

MANAGING PERSONAL GRIEVANCES

MANAGING PERSONAL GRIEVANCES UNDER THE EMPLOYMENT RELATIONS ACT

INTRODUCTION

The personal grievance jurisdiction is much the same as under the Employment Contracts Act 1991, but there are a few changes which are of importance to note. Part 9 of the Employment Relations Act deals with personal grievances.

SOME MAJOR CHANGES TO PERSONAL GRIEVANCE PROVISIONS IN THE EMPLOYMENT RELATIONS ACT

- Overall obligation of 'good faith'.
- Abolition of Employment Tribunal's role in mediation and abolition of adjudication function.
- Establishment of mediation service provided by Labour Department.
- Establishment of Employment Relations Authority, an investigative body which investigates and determines personal grievance claims.
- Emphasis on mediation throughout process.
- Removal of common law procedure for dealing with unlawful termination.
- Reinstatement primary remedy.
- Inclusion of further personal grievance ground – racial harassment.
- Bringing sexual harassment definition into line with definition in Human Rights Act.
- Inclusion of "indirect" discrimination to bring law into line with Human Rights Act, i.e. the actions have a discriminatory effect.
- New personal grievance resolution procedure.

The combined effect of changes to the personal grievance jurisdiction is that the process has become more streamlined and less "technical".

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The changes, e.g. good faith, inclusion of “indirect” discrimination, emphasis on mediation all in my view place an onus on employers to be proactive with their employment relationships.

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My view has long been that by carefully managing the employment relationship from start to finish is the best preventative measure in managing personal grievance claims. If you do not then you may end up reinstating an undesirable employee.

RECRUITMENT

Determine what kind of position you have available and then select the most suitable person (e.g. casual, part-time, fixed term, permanent).

INTERVIEW AND SELECTION

Be clear with employee about your expectations for the position.

A transparent fair process is important – Human Rights Act.

Check referees.

PRE-EMPLOYMENT LETTER AND AGREEMENT

S65 of Employment Relations Act sets out basic requirements of any individual employment agreement – comply.

NB. Must contain a plain language explanation for resolving personal grievances.

AGREEMENT

Employment Relations Act and amendments requires employer to:

- Provide prospective employee with a copy of the intended agreement which complies with s65(2).
- Advise employee that he/she is entitled to seek independent advice about the intended agreement.
- Give the employee a reasonable opportunity to seek that advice.
- If the employee raises issues to employer is to respond

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- Suggest sending a pre-employment letter to employee which they sign to ensure the Act is shown to have been complied with.

MONITOR PERFORMANCE

- Ensure person monitoring performance is aware of the law and its requirements.
- Once you have hired "suitable employee", monitor performance.
- Training assistance.
- Warnings.
- Performance Reviews.

PROCEDURAL FAIRNESS/NATURAL JUSTICE

Throughout the process always be aware that there are 2 sides to every story and the employee has a right to be heard and to have their explanation considered fairly.

POLICIES AND PROCEDURES

If you have policies and procedures for managing performance, follow them.

THE PROCESS

If you are at the point of termination of the employment relationship, seek advice.

Overriding question: what would a fair and reasonable employer do?

THE PERSONAL GRIEVANCE PROCESS

Every employment agreement must contain a procedure for resolving personal grievances.

MEDIATION

If you do find yourself with a personal grievance, the first port of call will be with mediation services provided by the Labour Department.

EMPLOYMENT RELATIONS AUTHORITY

If mediation does not resolve the grievance then the Employment Relations Authority will investigate and make a determination.

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EMPLOYMENT COURT

Will determine 'challenges' to decisions made by the Employment Relations Authority.

EMPLOYER'S RIGHTS

- Claim/counterclaim for breach of contract, e.g. breaches of restraint of trade, confidentiality and notice provisions.
- Breach of good faith provisions.

For more information, contact LawWorks at the below address.