

An employer's guide to resolving workplace issues



This guide provides employers with step by step practical guidance on how to resolve a workplace issue with their employee. You can find more tips and hints on resolving workplace issues at www.fairwork.gov.au/help



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Why use this guide?

This is a guide for employers dealing with workplace issues.

The Fair Work Ombudsman helps employers and employees to work together to resolve workplace issues. We don't represent either party. We want to make sure everyone is following workplace laws and can resolve any issues with minimal expense, time and stress.

Most workplace issues occur because people don't know what the law is, or because communication has broken down. The quickest, cheapest and most effective way for you to resolve a workplace issue is to find out what the law is and then work with your employee to fix the problem.

This guide will take you through a simple five-step process to help you resolve workplace issues with your employees.

Step 1: Identify the issue



Step 2: Check the law



Step 3: Talk to the employee



Step 4: Resolve the matter



Step 5: Seek further assistance



You can use the steps in the process to respond to workplace issues raised by your employees. These steps can also be used when you want to raise issues with an employee.



Step 1:

Identify the issue

Most people enjoy good relationships at work. However, even in the friendliest workplaces, disagreements can occur. Dealing with workplace issues can be time consuming and frustrating, but it's important to address concerns as soon as they arise to stop them from becoming more serious. Handling workplace issues promptly can also help you to:

- build better relationships with your employees
- maintain employee morale and job satisfaction
- retain your staff
- maximise workplace productivity.

If your employee approaches you with a question or a problem, the first thing you need to do is get a clear understanding of their concerns. Remember to:

- demonstrate you are ready and willing to talk and listen
- be calm and polite – being defensive or aggressive won't help you to resolve the problem
- ask questions if you do not understand the employee's concerns
- find out what action the employee would like you to take to resolve the issue
- take copies of any supporting information provided by the employee
- reassure the employee that you take their concerns seriously and advise them when you will respond.

You may also wish to ask the employee to provide details of the problem in writing. This might help you to better understand the issues involved and provide an appropriate response.

Tips for proactively managing workplace issues

Employees don't always feel comfortable raising workplace issues, but it is important that you know about, and can deal with, problems before they escalate. You can encourage employees to raise issues in your workplace promptly by:

- setting up a simple process for employees to report their concerns or complaints
- having a clear written 'dispute procedure' that employees can follow if they would like to raise an issue
- fostering a workplace culture of trust, transparency and open communication by acting on problems as soon as you become aware of them.

Example

George owns a clothing store. Judith, the assistant manager, arranges for Jim, a part time employee, to work extra shifts to cover for a sick colleague. Judith and Jim both forget to write the extra hours onto Jim's timesheet.

Jim checks his pay slip and notices that he wasn't paid for the extra shifts. He is upset about this and sends George a text message saying, "I'm not going to put myself out for you anymore if you're not going to pay me properly". George doesn't know what the message is about, so he arranges a time to sit down with Jim and discuss his concerns.

During their meeting George calmly asks Jim to explain what he meant by the message. Jim explains that he missed attending his nephew's birthday party to cover the extra shifts and feels angry that he wasn't paid for them. George explains that staff are paid based upon the shifts on their timesheet and that no extra shifts had been recorded, but he agrees to look into the issue. George tells Jim he will get back to him by the end of the week.

George talks to Judith and checks the payroll. He sees that Jim wasn't paid for the extra shifts because his extra hours weren't recorded. George contacts Jim to explain what happened. He apologises for the error and organises for Jim to be paid for the extra hours worked. George also reminds Judith and Jim about the importance of accurately recording roster changes and actual work times on employee timesheets.

Because he responded in a timely way, George was able to identify the issue and resolve the matter quickly and efficiently. He also strengthened his relationship with Jim, and was able to review his workplace processes to prevent similar issues occurring in the future.



Step 2: Check the law

Once you know what the issue is, you need to check your rights and responsibilities under the law.

Minimum pay rates and entitlements will depend on the award or enterprise agreement that applies. There are also minimum entitlements such as leave and notice under the National Employment Standards (NES). It is very important that you are familiar with the NES and the terms of the award or agreement that applies to your employees. The award or agreement that applies to your business will set out pay rates based on an employee's duties and other factors like their age and qualifications. Remember, minimum pay rates may change:

- after the Annual Wage Review on 1 July each year
- if the employee's duties change
- on the employee's birthday (if they are a junior employee).

