

**EMPLOYMENT
NEW ZEALAND**

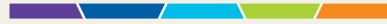
Quick guide to employment mediation



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

New Zealand Government

EMPLOYMENT NEW ZEALAND



Disclaimer: This document provides an overview of some of the minimum rights and responsibilities that apply by law to employers and employees, as at 1 April 2019. The Ministry of Business Innovation and Employment are not responsible for the results of any action taken on the basis of information in this document, or for any errors or omissions.

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Welcome, Nau mai, Afio mai, Huān ying guāng lín, Namaste

What to do if you have problems at work?

You tried talking to your boss, employee or colleague, but the problem is still there. You may have been unfairly dismissed or you felt you had to leave work, because of the level of stress these work problems were causing you. Or your staff may not be behaving as you expect.

You can get help from our free Employment New Zealand mediation service. This service is run by the Ministry of Business, Innovation and Employment (MBIE). Our mediators can assist employers and employees to find their own solution to employment relationship problems.

What is mediation?

Mediation is a **safe, voluntary** and **confidential** way where employers and employees can talk about their work problems with the help of an independent person (a mediator) and try to find their own solution.

What does a mediator do?

- › explain how the parties can safely talk about their issues
- › help parties understand each other's point of view and find a resolution they can both agree with
- › write up the agreed solution from mediation as a "Record of Settlement" (legal contract).

Who can apply for mediation?

Anyone involved in an employment problem, including migrants, students, people on temporary working visas, contractors and representatives.

How much does it cost?

Mediation is free.

How do I apply for mediation?

1. Check if the other person involved with the work problem (the other party) has agreed to go to Mediation.
2. If they agree, you can apply online at **www.employment.govt.nz/request-mediation**, or go to www.employment.govt.nz and search for 'Request Mediation' and complete the online form.
3. To make sure that we are able to meet your needs, please let us know if you have any cultural or disability requirements that we need to take into account when setting up the mediation.



4. Attach any supporting documentation to your application. This could include an employment contract, emails, your reasons for applying for mediation, and notes from any meetings you may have had.
5. After submitting the form, the mediation service team will contact you to set a date and time for mediation.
6. If the other party does not agree to attend mediation, you can apply to the Employment Relations Authority to resolve your issues. Visit www.era.govt.nz for more information.

What should I do before mediation?

Before the mediation day make sure that you:

- › have a short document with the summary of your case written down
- › have all important papers with you (e.g. employment agreements, time and wage records, letters and emails)
- › think about how you will talk about the issues and what else you want to say. Writing it down will help you to remember everything
- › have a clear understanding of what you believe the resolution should be.

You don't need to dress up for mediation, just come in your everyday clothes.

Who can be at the mediation meeting?

The people who can be at the mediation are the mediator and those that want to sort out an employment problem (the parties). This could be an employer and an employee, or could be two employees. Parties may bring an advocate, lawyer, union representative, whānau support and/or support person.

Is going to mediation like going to court?

No. Mediation is not like the court process. Mediation is like a meeting where the parties and the mediator talk about the issues and try to find a solution on how to resolve these issues.

Do I need a lawyer?

It is up to you if you would like to bring a representative. You can attend mediation by yourself. However, if the case is complicated, representatives, such as employment advocates, unions, employer organisations or employment lawyers can help you to present your case – such as getting the facts together, and what the law says about your rights and obligations.

Representatives could cost you money. Union representatives are normally free.

What happens on the day of mediation?

1. You will get a confirmation letter with the date, time and venue of your mediation. When you get there, you will be taken to a private room. The mediator will introduce themselves and make sure you are okay. They will speak to each party separately.
2. When you, the other party and the mediator are ready, it will be likely that everyone will meet in the same room (unless you choose not to do so). The mediator will start the mediation process. This will include giving each party their own time to speak about the issues from their point of view and tell how they would like to resolve the issue.
3. Once each party has spoken, they can have a conversation together, which will be facilitated by the mediator. The mediator will encourage both parties to think about how things might be resolved.
4. Part of this process might be that the mediator will talk to each party separately. These discussions are confidential between the mediator and each party involved.
5. The mediator will help each party to think about a fair solution, and what could happen if the issue is not resolved at mediation.
6. The mediator will give parties the opportunity to take breaks to think about what they have heard and what their options might be, or to talk privately with their representatives or support person.

Who does the talking?

You, the other party and the mediator will do the talking. Support people do not always speak during the combined sessions but can be helpful in private sessions. Representatives often speak on behalf of their clients but the most important contributions are from the parties themselves.

How long does mediation last?

Face to face mediation meetings usually take around three to four hours but some more complicated issues could take all day to resolve.

How do I get the most out of mediation?

Be prepared to:

- › listen to the other person's point of view and accept that this is their side of the story, even if you do not agree with what they say
- › explain your own side of the story
- › be honest and open about what has happened
- › put yourself in the other person's shoes and have an open mind about resolving the issue.

What happens after the mediation?

If there is an agreement

The mediator will write up what both parties agreed to as a Record of Settlement. Once it is signed by the parties and the mediator, this document becomes confidential, binding, final and enforceable through the courts.

The mediator will give you a copy of the document to take away with you. Both parties must then do what they agreed to do when they signed the document.

Can I tell other people about the mediation meeting or record of settlement?

No, you cannot discuss what was said during the mediation and what was agreed on the Record of Settlement with other people. Mediation is confidential.

If I change my mind later on

A Record of Settlement, signed by the mediator is final. You cannot go to court if you change your mind. Make sure that you really understand what you are agreeing to before you sign the agreement.

If one party breaks the agreement

If one party does not do what is in the Record of Settlement (e.g. does not make a payment or does not keep the outcome confidential), the other party may apply to the Employment Relations Authority or the Employment Court to make the other party do what they had agreed to do. You can also contact the mediator and ask them to talk to the other party about doing what has been agreed.

If the parties cannot agree on a solution

The parties may then:

- › ask the mediator to make a **recommendation**. If the recommendation is not declined by either party (before a specified time limit), it will become final, binding and enforceable, or
- › ask the mediator to make a **decision**. The decision will be final, binding, and enforceable
- › apply to the **ERA** (Employment Relations Authority) for a decision (called determination) on the issues. The ERA charges a fee for their service. To check the current fees and information on who can apply to the ERA go to **www.era.govt.nz/forms-and-fees**

NOTES:

1. If anything changes or you make an agreement with the other party, you **must** contact the Mediation Services team **immediately**.
2. If you have any questions visit **www.employment.govt.nz** or call our Service Centre on 0800 20 90 20 and we'll help you out.
3. You can also get information about your employment rights, the ERA and Employment Court by going to **www.employment.govt.nz**. We have resources on employment rights and responsibilities available in several languages.

