

- Identify legal issues to be addressed by the Authority;
- Advise which remedies the employer could seek, and the likelihood of their success;
- Communicate on behalf of the employer to the employee's lawyer and the Authority; and
- Advocate for the employer during the investigative meeting (investigative meetings are not as formal as Court hearings).

Following the investigative meeting, the Authority can award a number of remedies including:

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### **a. Interim reinstatement**

An interim reinstatement may be awarded while the Authority investigates whether the dismissal was justified; this allows employees to return to work on a temporary basis while the Authority deliberates.

### **b. Reinstatement**

Reinstatement may be awarded where the Authority finds that an employee was unjustifiably dismissed; this allows the employee to return to work.

### **c. Reimbursement**

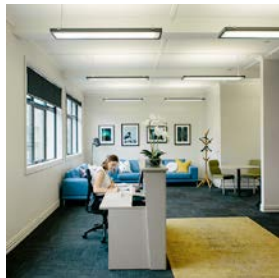
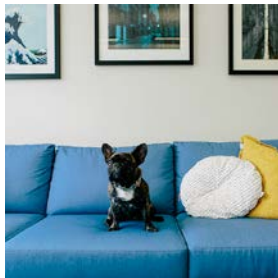
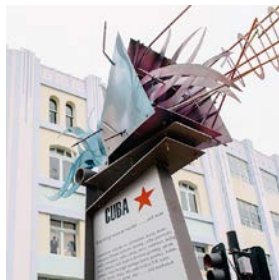
If the Authority finds that an unjustified dismissal has occurred or that the employee has been subject to other unjustified action by their employer, the employee may be able to get reimbursement for wages lost until they are reinstated or find another job.

### **d. Compensation**

Where the personal grievance has caused hurt and humiliation, the Authority may award compensation to be paid to an employee.

## Learn from your mistakes

If employers have made mistakes throughout the process, learn from them. Take this opportunity to review and update workplace processes and policies to ensure that there are less personal grievance claims in the future.



## About Us

Bell & Co is a boutique dispute resolution firm. We've led extensive restructures for clients and acted on behalf of disadvantaged employees.

This guide is not a replacement for good advice. At Bell & Co, we can offer advice from both a human resource and legal point of view.

If you have further concerns or questions, regarding requesting flexible working, please don't hesitate to get in contact with Bell and Co at 04 499 4014.





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