

The Employment Relations Authority

A GUIDE TO USING OUR SERVICES



**Employment Relations
Authority**
TE RATONGA AHUMANA TAIMAHI

About the Employment Relations Authority

The Employment Relations Authority resolves employment relationship problems. Members of the Authority investigate the facts of a case and make decisions based on the merits of the matter, not on technicalities.

The Employment Relations Authority is an investigative body established under the Employment Relations Act 2000.

If you are an employee, a union or an employer having an employment relationship problem, the Authority is here to help you.

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

More information

Information, examples and answers to your questions about the topics covered here can be found on our website: **www.era.govt.nz**.

Disclaimer

This document is a guide only. It should not be used as a substitute for legislation or legal advice. The Employment Relations Authority is not responsible for the results of any actions taken on the basis of information in this document, or for any errors or omissions.

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How the 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. "An employment relationship problem includes a personal grievance, a dispute, and any other problem relating to or arising out of an employment relationship".

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

First, the employer and employee should try to resolve the problem together. The Ministry of Business, Innovation and Employment (MBIE) 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. MBIE has a free mediation service.

To get information on employment matters or access mediation, visit the New Zealand at Work website at www.employment.govt.nz or call free on 0800 20 90 20.

How the Authority works

The Authority operates in a mostly informal way. It investigates 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 usually 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 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. The public may attend unless excluded by the Member.

A member of the Authority will investigate your case. Members are independent. You cannot communicate directly with a Member and not include the other party. 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 Authority member who held the investigation will consider the evidence and issue a decision in writing, called a determination. The determination is legally binding.

Using a representative

You can be represented in the Authority by any person or organisation you choose. You do not have to be represented in the Authority if you do not want to be.

A representative may help by:

- ❖ giving advice on your employment problem
- ❖ helping you prepare for an investigation in the 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 Member will run the process so that no one is disadvantaged if they choose not to have a representative.

How long it takes

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

Steps in the Authority process

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

- a) lodging an Application
- b) understanding the issues
- c) the investigation meeting
- d) deliberation and determination.

Lodging an Application

To begin your case, lodge a Statement of Problem using the Application to Authority form. You can get this from the Authority website www.era.govt.nz or you can phone MBIE 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
7. Provide contact details including the address of the parties.

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 will also need to provide an undertaking as to damages. This means if you are unsuccessful, the party affected by the interim order may ask you to account for any damages or loss they have suffered as a result of the order.

You can then lodge your application by sending or delivering one completed copy of it to the Authority office nearest to you. You must enclose the lodgement fee and copies of supporting documents with the application. Supporting documents may include:

- ❖ employment agreements

- ❖ payslips
- ❖ all correspondence between parties e.g., letters, texts, emails
- ❖ meeting notes.

An Authority officer will send you a letter acknowledging receipt of your application.

The Authority officer will be your point of contact throughout the process. 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 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”¹ and a “Statement in Reply” form. You have 14 days to provide a Statement in Reply.² 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
- ❖ a description of the relevant facts
- ❖ details of any steps already taken to resolve including 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.

Understanding the issues

Before any investigation meeting, the Authority will need to sort through any issues.

¹See back of the booklet

² See back of the booklet

The Authority may:

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

Case management conference (CMC)

The case management conference (CMC) is usually by phone, is brief and informal. It involves both parties, or their representatives, and the Authority member. An Authority officer will also be on the call to connect the parties and make note of future dates.

The purpose of the CMC is to:

- ❖ ensure the issues to be investigated are clear
- ❖ consider whether other methods of resolving the problem would be helpful, such as mediation,
- ❖ set a timetable for other steps that need to be taken before the investigation meeting. For example, supplying further documents, 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.

Assistance for people with disabilities can be provided. Please discuss your needs with the Authority officer well ahead of the conference date.

Sorting problems through mediation

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

The Authority may, at any time, the parties to mediation. If you have already been to mediation, you cannot tell the Authority member what was discussed.

