



# Getting the People Stuff Right

Guiding principles to minimize  
risk of personal grievance claims

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# 1. 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

## 2. 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:
  - a. an employee has been unjustifiably dismissed
  - b. 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
  - c. one of the circumstances set out in section 103(1)(c) – (k) ERA 2000

### 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 at the time*
- 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

## 4. 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, so take care to avoid:
  - termination letter before any process
  - passwords change
  - telephone disconnection
  - new appointment
  - encouraging employee to resign

- immediate paid suspension
  - be careful if can't justify substantively; and/or
    - interfere with investigation
    - health and safety
    - significant risk of further damage/loss
  - be careful if can't justify procedurally – i.e. without proposal or feedback
- heat of the moment resignations (use of cooldown emails)
- 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: 09 916 2595 LangtonHudson Lawyers

- 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?