

Going to the Employment Relations Authority

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**Employment
Relations
Authority**

About the Employment Relations Authority

The Employment Relations Authority helps to resolve employment relationship problems. It does this by looking into the facts and making a decision based on the merits of the case, not on technicalities. It is an independent body set up under the Employment Relations Act 2000.

If you are an employee in a dispute with your boss, a union, or an employer or manager having trouble with staff, the Authority is there to help you.

This booklet explains how the Authority works and what you need to do if you need its help.

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How the Employment Relations Authority can help

Employment relationship problems are not just confined to the problems an employee may have with an employer, like unjustified dismissal or unpaid wages. They can also involve problems that an employer may have with an employee such as failure to meet the terms of an employment agreement.

There are steps that need to be taken before you can bring a case to the Employment Relations Authority.

First, the employer and employee should try to resolve the problem together. The Department of Labour provides information on employment matters and can clarify your employment rights and obligations.

If that fails, you can try mediation. This is where a mediator, who is neutral, sits down with the parties and tries to help them resolve the issue. The Department of Labour has a free mediation service.

To get information on employment matters or access mediation visit the Department of Labour's website at www.dol.govt.nz or call free on **0800 20 90 20**.

■ How the Authority works

The Authority operates in a mostly informal way. It looks into the facts of a case and makes decisions based on the merits of the matter, not on technicalities.

When you lodge a problem with the Authority, they will seek a response from the other party and arrange a timetable for the Authority's investigation. A case management conference will be set up to identify what the issues are. This is usually done by phone. The Authority may also ask for more information.

An investigation meeting is then held with all of the parties and a member of the Authority. This is where the issues get discussed and investigated. Witnesses usually attend the meeting to answer questions. Members of the public may attend unless excluded by an Authority member.

A member of the Employment Relations Authority will investigate your case. Members

are independent. You cannot talk directly with an Authority member. Members will only speak to parties if both sides are present, such as at the case management conference or investigation meeting.

After this meeting the Employment Relations Authority member who presides over the investigation will consider the evidence and issue a decision in writing, called a determination. The determination is legally binding.

At any stage in the process the parties can ask the Authority to make a recommendation on how the problem might be resolved. This request must be in writing. If accepted by the parties the recommendation becomes final and binding.

Using a representative

You can be represented in the Employment Relations Authority by any person or organisation you choose. A representative may help by:

- › giving advice on your employment problem
- › helping you prepare for an investigation in the Employment Relations Authority
- › representing you in meetings with the Authority member.

You can be represented by:

- › a union
- › an employers' association
- › a lawyer, either through a law firm or a community law office
- › an employment relations advocate
- › a family member
- › a friend.

The Authority member will run the process so that no one is disadvantaged if they choose not to have a representative.

How long it takes

It can take a few weeks or a few months for an application to be processed, heard, and determined by a member. The length of the process will depend on things such as urgency of the application, whether parties have tried to resolve their problem at mediation, the availability of parties, representatives and the complexity of the case.

Steps in the Authority process

The main steps in bringing a problem to the Employment Relations Authority are:

1. Lodging an Application
2. Getting the issues straight
3. The investigation meeting
4. Deliberation and determination.

■ Lodging an Application

To begin your case you first have to lodge a *Statement of Problem* using the *Application to Employment Relations Authority form*. You can get this from the Authority website www.era.govt.nz or you can phone the Department of Labour on **0800 20 90 20** during normal business hours.

You will need to supply the following information in your application:

1. Say who you are having the problem with (“the respondent”)
2. Explain in plain language what the problem is
3. State the facts that gave rise to the problem
4. Say how you would like the problem resolved
5. Attach copies of any documents that relate to the problem
6. Explain the steps that you have taken to try and resolve the matter, either directly with the other party, or through mediation.

If you have been dismissed from your job and want to return to that work (to be reinstated) while the Authority investigates, include an *Application for Interim Reinstatement form* with your application.

You can then lodge your application by sending or delivering two completed copies of it to the Authority office nearest to you. You must enclose the \$71.56 lodgement fee and copies of supporting documents with the application.

Supporting documents may include:

- › employment agreements
- › payslips
- › all correspondence between parties, eg: letter, fax or email
- › meeting notes.

An Authority support officer will send you a letter acknowledging receipt of your application. The support officer will be your point of contact

throughout the investigation. They cannot provide legal advice or decide if you have a case worth taking further.

The Authority will not proceed with your application if you have not paid the lodgement fee. This can be done by cheque, direct credit, or by paying cash at the nearest Authority office. Please note that EFTPOS is not available in Authority offices and cash should not be sent through the post.

If you pay by direct credit, please supply the bank deposit slip as proof of payment with your application. Your nearest Authority office can supply bank account details.