The Pay and Conditions Tool (PACT) at www.fairwork.gov.au/pay can help you find the correct award and calculate pay, penalties, allowances and leave entitlements. For more information about pay, leave, employee entitlements, awards or ending employment you can visit www.fairwork.gov.au

If you need information about enterprise agreements, superannuation, tax, workplace health and safety, workers' compensation, or bullying and harassment, see the 'Links and resources' section in the back of this guide for a list of contacts that can help you.

My account

Register for an online account with us at www.fairwork.gov.au/login and you'll be able to:

- make enquiries online for priority support
- save results from our Pay and Conditions Tool (PACT)
- save your favourite pages from www.fairwork.gov.au to read or refer to later
- get information tailored to your needs.

Example

Maria manages the staff at a local restaurant and has recently hired new employees to work on weekends. Nate, one of the new employees, has spoken to Maria. He's concerned he is not receiving the correct pay rate for working on Sundays, as he received a higher Sunday rate in his last job in the bistro of the local RSL Club.

Maria decides to check the pay rates using the pay and conditions tool at www.fairwork.gov.au/pay. Here, she finds information about the base rates of pay and weekend penalty rates that her employees are entitled to. Maria compares these pay rates with her time and wages records and confirms that she has been paying the correct Sunday rates.

Maria organises a meeting with Nate. She provides the information she found at www.fairwork.gov.au and explains how the Sunday penalty rates are calculated under the Restaurants Award. She also provides information about Nate's classification under the award and the fact he would probably have been under a different award in his old job. Nate thanks Maria for looking into it.

The next day, Maria gives a letter to Nate confirming their discussion. She encourages him to speak with her if he has any further concerns.

By checking the law and sharing the information she found with Nate, Maria was able to quickly and confidently resolve the issue. Nate also feels better knowing that Maria took his concerns seriously and made proper checks.

Record-keeping

Good record-keeping helps you keep track of employee details, identify any payroll issues and keep your business running efficiently. It also makes it easier to find the information you need to respond to any concerns raised by your employees.

You are legally required to keep written records, in English, for each employee. This includes information such as the business' legal name and ABN, the employee's name, employment status and commencement date. It also includes records about:

- pay
- overtime
- hours of work
- leave
- superannuation contributions
- termination of employment
- agreements relating to employment including individual flexibility arrangements and guarantees of annual earnings.

These time and wages records must be kept for seven years.

You must also give all employees a pay slip within one day of paying their wages.

You can find more information about record-keeping at www.fairwork.gov.au/recordkeeping



Step 3: Talk to the employee

Once you have checked your records and the law and have an understanding of the problem, you should organise a time to speak with the employee.

It's important to prepare for this conversation. You can do this by summarising the key points you want to cover, gathering any supporting documents or information and considering your options for resolving the issue.

After the conversation, you should make notes about the discussion you had and any agreement you have made. Include the date and time of the meeting and who was present.

Tips for discussing workplace issues with your employees

Remember to:

- refer to any conversations you have already had about the issue
- clearly outline the employee's entitlements, if that is what the issue is about
- include any supporting information, such as copies of pay slips, leave records and relevant information obtained from **www.fairwork.gov.au**
- stick to facts, rather than opinions, and give examples where possible
- invite the employee to share their point of view and listen to what they have to say
- keep an open mind – there may be facts or issues you don't know about.

Need help having a difficult conversation with your employee?

Our Online Learning Centre has a free online course to help you prepare for a difficult conversation with your employee. The course includes practical tips to help you handle the conversation well, deal with the problem and get on with running your business. You can access the course from **www.fairwork.gov.au/learning**

Example

Shamim is the manager of a car repair business where he employs 5 staff. One of his employees, Kelly, has sent him a request for annual leave during the upcoming school holidays.

Shamim checks the roster because 2 other employees already have leave approved for the same period. Shamim knows the business can't operate with so few staff, and he doesn't have enough time to find temporary replacement staff. Therefore, he decides to refuse the request because it will have a significant impact on the business.

Shamim expects that Kelly will be upset about being refused annual leave. He's not sure how to talk to her about it, so he visits the Online Learning Centre at **www.fairwork.gov.au/learning** and does the 'Difficult Conversations in the Workplace – manager course'. The course helps him to prepare for the conversation and makes him feel more confident about discussing the leave request with Kelly.

After completing the course, Shamim organises a time to meet with Kelly. He clearly explains the reasons for refusing the leave and talks to her about other possible times that she could take leave. He also agrees to give her first option on leave for the next school holidays. Kelly says she understands the problem with staffing and will consider taking the leave later.

