The personal grievance process

If the first steps of solving a problem don't fix the issue, in many instances an employee can raise a personal grievance. An employee can raise a personal grievance if they believe their employer has acted unfairly or unreasonably towards them. This is covered by the Employment Relations Act 2000.

Section 103 of the Employment Relations Act 2000 - New Zealand Legislation website

What is personal grievance

A personal grievance is a legal complaint that can be made in some situations. An employee can raise a complaint with their employer if they were:

- unjustifiably dismissed,
- unjustifiably ‘disadvantaged’ in their employment,
- discriminated against on one of the prohibited grounds,
- sexually or racially harassed, or
- subjected to duress due to membership or non-membership of a union or an employees’ organisation.

What is a personal grievance

Unjustifiable dismissal

Disadvantaged employees

A “disadvantaged” employee can include those who have:

- been given a warning, suspension, or demotion (reassignment to lower position) without good reason,
- had hours of work or pay changed without consultation,
- been underpaid,
- been misled by their employer,
- not had the opportunity to respond to allegations against them,
- not had a safe workplace, or
- not been informed about proposals which may affect their employment.

How to raise personal grievance

There are various ways in which an employee could raise a personal grievance.

Raise a personal grievance with your employer

Employees should first talk to their employer to resolve problems. Trying to resolve the problem informally first can help to keep the employment relationship positive.

Communicate in writing to the employer to tell them about personal grievance and request a meeting to resolve the issue.

The employee must clearly state what their complaint is and the reasons why they believe that they have a grievance. It is best practice to do this in a letter or email to make sure that everything that needs to be is included, to present your case.

The employee must give enough detail about the problem for the employer to respond to the issues.

The employee should keep a copy of their letter or email for reference. If the employee raises the grievance verbally, both the employer and employee should take notes of what was said in case there is a dispute later.

If an employee doesn’t raise the grievance clearly enough, or in enough detail, it may mean that they are unable to take legal action.

The parties could either try to resolve the issues between themselves or participate in a mediation process with a mediator. For example, they could use a mediator from the MBIE employment mediation service or a private mediator.

Request mediation for personal grievance

If you decide mediation could be helpful, you can use the free Employment Mediation Services provided by MBIE. You do not need a lawyer to go to mediation.

Mediation is where an independent person called a mediator helps an employee and an employer resolve an employment relationship problem in a semi-formal and confidential environment.

If you want to go to mediation but you're not comfortable talking to your employer first (or anyone else in your organisation) because of the type of behaviour (bullying, discrimination or harassment) or person you're complaining about, you'll be able to apply directly for mediation.

Make a personal grievance claim with the Employment Relations Authority (ERA)

The ERA is an independent organisation that sits below the Employment Court. The ERA’s process is more formal than mediation but less formal than the Employment Court.

The ERA helps to resolve employment relationship problems by looking into the facts and making a decision based on the merits of the case, not on
An employee can make a personal grievance claim with the ERA if they believe their employer has acted in an unfair or unreasonable manner without having to discuss it with their employer or going to mediation.

If you haven't tried using mediation to solve your problem, the ERA may suggest you try mediation. Even if you have tried mediation, the ERA may suggest trying mediation again, if they feel it might solve the problem.

To make a claim, follow the steps on the ERA website.

**Time limit for raising a personal grievance**

A personal grievance must be raised with the employer within 90 days (except those for sexual harassment) of when the personal grievance arose or came to the employee's attention, whichever is the later.

For example, if any employee is fired they have 90 days from the end of their employment to raise their grievance for unjustified dismissal.

For sexual harassment claims, the period for raising a personal grievance is extended from 90 days to 12 months from 13 June 2023. This means employees have 12 months to raise a grievance about sexual harassment they have experienced in their employment from the moment it happened, or the date they became aware of it, whichever is later.

The 12-month timeframe applies from 13 June 2023 and is not retrospective. This means it applies only if the alleged sexual harassment happened on or after that day. If it happened before, then the former 90-day rule applies.

**Raising a grievance after the end of notice period**

An employee may raise a personal grievance after the notice period if the employer agrees.

If the employer doesn't agree, the employee can ask the ERA if they can raise a personal grievance. An employee can only do this if they prove the delay was due to exceptional circumstances.

Exceptional circumstance examples can include:

- the employee's representative failing to raise the grievance in time
- the employee being unable to raise a grievance due to health issues caused by the problem
- the employment agreement not explaining services available for resolving problems, or stating the 90-day notice period
- if the employer failed to provide a reason for a dismissal when asked to

**Starting proceedings after raising a personal grievance**

Employees have three years to begin proceedings in the ERA after it was first raised with the employer.

After the three-year period has passed, an employee needs permission from the ERA, and this is very rarely granted.

**Taking a personal grievance in a triangular employment situation**

Employees in a triangular employment situation are employees of one employer, but perform work for another business or organisation (the third party) eg labour-for-hire, “temp” assignment, or through a secondment.

Employees can bring a personal grievance claim against their employer (the agency) and, if relevant, the third party (controlling third party) they work for. The third party must direct or control their day-to-day work.

The third party (controlling third party) can be added to a personal grievance claim in cases where their behaviour or actions contributed to the problem. This may include actions and behaviours like bullying, harassment or discrimination. In this situation, the employer (the agency) and the third party could both potentially be responsible for providing remedies (compensation) to the employee.

Employees in a triangular employment situation can apply to the Employment Relations Authority (ERA) to add the controlling party to their personal grievance claim, and for remedies to be divided among the responsible parties (the agency and the controlling third party).

Employees (the agency) can also apply to the ERA to add the controlling party to a personal grievance claim, and for compensation to be divided up to the responsible parties (the agency and the controlling third party).

**Tools and Resources**

**Raising a personal grievance sample letter**  -  [DOCX 19KB]

Use this example to help raise a personal grievance with an employer.