

Redundancy continued from page 3.

Your employer is also required to have a genuine need for the redundancy. They cannot simply use redundancy as an excuse to get rid of an employee that they no longer want working for them. Should an employer fail on either of these two points, then you will most likely have a genuine cause to raise a personal grievance.

### Constructive Dismissal

There is an urban myth floating around many work places that if an employee does not like their job or their working conditions they can simply resign and claim a constructive dismissal personal grievance against their employer.

This is simply not true. The Employment Relations Act 2000 is mostly written in such a way that the onus is on the employer to disprove the allegations of the employee. This changes with constructive dismissal as the onus of proof is on the employee to prove that they have been constructively dismissed. Most cases for constructive dismissal fail because the burden of proof is very high. It is usually only successful in situations where the employer has stopped paying the employee or say if the employer forces major changes to the employee's working terms and conditions without the agreement of the employee.



### Help! What Can I Do Right Now?

If you fear for your personal safety or wellbeing at work then get yourself out of there straight away. Once you are in a safe place call me for help.



Never resign in the heat of the moment. Should you resign, you lose most of your compensation rights as an employee and you make it much harder for your advocate to help you. If the situation is really stressing you, then it is best to go home sick, after telling your manager that's what you are doing. Go and see your doctor for a medical certificate and phone someone who can help you with your employment situation.

Keep an accurate diary of all the events that have happened. Start a file and write down the time, day and date, where you were, who you were with and who said or did what to whom. If at all possible, take home printouts of all communications regarding your issue.

Contact our employment advocate on **0800 435 763** who will talk to you, **free of charge**, to get specific advice on how to best handle your particular set of circumstances. Check with them at the beginning of the call that you will not be charged anything for that call. They should be able to give you sound advice over the phone and they may possibly send you an action plan by email.

Please don't hesitate to call us if you require other employment law advice that is not covered here.

Disclaimer: All information in this brochure is to the best of the authors' knowledge true and accurate. No liability is assumed by the authors, or publishers for any losses suffered by any person relying directly or indirectly upon this information. It is recommended that you should consult your employment representative before acting upon any of this information.

# FREE EMPLOYMENT LAW ADVICE

Information for  
Employees and workers  
who have problems  
with their work

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For a **free** consultation phone

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Danny Gelb Employment Law Advocacy

**Employment  
Law Advocacy**  
**0800 HELP ME**

# Employment Dispute?



## What are my Employment Rights?

New Zealand employment rights and obligations are primarily controlled by the Employment Relations Act 2000. This Act of Parliament states what your rights are as an employee. The essence of this law is that your employer must treat you in a fair and just way in handling all aspects of your employment, and that they must act in good faith at all times. Should they not treat you in a fair or just manner, or should they act in a way that either disadvantages you or leads to the termination of your employment, then you may be justified in raising a personal grievance matter against your employer in an attempt to correct any wrongdoing on their part. You may also be able to claim and receive compensation for the action that you perceive to have been unjust, unfair or wrong.

As an employee, you must also act in good faith in handling all matters of employment with your employer. Should an employer be able to establish that you have not acted in good faith and that you have contributed, in a negative way, to the situation, any money the Employment Relations Authority may award you, in compensation for your personal grievance, may be reduced if it is considered that you have contributed to the situation.



## Personal Grievances

An employee may raise a personal grievance against their employer at any time within 90 days from the date of the incident that caused the employee to feel personally aggrieved. A grievance is raised by way of a letter being sent to your employer stating that you have a personal grievance, what has happened to cause you this personal grievance and what you want the employer to do to make this matter right. It is important that this letter be written correctly otherwise it may not be considered a valid personal grievance claim and by the time you realise this, the 90 days may have passed and it would then be too late to proceed with your claim. If you are unsure how to write the letter, you can contact us for free advice or we can help write the letter for you.



**Free Advice 0800 435 763**

## Disciplinary Meetings

Disciplinary meetings are called by employers if they have an alleged item of misconduct or a performance issue that they want to investigate or discuss with you. For this meeting to be fair on you, your employer must give you written notice of the meeting, stating at a minimum:

1. This is a disciplinary meeting.
2. The time and date of the meeting.
3. The allegations they are accusing you of.
4. The possible outcomes of the meeting.
5. Advising you that you are entitled to bring a support person with you to the meeting.

You have the right to reschedule the meeting if your support person cannot make the time that your employer proposes. If your employer fails to include all of the above in the notice, then the meeting may be unfair and unjust on you and you may have grounds for a personal grievance.

The best type of support person to take to these meetings is someone who has knowledge of employment law. A friend or work colleague may give you comfort at these meetings. However, if they don't know employment law, they may not be able to advise you of your rights. Sometimes **we can attend these meetings as your support person free of charge** to you, subject to our availability. The typical outcomes of a disciplinary meeting include:-

1. No further action required.
2. A verbal warning.
3. A written warning.
4. Termination of your employment.

## Unjustified Termination or Warnings

Should you believe that the outcome of your disciplinary meeting is not justified and your employer is wrong in their decision, then you can challenge it by raising a personal grievance. Thought should be given before you raise a personal grievance because it may affect your long term employment relationship with your employer. We can talk you through the positives and negatives of raising a personal grievance.

## Redundancy

Redundancy is an unfortunate risk of employment that cannot be avoided. In reality, you have very little control over your company's situation and the need, or not, for redundancies. There is no legal requirement for an employer



to pay you anything extra for a redundancy. However, employers are required by law to go through a consulting process with you. This includes talking with you about the possibilities of redundancy and seeking your feedback before they make their final decision. Similar to the disciplinary meetings they must give you written notice of the meeting incorporating most of the same information as a notice for a disciplinary meeting.