

# Handling employment disputes

## Legal information for community organisations

### This fact sheet considers:

- ▶ different kinds of employment disputes
- ▶ complying with laws, internal policies and procedures
- ▶ recording dispute incidents
- ▶ notifying insurers
- ▶ discussions with employees
- ▶ victimisation, and
- ▶ confidentiality



**Disputes (or conflicts and grievances) between not-for-profit organisations and their employees or between employees of a not-for-profit organisation can occur for many reasons.**

**These disputes 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 (or between) employees.



### Disclaimer

This fact sheet provides information on disputes with an employee, or disputes 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 deciding what to do.

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



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

## What is the dispute about?

Legal issues often arise in disputes with or between employees.

There are generally two types of disputes – equal employment opportunity (**EEO**) disputes, and general disputes.

EEO disputes are disputes or complaints that relate to discrimination, bullying, harassment (including sexual or sex-based harassment) or victimisation.

General disputes include disputes or complaints about:

- terms and conditions of employment
- performance management, career development or promotions
- salaries and benefits
- misconduct
- the work environment and work health and safety issues
- flexible working arrangement applications and balancing family obligations and work
- privacy, and
- use of social media

An 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 type of dispute is complex and you may need legal advice.

## Compliance with laws, policies and procedures

The first step is to determine whether any relevant legislation or industrial instrument (laws) apply to the dispute or complaint and consider if there are any applicable organisational policies or procedures.

EEO disputes should be handled in accordance with the organisation's EEO policy or an equivalent policy dealing with workplace behaviour.



### Caution

There are federal and state laws which define and regulate discrimination and other types of unfair treatment in employment. Where allegations of workplace bullying or sexual harassment are made, the *Fair Work Act 2009* (Cth) enables employees to seek intervention from the Fair Work Commission.

For more information, see [our guide to workplace behaviour laws](#).

General disputes should be handled:

- in accordance with the organisation's grievance or complaint handling policy, and
- if the dispute falls under a relevant award or enterprise agreement or relates to the National Employment Standards (**NES**) – in accordance with the dispute settlement procedure in the applicable award or enterprise agreement and in accordance with the *Fair Work Act 2009* (Cth).



### Example

For example, the NES provide certain employees with the right to request flexible working arrangements. Employers may only refuse such requests where there are 'reasonable business grounds' to do so. Disputes about this can be determined by the Fair Work Commission.

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

### Other general tips for handling disputes

#### 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 asked 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 and support your employee (and others)

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

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



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

For information on alternative dispute resolution, see the Attorney-General's webpage on [alternative dispute resolution](#).

## More serious disputes

If the dispute potentially involves:

- a breach of a workplace 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, disciplinary action, or both.

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

If certain disputes can't be resolved at the workplace level – such as those relating to flexible working arrangements – employees may apply to the Fair Work Commission for assistance in resolving the matter.

## Collective disputes

Disputes may arise in the context of enterprise bargaining where employers and employees negotiate the terms and conditions of relevant enterprise agreements. Employers, employees and their union representatives are all typically involved in the negotiation process for enterprise agreements. The Fair Work Commission can facilitate the bargaining process and help parties to resolve disputes.

It is important to uphold the rights of workplace delegates as provided for in the *Fair Work Act 2009* (Cth) and relevant awards, agreements and workplace determinations. Workplace delegates are union members chosen to represent other union members in their workplace.

The *Fair Work Act 2009* (Cth) prohibits taking adverse action against a person for engaging in or proposing to engage in lawful industrial activity.



For more information, see our fact sheets '[Employee entitlements and protections](#)', '[Modern awards and enterprise agreements](#)' and '[Unions in the workplace](#)'.

## Victimisation

Laws relating to sexual harassment and discrimination (and other unfair treatment) 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 (or proposed to attend) a conciliation conference as a party or as a witness



### Example of victimisation in employment

An organisation employs a junior staff member with carer's responsibilities. On multiple occasions, during work meetings and in emails, the employee's manager makes rude, insulting and belittling comments in relation to the employee's carer's responsibilities. The employee decides to make a formal complaint of discrimination, and another co-worker speaks up in support, acting as a witness. The organisation managing director threatens to immediately dismiss both the complainant and the witness for 'causing trouble'.

The complainant and the witness could each bring a claim of victimisation. The complainant could also bring a general protections claim – see 'Adverse action' below.



For more information, see [our guide to workplace behaviour laws](#).

## Adverse action

Examples of adverse action include dismissing an employee, altering an employee's position to their detriment, and discriminating between an employee and other employees.

Your organisation must not take adverse action against an employee because that person has made a complaint or inquiry in relation to their employment or exercised or proposed to exercise a workplace right under an applicable law, award or enterprise agreement, such as initiating or participating in a dispute settlement procedure.

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



For more information, see our fact sheet '[Employee entitlements and protections](#)'.

## 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.



### 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, see [our webpage on employee termination and resignation](#).



For more information, see:

- the Fair Work Ombudsman webpage [Effective dispute resolution best practice guide](#), and
- the Fair Work Commission webpage [Types of workplace disputes](#)