

# How can an employee respond if you breach their minimum standards of employment?

In a recent case a Labour Inspector investigated an employer who was breaching its employee's minimum standards of employment. The employer had failed to provide the employees with written employment agreements, failed to keep holiday and leave records and failed to keep time and wage records. The employer was ordered by the Employment Relations Authority to pay a \$25,000.00 penalty.



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If your employee believes that their minimum employment entitlements are being breached, they should discuss their concerns with you in the first instance so that you can have the opportunity to rectify any breach. If you fail to respond to, or address, your employee's concerns, they might raise the matter as a personal grievance, so it is best to try to resolve matters by discussion first.

Your employees or their lawyer/union can seek copies of your employee's employment records from you, including wage and leave records, so both parties can check if the employee has been correctly paid or not or given their correct leave etc. Your failure to provide the records can be penalised by the Employment Relations Authority, and your employee can make a claim to the ERA.

Labour Inspectors also have powers to get the records from you. A Labour Inspector can enter a workplace at any reasonable hour and:

- interview any employee or yourself (as the employer);
- ask to see and take copies of:
  - wages and time records;
  - holiday and leave records;
  - employment agreements;
  - strike and lockouts information; and
  - any other relevant document which the Labour Inspector believes may assist their investigations; and
- question you about your compliance with employment related laws.

If you, as the employer, fail to comply with any requirement of a Labour Inspector, or if you obstruct, delay, hinder, or deceive any Labour Inspector, the Labour Inspector may bring an action in the Employment Relations Authority against you for a penalty.

If you are found to have breached an employee's minimum standards of employment, the Labour Inspector may:

## **1. Agree to an enforceable undertaking**

A Labour Inspector can enter into a written agreement with you, whereby you undertake to rectify a breach, or pay money owed to an employee, or take any other action that the Labour Inspector considers appropriate, by a specified date.

If you breach an undertaking, the Labour Inspector can bring an action against you in the Employment Relations Authority. The Employment Relations Authority may make a compliance order to enforce the undertaking and/ or may impose a penalty on you.

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## **2. Issue an improvement notice**

A Labour Inspector may also issue and serve on you an improvement notice. An improvement notice requires your action to remedy any breaches as set out in the notice by a specified date.

You may lodge an objection to an improvement notice in the Employment Relations Authority within 28 days.

As an employer, if you fail to comply with an improvement notice, the Labour Inspector make take action against you in the Employment Relations Authority and a penalty may be imposed. The Employment Relations Authority can also enforce an improvement notice by making a compliance order.

An enforceable undertaking or improvement notice may be appropriate where the breaches of minimum employment standards are less serious, or are one-off mistakes on your behalf.



## **3. Issue a demand notice**

A Labour Inspector may also issue and serve on you a demand notice, when a Labour Inspector reasonably believes that an employee has not received wages or holiday pay or other money payable to them, within the last 6 years, under employment legislation.

The demand notice can be enforced through a compliance order issued by the Employment Relations Authority.

You may lodge an objection with the Employment Relations Authority to a demand notice within 28 days. If the Employment Relations Authority finds that an employee is due money, their decision can be enforced in the District Court as a judgment debt.

If no objection is lodged, the demand notice can also be enforced as a judgment debt.

## **4. Issue an infringement notice**

A Labour Inspector may issue and serve on you an infringement notice where you have breached your record-keeping obligations (including your obligation to keep a signed copy of your employee's employment agreement). The notice must set out the amount of the infringement fee which can be up to \$1,000 for each offence to a maximum of \$20,000 in any 3 month period.

## **5. Take action against you, as the employer, in the Employment Relations Authority**

A Labour Inspector can also take action against you in the Employment Relations Authority for breaching the minimum standards of employment. A Labour Inspector can request that the Employment Relations Authority penalises you or can seek the recovery of wages or other money owed to an employee as a result of any breach of an employee's minimum standards of employment. It is important to know what your obligations are and to carry those out properly to avoid upsetting your employees and ending up on the wrong end of a Labour inspector investigation.

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