



Employer's Toolkit

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Employer's toolkit: Building a better business

All employers have duties to their employees under law. The overriding principle for all employment relationships is that of 'good faith'. Both employers and employees must act in good faith towards each other.

That means you must not undermine the other party but show trust and confidence in them. It also means you must work at forming and keeping a productive employment relationship. Parties to an employment relationship are meant to communicate well with each other.

This affects how you go about changing an employee's terms and conditions of employment, reviewing an employee's performance, disciplining an employee, and addressing any concerns or responding to requests raised by an employee.

If you fail to meet your legal obligations then you can be financially liable to your employees. The following is a quick test to check how your workplace practices measure up.

Do all of your employees have a written employment agreement?

Regardless of whether your employee is full-time, part-time or casual every employee must have a written employment agreement. There are minimum requirements for written employment agreements:

- Who are the employer and employee?
- What are the employee's duties?
- Where will the employee be working?
- When will the employee be working?
- How much will the employee be paid?
- Statement of leave entitlements and where to go for additional information;
- Statement of services available from the Department of Labour to resolve any employment relationship problems;

- Statement of 90 day time limit for personal grievances;
- Statement of what the employer will do to protect employees in the event of transfer of the business to someone else.

If employment is for a fixed term or subject to a trial period, then that must be recorded in detail in the written agreement too. There are many other additional clauses that can be very useful for an employer. And putting your expectations in writing means your employees know and are more likely to do what is expected of them.

Do you consult employees before making any decision affecting them?

An employer must act fairly and reasonably. An employer must consult the employee before dismissing an employee for any reason, or taking any other action that adversely impacts on an employee's employment, for example, a warning, or a change of hours or duties. Consulting first means you are fully informed and will make a better decision. Employees appreciate being involved and are more likely to accept your decision.

What is consultation? You must:

1. Tell the employee what is proposed and why. For example:
 - We want to talk about how the trailer came to be damaged when you were using it. We are considering giving you a warning if it was your fault.
 - We are considering reducing your hours to 20 per week because we do not have enough work for you.
 - We are considering dismissing you because you have been off work for six weeks and we still don't know when you will return.
2. Give the employee the opportunity to consider and respond, including the opportunity to get a representative to help.
3. Consider the employee's response and only then make a decision and tell the employee what you have decided.

Please note that this is only a brief summary to give you a basic idea of what is required. How consultation is carried out is very important, for example, you

must give the employee sufficient detail of what is required and sufficient time to respond, you should have written records of what you are doing, and you must not make up your mind before the consultation process is completed. If the proper process is not followed then your employee could raise a personal grievance against you. It is worth getting the process right.

As an employer you must also have good reasons for what you do. For example, dismissing someone just because you don't like them, or because they are homosexual, is against the law.

Are your employees safe?

You have a duty to ensure employees are safe at work. That means safe both physically and mentally. You must take all practicable steps to do this, which is a high test. It includes actively identifying hazards that can cause harm to employees. You must eliminate significant hazards where possible, or isolate those hazards, or minimise the risk of harm from them.

An employee who suffers mental or physical injury at work can seek compensation from their employer under the Employment Relations Act 2000 or you could be prosecuted under the Health and Safety in Employment Act 1992. Accidents at work also affect productivity and your ACC levies.

To ensure you understand and meet your legal obligations, talk to the Employment Law Team at your Lawlink lawyers. We can help with:

- reviewing and drafting employment agreements;
- procedural requirements for handling poor performance, misconduct, and redundancy; and
- resolving any personal grievance.

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