However, if the Authority member considers that mediation will still be helpful in resolving the problem they may direct the parties to mediation again. If the employment relationship problem is resolved through mediation you should advise the Authority as soon as possible.

MBIE offers a free mediation service.

The investigation meeting

Investigation meetings are not as formal as

a court hearing. They are usually held in the Authority offices in Auckland, Wellington or Christchurch but members may also travel to other cities or towns if required. 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.

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 appropriate.

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.

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. Case references should be provided.

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.

Investigation Meeting Fees

The applicant pays the cost of the investigation 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 Authority is legally binding. It is issued to both parties or their representatives. It is a public document:

Copies of past determinations of the Authority are available here:
<https://determinations.era.govt.nz/determinations>

Remedies

The Authority member has the power to award a range of remedies to resolve the employment relationship problem.

These include:

- ❖ arrears of wages
- ❖ interim reinstatement
- ❖ reinstatement
- ❖ reimbursement of lost wages or other monies

- ❖ compensation
- ❖ penalties
- ❖ 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

The Authority can order payment for the cost of professional representation. 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 Ministry of Business, Innovation and Employment.

After the Authority determination

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

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 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.

Making a complaint

If you wish to make a complaint, our website contains the process for this: www.era.govt.nz/about-us/make-complaint, or you can email complaints@era.govt.nz and request a copy of the process to be sent to you. Alternatively, you may visit one of our offices.

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Forms and fees

Employment Relations Authority forms are available from:

- ❖ our website www.era.govt.nz
- ❖ MBIE by calling 0800 20 90 20 during normal business hours
- ❖ your closest Authority office.

Forms include:

- ❖ Application to the Employment Relations Authority
- ❖ Undertaking in relation to application for interim reinstatement
- ❖ Application for joining controlling third party to personal grievance
- ❖ 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. The Authority is not able to wave fees.

For more information regarding fees, you can contact our offices or visit our website at:

<https://www.era.govt.nz/resolution-process/our-fees#application-fees-1>

Terminology in this document

Applicant	The person/s or organisation/s that is making the application to the Authority
ERA	Employment Relations Authority or the Authority
Form 1	The Application to Authority Form
MBIE	Ministry of Business Innovation & Employment
Representative	A person or organisation that is representing or advocating for a party
Respondent	The person/s or organisation/s that has had an application made to the Authority about them
Statement of Problem	The problem the applicant wishes the Authority to resolve.
Statement in Reply	The respondent's reply to the statement of problem

Employment Relations Authority Offices

Auckland

Level 3
167/b Victoria Street West
Auckland Central 1010

Phone: 09 970 1550

Hours: Monday to Friday 8:30am to 5.00pm

AucklandERA@era.govt.nz

Wellington

Mezzanine (South)
50 Customhouse Quay
Wellington Central 6011

PO Box 2458
Wellington 6140

Phone: 04 915 9550

Hours: Monday to Friday 8:30am to 5.00pm

WellingtonERA@era.govt.nz

Christchurch

Level 7
62 Worcester Boulevard
Christchurch 8013

PO Box 13 892
Christchurch 8141

Phone: 03 964 7850

Hours: Monday to Friday 8:30am to 5.00pm

ChristchurchERA@era.govt.nz

The Auckland office currently generally covers the following regions:

- ❖ Northland
- ❖ Auckland
- ❖ Coromandel
- ❖ Bay of Plenty
- ❖ East Coast
- ❖ Waikato
- ❖ Central Plateau

The Wellington office generally covers the following regions:

- ❖ Wellington
- ❖ Manawatū-Whanganui
- ❖ Nelson
- ❖ Marlborough
- ❖ Hawke's Bay
- ❖ Wairarapa
- ❖ Taranaki

The Christchurch office generally covers the following regions:

- ❖ Canterbury
- ❖ West Coast
- ❖ Otago
- ❖ Southland
- ❖ Fiordland
- ❖ Stewart Island
- ❖ Chatham Islands

From time to time your file may be handled by a different office.

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

For information on employment rights and obligations visit www.employment.govt.nz, or phone MBIE

on 0800 20 90 20 during normal business hours.