Statement in Reply

If you are named as the respondent in an application, the Authority will send you a copy of the application, which includes the *Statement of Problem* and a *Statement in Reply form*. You have 14 days to provide a *Statement in Reply*. There is no fee. The Authority may shorten the time for lodging a *Statement in Reply* in appropriate cases.

The *Statement in Reply* should include:

- › your view of the problem, in plain language
- › your version of the facts
- › details of any steps already taken to resolve the problem, like mediation.

If the respondent does not file a *Statement in Reply*, the *Statement of Problem* will be referred to an Authority member who will decide if the matter should be directed to mediation, proceed to a case management conference, or be set down for an investigation meeting.

Should the respondent decide to provide a *Statement in Reply* later, they must apply in writing to do this from the Authority.

■ Getting the issues straight

Before any formal investigation meeting, the Authority will need to sort through the issues. The Authority may:

- › ask either party to clarify any points made in their statements
- › call for more evidence from the parties or anyone else
- › hold a case management conference.

Case management conference

The case management conference is usually done by phone and is brief and informal. It involves both parties, or their representatives, and the Authority member.

The purpose of the case management conference is to:

- › ensure the issues to be investigated are clear
- › consider whether other methods of resolving the problem would be helpful, such as mediation, going directly to the employment court, making a recommendation, or dismissing the matter.
- › set a timetable for other steps that need to be taken before the investigation meeting. For example, supplying further documents, making submissions, exchanging witness statements
- › provide details of people to give evidence
- › outline the procedure for the investigation meeting
- › agree a date, place and time for the investigation meeting.

Translators are available and assistance for people with disabilities can be provided. Please discuss your needs with your support officer well ahead of the conference date.

Sorting problems through mediation

Trying mediation before making an application to the Authority means that your case will be heard more quickly.

The Authority may, at any time, refer the parties to mediation. If you have already been to mediation, you cannot talk about the content or the outcome of the mediation with the Authority member.

However, if the Authority member considers that mediation will still be helpful in resolving the problem they may direct the parties to try mediation again.

The Department of Labour offers a free mediation service.

■ The investigation meeting

Investigation meetings are not as formal as a Court hearing. They are usually held in the Employment Relations Authority offices in Auckland, Wellington or Christchurch but members may also travel to other cities or towns if necessary.

You can bring friends, whanau or supporters. You can present your own case or have a representative

do it for you. The Authority member will run the meeting so that no one is disadvantaged if they do not have a representative.

At the start of the meeting, the Authority member will make introductions and outline how the meeting will proceed and determine the order in which people will speak.

The Authority member will, then, ask questions of both parties, about the facts they provided in the *Statement of Problem* and *Statement in Reply*.

Giving information and presenting evidence

You may be asked to give information or present evidence at the investigation meeting. The Authority member may ask you to provide this verbally or to prepare a written statement beforehand. You will usually be asked to swear that the information or evidence you provide is the truth.

You or your representative may ask the Authority to make more inquiries about the evidence or anything else relevant to the investigation. The Authority will consider these proposals and respond as it thinks best.

Witness statements

Every person who provides a witness statement is required to attend the investigation meeting. If a witness cannot attend the investigation meeting, the Authority member will decide how they will hear that evidence, such as by phone or video link.

To make the facts clear and check that the information given is correct, the Authority member will usually ask witnesses questions about their statements. The Authority member must allow the parties to ask additional questions if these are relevant and have not already been asked. Cross examination of a party or person is also permitted.

End of investigation meeting

At the end of the meeting, you or your representative may sum up by making points about the information gathered by the Authority.

When summing up, you may refer to any applicable legal principles. A citation of any case law should be given if you choose not to present a copy of the decision. In some cases, you may be invited to make submissions in writing after the meeting.

Parties who fail to attend

The Authority member can proceed with an investigation meeting if, without good reason, a party fails to attend or be represented.

If the applicant does not attend the investigation meeting, the matter may be dismissed and the applicant may have to pay costs.

If the respondent does not attend the investigation meeting, the Authority member may, without hearing further evidence from the respondent, issue a determination.

The Authority member makes a determination based on all the information put before the investigation meeting, so it is important that all parties attend and present their evidence.

Meeting Fees

The applicant pays the cost of the meeting fees.

Most investigation meetings take one day or less. The first day is free. For each half day after that, there is a fee of \$153.33.

■ Deliberation and determination

After the investigation meeting and taking into account any final submissions, the Authority member will consider the evidence and make a decision. This is called a Determination.

Determinations

The determination is issued in writing. However, in some cases, the Authority member may give a decision verbally at the end of the investigation meeting, and then issue a written determination later.

