

Factsheet



COOK ISLANDS
CHAMBER OF COMMERCE
PUNANGA KIMI PUAPINGA O TE KUKI AIRANI

Employment Dispute Resolution and Mediation Services



In the Employment Relations Act (2012), Part 6 deals with the requirements of employment disputes. This requirement does not apply in relation to the public service or disputes to which the Disability Act 2008 applies.

An employment dispute means a dispute between an employer and employee, a former employee and former employer, and is about the interpretation, application or operation of an employment agreement, or, an alleged breach of an employment agreement, or, a failure by the employer to provide at least the minimum terms and conditions, or, a personal grievance.

Personal Grievances

A personal grievance may be a result of:

- Unjustifiable termination
- Employment, or a condition of employment is adversely affected by an unjustifiable action of the employer
- There has been discrimination in employment, or, sexual or racial harassment
- The employee has been subjected to duress

For the purposes of the Act, the question of whether an employee's employment has been unjustifiably terminated, or an action was justifiable, must be objectively determined. This is done by considering whether the employer's actions were what a fair and reasonable employer could have done in all the circumstances at the time the termination or action occurred.

Dispute Resolution Process

The Act allows for an employer and an employee to be represented by an appointed representative in the dispute resolution process. There is a requirement under the Act to try to resolve disputes between the parties. If the employment agreement between the parties contains a dispute resolution procedure, then the parties must use that procedure. If the dispute relates to the interpretation, application or operation of a collective agreement, the person bringing the claim must tell all parties to the agreement about the claim. If the dispute relates to a personal grievance, the employee has an obligation to inform the employer within 60 days of the action giving rise to the personal grievance.

Mediation of employment disputes

If the parties cannot resolve the dispute then either party may, by written notice to the other party, refer the dispute for mediation. This mediation must be undertaken by a mediator agreed to by the parties, or if that cannot be agreed, by the Secretary of the Department of Internal Affairs. During mediation, each party may be represented by a representative at the mediation and have the assistance of a support person at the mediation. The mediator must decide how the costs of the mediation are to be borne by the parties.

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Mediation Procedure

If an employment dispute has been referred for mediation under Section 64 of the Act, the mediator must determine the nature of the dispute and attempt to settle it between the parties as quickly and fairly as possible. The actions of the mediator may include:

- Notifying the parties in writing of the date, time, and place of the mediation
- Gathering information to assist in their consideration of the dispute
- May make recommendations to the parties
- If requested by the parties, make findings in relation to the interpretation, application or operation of the employment agreement

If the dispute is settled, either in part or in full, the terms of the settlement must be recorded in a written settlement agreement. This agreement is binding and may be enforced by way of proceedings in the High Court.

If the dispute is not settled, either party may refer the dispute for arbitration by an arbitral tribunal under the Arbitration act 2009.

Remedies

This applies if an employment dispute has been resolved either by mediation or by arbitration. The final settlement, decision, or award in relation to the dispute may include reimbursement by the employer for any sum or part of wages lost as a result of the dispute to a maximum of 3 months at the employee's ordinary rate of pay; reinstatement of the employee to their formal position or one that is not less advantageous than the former position; or payment of compensation by the employer to the employee.

If an arbitral tribunal determines that an unjustifiable termination has occurred, the tribunal must decide the nature and amount of any remedy, with consideration given to the extent to which the employee's own actions contributed to the termination.

Confidentiality & Privilege

Except as required by law or agreed to by the parties all matters discussed, raised, agreed, admitted, or determined during mediation must not be disclosed by the parties or any other person attending the mediation, and, are not admissible in court, tribunal or other forum or person acting judicially, except for the purpose of enforcing a settlement agreement.

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Tauranga Aka' Au - Cook Islands Mediation Centre



Mediation Services

The Tauranga Aka' Au – Cook Islands Mediation Centre organization is a voluntary-based council formed in 2019 to provide a co-ordination point for mediation services covering family, land, and employment.

Their aims and objectives are:

- To promote alternative dispute resolution (ADR) as a mean of resolving disputes in the Cook Islands
- To raise awareness of ADR as an efficient and effective mechanism for resolving disputes
- To provide training and development opportunities for prospective and current practitioners of ADR
- To collate and maintain a list of qualified practitioners and their contact details
- To co-ordinate the arrangements for ADR by identifying available practitioners of ADR, organizing dates, times, and venues, for ADR to be undertaken in a professional manner.
- To develop and maintain professional standards for practitioners of ADR
- To develop and strengthen relationships with regional and international ADR organisations

For assistance in employment dispute resolutions, they can be contacted by emailing them at

tauranga.akaau.mediation@gmail.com

or via their Facebook page

<https://www.facebook.com/cookislandsmediationcentre>

For more information

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