

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

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



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 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 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 or an equivalent policy dealing with workplace behaviour.

General disputes should be handled:

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

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 or complaint.



If your organisation has an Employee Assistance Program (**EAP**), invite the employee 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](#)'.

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.

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 (or proposed to attend) a conciliation conference as a party or as a witness



Example of victimisation in the provision of goods or services

A community house runs educational courses. A volunteer tutor fails a student because the student did not complete their attendance requirement. The student complains that they are being discriminated against due to their 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, they could bring a claim for victimisation based on the actions of the community house after receiving the complaint.



Example of victimisation in employment

A charity 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 charity's 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.

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.



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 about adverse action in relation to employees, independent contractors and prospective employees, see the [Fair Work Ombudsman website](#) and the [Fair Work Commission website](#).

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