A determination of the Employment Relations Authority is legally binding. It is issued to both parties or their representatives. It is a public document and will be published on the Department of Labour's internet database of determinations.

Copies of past determinations of the Employment Relations Authority and summaries of employment law cases are available from the Department of Labour website www.dol.govt.nz.

Employment court decisions are available from the Employment Court website at www.justice.govt.nz/courts/employment-court.

Remedies

The Authority member has the power to award a range of remedies depending on the nature of the claim. These include:

- › interim reinstatement
- › reinstatement
- › reimbursement of lost wages

- › compensation
- › compliance
- › costs.

Interim reinstatement

If an employee has been dismissed, the Authority can order that they be re-instated on a temporary basis while the Authority investigates whether the dismissal was justified. This allows them to return to work.

Reinstatement

If the Authority finds an employee was unjustifiably dismissed they may order reinstatement, if the employee wants to return to their job and it is feasible.

Reimbursement

If an employee has been dismissed or subject to other unjustified action by their employer, they may get reimbursement for wages lost. This may cover either the time until they are reinstated or until they get another job.

Compensation

The Authority may order compensation to be paid to an employee for hurt and humiliation caused by dismissal or unjustified action.

Compliance

The Authority may order:

- › an employer to pay wages and holiday pay owed to an employee
- › employees and employers to comply with the terms of their employment agreement or any settlement agreement
- › one or other party to pay a penalty if one is allowed in the Employment Relations Act.

Costs

If the parties cannot agree who pays costs, the Authority may order one party to contribute to the costs incurred by the other party when preparing for the investigation meeting, or decide that each party is responsible for meeting all of their own costs.

Compensation and Costs Awards Tables

Tables setting out the levels of costs and compensation awarded by the Employment Relations Authority under the Employment Relations Act are available from the Department of Labour website www.dol.govt.nz.

After the Authority determination

If you are unhappy with the Employment Relations Authority determination about your case, you can ask the Employment Court to consider your case.

Going to the Employment Court

When you apply to the Court, you must say whether you want the Court to hear the whole matter again or to consider only specific parts of the Authority's determination. A full hearing of the entire matter is called a 'de novo hearing.'

You must apply to the Employment Court within 28 days of the date of the Authority's determination.

More information is available from the Employment Court website at www.justice.govt.nz/courts/employment-court or community law offices.

Non Compliance

If one party fails to comply with the determination of the Employment Relations Authority, the other party may:

- › ask for a Certificate of Determination from the Authority and file an application in the District Court for enforcement, or
- › apply for a Compliance Order from the Authority.

Copies of Authority Determinations

Determinations made by the Authority are public documents and are available on the Department of Labour's website www.dol.govt.nz or you can phone the Department on **0800 20 90 20** during normal business hours to request a copy.

Complaints

Complaints about Authority members must be made in writing to:

The Chief of the Employment Relations Authority
P O Box 105 117
Auckland 1030

The complaint must include the name of the member concerned and details of the complaint. Please note that the member will be provided with a copy of your complaint.

The Chief of the Authority will determine if the complaint is related to a determination issued and where appropriate, advise the complainant of their rights to challenge a determination in the Employment Court or request a rehearing in the Authority.

In all other cases, the Chief of the Authority may gather preliminary information from the member concerned. If it is determined that no further action is required, the Chief of the Authority will advise the person making the complaint.

If the Chief of the Authority determines the complaint has substance, the following responses may be considered and the complainant notified:

- › Noting the complaint has merit and notifying the member
- › Apologising to the complainant
- › Providing counselling, training or other assistance to the member.

Further actions to discipline or remove an authority member require the involvement of the Minister of Labour.

Complaints against the Chief of the Authority

Complaints against the Chief of the Authority must be in writing and include details of the complaint. Send the complaint to:

The Chief Judge of the Employment Court
P O Box 5041
Wellesley St
Auckland 1036

Forms and fees

Employment Relations Authority forms are available from:

- › our website **www.era.govt.nz**
- › the Department of Labour by calling 0800 20 90 20 during normal business hours
- › your closest Authority office.

Forms

- › Application to the Employment Relations Authority – in this booklet
- › Application for interim reinstatement
- › Statement in Reply
- › Application for investigation to be reopened
- › Application for removal of part or all of a matter to the Employment Court

The relevant fee must be included with forms.

Application Fees

Application to the Employment Relations Authority	\$71.56
Application for interim reinstatement - must be accompanied by an Application to the Employment Relations Authority	No additional fee
Statement in Reply	No charge
Application for investigation to be reopened	\$153.33
Application for removal of matter to Employment Court	\$153.33

Meeting Fees

Case management conference	No charge
Investigation meeting – first day, half or full	No charge
Investigation meeting – for every half day after the first day	\$153.33

The Authority is not able to waive fees.

