

Solving those employment blues

The Employment Relations Authority is an independent investigatory body for employment relationship problems not able to be solved at mediation.

To lodge a claim you generally must have raised a personal grievance within 90 days of the events giving rise to your claim.

Once raised you have three years to file your claim in the Employment Relations Authority. You can represent yourself or you may be represented by a lawyer, friend, advocate or union.

You start a claim by filing a Statement of Problem. The Employment Relations Authority staff can assist with the form. You need to set out what you are claiming and why (the facts) and attach copies of relevant documents.

You also need to set out what steps you have taken to resolve



LEGAL MATTERS

ALAN KNOWSLEY

RAINEY COLLINS LAWYERS

the dispute (eg mediation). The filing fee is currently \$71.56.

The Employment Relations Authority will send a copy of your claim to the other party and give them 14 days to file a response.

If mediation has not been attempted, you will usually need to attend mediation before the claim can proceed further.

If mediation has been attempted, the Employment Relations Authority will hold a phone conference with the parties

to sort out the issues to be looked into and ascertain who will need to give evidence.

The Employment Relations Authority can direct witnesses to attend and issue a summons if necessary requiring them to attend.

It can also make orders for production of documents and inspection of computer records etc.

At the hearing you will give your evidence along with any witnesses and produce the documents you are relying on.

Each witness can be questioned by the authority member and the other party (or their lawyer/advocate).

The hearing is open to the public, but the authority can prevent publication of names and personal information if necessary.

The party making the claim have to prove their case, including any losses suffered.

This includes attempts to find other employment if you have been dismissed.

You need to keep a record of the job searches you have made, interviews attended and any job offers received.

If you turn down work within a reasonable travel time or do not make enough effort to find new employment, you may miss out on lost wages for the time you are out of work.

If the employee proves that they have been dismissed, the employer has to prove the dismissal was justified.

The test is whether a fair and reasonable employer would have acted as they did.

The authority will then make a decision and you will usually get the decision in writing within a few weeks.

The decision will set out the claim, each party's arguments and

the decision, plus any remedies ordered. Remedies can include money for wages and holiday pay, plus compensation for hurt and humiliation suffered and any expenses (eg medical bills).

Legal costs can also be awarded. Penalties may also be imposed for serious breaches of legal requirements.

Any party can apply to the Employment Court to consider the case if they are not satisfied with the outcome.

This must be filed within 28 days of the decision. Any decision of the Employment Relations Authority or Employment Court can be enforced in the ordinary courts to recover the money owing or by getting a compliance order.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733484. If you have a legal inquiry you would like discussed aknowsley@raineycollins.co.nz.