

1 What is a personal grievance?

An employee who believes that he or she has a personal grievance may pursue that grievance under the Employment Relations Act 2000 (“ERA 2000”), meaning:

- an employee has been unjustifiably dismissed
- an employee’s employment, or one or more conditions of employment are/were affected to the employee’s disadvantage by some unjustifiable action by the employer
- one of the circumstances set out in section 103(1)(c) – (k) ERA 2000

2 General principles

Employer’s rights:

- prerogative to run the business
- entitled to expect good performance and no misconduct
- right to take disciplinary action for misconduct after full and fair investigation

Employee’s rights:

- right to be treated fairly and reasonably
- entitled to representation
- right to be notified of allegations of misconduct
- right to disclosure of all relevant information
- right to be listened to before decision made that will adversely affect them (e.g. disciplinary action)
- right to bring a personal grievance against their employer

3 Key obligations to keep in mind when dealing with your employees

a. Good faith obligations

An employer and employee:

- must deal with each other in good faith
- must not (indirectly or indirectly) do anything (i) to mislead or deceive, or (ii) likely to mislead or deceive
- good faith is wider in scope than the implied mutual obligations of trust and confidence
- good faith requires parties to be (i) active and constructive establishing and maintaining a productive employment relationship and (ii) responsive

b. Test of justification

What **a fair and reasonable** employer **could** have done in **all of the circumstances**

Employment law requires employers to comply with the Employment Relations Act 2000 (and other relevant legislation) and follow the principles of natural justice:

1. substantive fairness
 - consider appropriateness of type of action – disciplinary, performance, restructure
 - stand back, try to consider objectively – *think* could we justify our actions as fair and reasonable in the circumstances before the Employment Relations Authority or Employment Court?
2. procedural fairness
 - comply with employer's contractual obligations and policies/procedures
 - fully investigate concerns
 - raise concerns with employee – fully communicate concerns/allegations
 - provide the employee with all/full relevant information
 - raise the possibility of disciplinary action – if relevant
 - give the employee the opportunity to respond and tell their side of the story
 - let the employee know that they may bring a support person to meetings
 - give the employee the opportunity to seek legal advice
 - consider the employee's feedback with an open mind
 - only determine outcomes after employee has responded and all options have been considered

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Common issues and mistakes

- acting too quickly to get to a conclusion
- confusing disciplinary, performance and restructure issues
- not dealing with underperformance or conduct issues as and when they arise
- predetermination - take care to avoid:
 - termination letter
 - passwords change
 - telephone disconnection
 - new appointment
 - encouraging employee to resign
- immediate paid suspension
 - substantive justification
 - interfere with investigation?
 - health and safety?
 - significant risk of further damage/loss?
 - procedural justification – i.e. without proposal or feedback
- attempted “offline” or “without prejudice” conversations
- constructive dismissal – “accept exit proposal or else XYZ...”

REMEMBER:
If you are unsure or inexperienced, seek legal advice

ANDO CLUB COVER LEGAL ADVICE

LangtonHudson, Lawyers

09 916 2595 (please mention that you are calling re ANDO Club Cover)

30 minute phone call per claim available – use it wisely!

When to call

- possibility of disadvantage to employee?
- possibility of termination?