Employment Relations Authority Offices

<p>Auckland</p> <p>Level 10 The 280 Centre 280 Queen Street</p> <p>P O Box 105 117 Auckland 1030 DX CX10257 Auckland</p> <p>Phone: 09 970 1550 Fax: 09 970 1550</p>	<p>Christchurch</p> <p>110 Wrights Road Addington</p> <p>P O Box 13 278 Christchurch</p> <p>Phone: 0800 20 90 20 Fax: 03 964 7851</p>	<p>Wellington</p> <p>Mezzanine (South) Tower Building 50 Customhouse Quay</p> <p>P O Box 2458 Wellington 6140 DX SX11191 Wellington</p> <p>Phone: 04 915 9550 Fax: 04 915 9549</p>
<p>The Auckland office covers the following regions:</p> <ul style="list-style-type: none"> › Northland › Auckland › Coromandel › Bay of Plenty › East Coast › Waikato › Central Plateau 	<p>The Christchurch office covers the South Island:</p> <ul style="list-style-type: none"> › Marlborough › Nelson › Canterbury › West Coast › Otago › Southland › Fiordland › Stewart Island 	<p>The Wellington office covers the following regions:</p> <ul style="list-style-type: none"> › Wellington › Manawatu-Wanganui › Hawkes Bay › Wairarapa › Taranaki

For more information about the Employment Relations Authority visit www.era.govt.nz

For information on employment rights and obligations visit the Department of Labour’s website www.dol.govt.nz, or phone the Department on 0800 20 90 20 during normal business hours.

Form 1

APPLICATION TO EMPLOYMENT RELATIONS AUTHORITY

(Section 158, Employment Relations Act 2000)

Between

Full name of applicant:

Address of applicant:

and

Full name of respondent:

Address of respondent:

To the Employment Relations Authority

And to the respondent

Statement of problem (or matter)

1. The problem (or matter) that I wish the Authority to resolve is:¹

.....
.....

2. The facts that have given rise to the problem (or matter) are:¹

.....
.....
.....

3. I would like the problem (or matter) to be resolved in the following way:^{1 2}

.....
.....
.....

¹ Give enough detail to ensure that the Authority and the respondent are fully, fairly, and clearly informed.

² Please include reference to any specific remedy (being a remedy under any enactment or rule of law) that you are seeking. If the applicant is an employee who is seeking, by this application, an order, under section 127(l) of the Employment Relations Act 2000, for the employee's interim reinstatement, the applicant must, at the time of lodging this application, file a signed undertaking in Form 2.

Form 1 - continued

4. I attach copies of the following documents (which I think are relevant to the problem):³

.....
.....
.....

³ List here **all** the documents that are attached, e.g. your employment agreement or letters that you wish to rely on, or documents required under any other legislation, etc.

Mediation

5. Have you, the applicant, tried to resolve this problem (*or matter*) by using mediation services provided by the Department of Labour? Yes No

6. Have you, the applicant, tried to resolve this problem (*or matter*) by using mediation provided by someone other than the Department of Labour? Yes No

7. Have you, the applicant, taken any other steps of any kind to resolve the problem (*or matter*)? Yes No

If the answer to this question is "Yes", specify the other steps taken:

.....
.....

8. If you, the applicant, have answered "No" to both the question in paragraph 5 and the question in paragraph 6, please indicate why you have not used mediation to try to resolve the problem (*or matter*):

.....
.....

Fee

9. This application is accompanied by the prescribed fee.

Signature of applicant:

Date:

Notice to the respondent

1. If you intend to respond to this application, you must, within 14 days after the date of the service* of this application on you, lodge 2 copies of a Statement in Reply with an officer of the Employment Relations Authority at [.....].

* Note that Regulation 8 of the Employment Relations Authority Regulations 2000 allows the Authority to direct a shorter period in any particular case

2. The term **days** (in paragraph 1 of this notice) does not include any day in the period beginning with 25 December in any year and ending with 5 January in the following year.
3. You will be notified of the place, date, and time at which the Authority will conduct any investigation meeting, in respect of this application.

Officer of the Employment Relations Authority:

Date:.....

This application is lodged by....., whose address for service is and whose telephone number is and whose fax number for service is and whose document exchange number for service is and whose e-mail address for service is⁴

or

This application is lodged by..... on behalf of the abovenamed applicant, whose address for service is and whose telephone number is and whose fax number for service is and whose document exchange number for service is and whose e-mail address for service is⁴

⁴ Although a full postal address must always be supplied, the supply of a telephone number and the supply for service of any 1 or more of the following, namely, a fax number, a document exchange number, or an e-mail address are optional.