

Handling employment disputes

Legal information for community organisations

This fact sheet covers:

- ▶ recording dispute incidents
 - ▶ complying with internal policies and procedures
 - ▶ notifying insurers
 - ▶ discussions with employees
 - ▶ confidentiality, and
 - ▶ victimisation
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Disputes (or conflicts and grievances) between not-for-profit organisations and their employees or between two employees of a not-for-profit organisation occur for many reasons. They should be addressed quickly and appropriately to avoid ongoing conflict and poor workplace culture.

When you manage a dispute, you must consider your legal obligations. Legal issues can arise if disputes are not resolved in a timely and sensitive manner.

We can't cover every possible dispute between your organisation and an employee, but this fact sheet sets out some steps for handling disputes with employees. References to more information on disputes are included.



Note

This fact sheet provides information on disputes with an employee or between employees. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before making a decision about what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.



More information on our website

This fact sheet only covers disputes with an employee or between employees. For information on internal disputes generally, go to [our webpage on internal conflicts](#).



What is the dispute about?

Some legal issues often arise in disputes with employees. There are generally two types of disputes:

- Equal Employment Opportunity (EEO) Disputes, and
- General Disputes

EEO Disputes are disputes that relate to discrimination, bullying or sexual harassment.

General Disputes

include disputes about:

- terms and conditions of employment
- performance management
- misconduct
- the work environment and safety issues
- flexible working arrangement applications and balancing family obligations and work
- privacy, and
- use of social media

The organisation's legal obligations and the action it takes to resolve the dispute will vary depending on whether the dispute is an EEO Dispute or a General Dispute. Each issue is complex and you may need legal advice.

Compliance with policies and procedures

The first step is to determine if a policy or procedure applies to the dispute or complaint.

EEO Disputes should be handled in accordance with the organisation's EEO Policy.

General Disputes should be handled in accordance with:

- the organisation's grievance handling policy, or
- if the dispute falls under an award or enterprise agreement or relates to the National Employment Standards – the dispute settlement procedure in the applicable award or enterprise agreement

Check whether there are any timeframes or procedural steps in your organisation's policy or the relevant dispute settlement procedure that you must comply with.



Note

If the relevant employee is not covered by an award or enterprise agreement, then any dispute should be handled in accordance with the applicable EEO or grievance policy.

If your organisation has insurance, consider the requirements in the insurance policy

Often insurance policies will require the organisation to immediately notify the insurer of a dispute. If you don't comply with the insurance policy, and later try to claim any cost, you may not be covered.

Your insurer may also have a panel of lawyers who may be able to assist with specific legal issues.

Make file notes of conversations and incidents

Keep accurate and unbiased notes of any conversations about the dispute. Remember - you may need to rely on these notes later. Your organisation may also be requested to produce documents, including notes, in any related legal proceedings or in response to a Freedom of Information (FOI) request, so take care to only record objective facts.

Talk to your employee

If appropriate and in line with the relevant policy, procedure or legal advice, make sure you update the employee on any progress to resolve the dispute.



If your organisation has an Employee Assistance Program (**EAP**), invite the employee to contact EAP for confidential assistance and support throughout the process.



More information on our website

Some policies and procedures provide that mediation may be used to resolve the dispute. For more information read to our fact sheet '[Using mediation to resolve conflicts and disputes](#)'.

More serious disputes

If the dispute potentially involves:

- a breach of policy
- a breach of any law, or
- a risk to health and safety,

you may need to take further action to resolve the problem. This may involve an investigation.

If the organisation is unable to conduct the investigation internally, it may consider engaging an independent external investigator.

Confidentiality

Confidentiality should be maintained as far as possible at all stages of the dispute resolution process.

An employee dispute shouldn't be discussed with anyone other than those directly involved in the dispute and its resolution, except in circumstances where an employee is seeking formal counselling, support or advocacy.

Victimisation

Laws relating to sexual harassment and discrimination also prevent 'victimisation' of a person who has made a complaint about such behaviour or exercised other rights under the relevant laws.

Victimisation is subjecting, or threatening to subject a person to any detriment because they have (in good faith):

- made, or are proposing to make, a complaint about being discriminated against or harassed
- supported another person with a complaint or acted as a witness, or
- provided information, documents or attended a conciliation conference



Example

A community house runs educational courses. A volunteer tutor fails a student because she did not complete her attendance requirement. The student complains that she is being discriminated against due to her race. The community house tells the student that this is a ridiculous complaint and that any application to re-enrol next year will not be accepted.

While the student's discrimination complaint appears weak, she could bring a claim for victimisation based on the actions of the community house after receiving the complaint.

Adverse action

Your organisation must not take adverse action (such as dismissal) against an employee because that person has made a complaint or inquiry in relation to their employment or exercised a right under an applicable dispute settlement procedure.

The *Fair Work Act 2009 (Cth)* includes complex provisions about adverse action. A breach of those provisions can carry serious consequences.



More information

For more information about adverse action in relation to employees, independent contractors and prospective employees, go to the [Fair Work Ombudsman website](#), or the [Fair Work Commission website](#)



Caution

If you are considering terminating an employee's employment, first consider your legal obligations and always give your employee a chance to be heard.

For more information, go to [our resources on termination](#).



Information on alternative dispute resolution

The Attorney-General's Department provides advice on dispute resolution and has published a [guide on alternative dispute resolution and resolving disputes generally](#).