The next day, Shamim sends Kelly an email confirming their discussion and the reasons the leave was refused.

The following week Kelly sends Shamim a new leave request for one of the alternative dates they discussed. Shamim approves this request. While Kelly is disappointed that her original request was denied, she is happy that she could work with Shamim to find alternative dates.

If you and your employee are committed to finding a solution but you can't agree on a way forward, you might want to ask the employee if they would consider doing a voluntary mediation. You can find out more about mediation at Step 5.



Step 4: Resolve the matter

Depending on the issue raised, there may be a number of ways to resolve it. These may include:

- giving an explanation to the employee about their entitlements
- back paying any unpaid entitlements
- updating the employee's records to rectify any mistakes
- updating any relevant policies and procedures
- providing training
- setting a date in the future to check in with the employee to ensure the issue has not re-occurred.

It's important that you take action in a timely manner and monitor the situation to ensure the issue has been resolved.

After talking to your employee, it's a good idea to write to them to confirm your discussion and any actions that will be taken to resolve the matter. If you need help writing to your employee, refer to the example letter attached to this guide. Remember, you will need to change the letter to reflect your circumstances.

If other staff members are affected by the same issue, you should fix the matter and discuss this with all affected employees. This may involve checking the entitlements of other employees, updating any relevant policies and procedures or providing information to other employees.



Step 5: Seek further assistance

If you have followed Steps 1 to 4, and still haven't been able to resolve the issue, you may want to ask a third party to help. A third party might be a mediator, your industry association or a solicitor. The approach you choose will depend on the issue you're trying to resolve.

Requesting assistance from the Fair Work Ombudsman

You or your employee may choose to request assistance from the Fair Work Ombudsman. The services we offer focus on education, early intervention and resolution of workplace issues through advice and support. For more information visit www.fairwork.gov.au/help

Mediation

If you haven't been able to resolve the workplace issue with your employee, an accredited mediator may be able to help you and your employee negotiate with each other to resolve it. Mediation is a voluntary process, so both you and your employee have to agree to mediate.

Mediators don't take sides, give advice or make a decision about who's right or wrong. They help you to work through the issues and reach a solution that is fair, reasonable and acceptable to everyone.

Some community organisations and private dispute resolution providers offer free or low cost mediation services. To find information about mediation providers in your state or territory, go to www.accesstojustice.gov.au

You can also find information about our mediation service at www.fairwork.gov.au/mediation

Industry association

Your industry or business association can provide you with tailored advice and assistance to help you understand your rights and your obligations to your employees. A list of organisations that are formally registered under the national workplace relations system can be found at www.fairwork.gov.au/registeredorgs. There may also be other industry and business bodies in your area that can help.

Legal avenues

You or your employee can seek legal advice from a solicitor or community legal centre at any time. They may be able to assist you with a range of actions, including providing advice about your rights and responsibilities to your employees.

To find a solicitor, visit the law institute or law society within your state or territory. The details of these organisations can be found at www.accesstojustice.gov.au. To find a community legal centre go to www.naclc.org.au

Your employee might choose to take legal action. The small claims process can be used to recover employee entitlements or other debts up to a maximum amount of \$20,000. The small claims process is quicker, cheaper and more informal than regular court proceedings. The aim is to settle disputes quickly and fairly, with minimum expense to the parties. For information about small claims see www.fairwork.gov.au/smallclaims



Links and resources: To help you out

Enterprise agreements

Enterprise agreements are collective agreements made at an enterprise level between employers and employees about terms and conditions of employment. The Fair Work Commission (FWC) can help you deal with disputes about how the agreement applies.

For more information about enterprise agreements, visit the FWC website at www.fwc.gov.au/awards-and-agreements/agreements

Workplace health & safety

You are responsible for providing your employees with a healthy and safe working environment.

If you're dealing with a workplace issue about workplace health & safety, contact the relevant work health and safety body in your state or territory. You can find their contact details at www.fairwork.gov.au/links

Tax & superannuation

You need to meet your tax and superannuation obligations for all employees. This includes PAYG withholding tax and superannuation.

If you are dealing with a workplace issue about tax or superannuation, the Australian Taxation Office (ATO) can help. Visit www.ato.gov.au/business/employers

Bullying

Everyone has the right not to be bullied at work.

If you are dealing with a workplace issue about bullying, the Fair Work Commission can help. For more information go to www.fwc.gov.au/bullying

Personal support

Dealing with workplace issues can cause stress. If you're having trouble coping, support is available at www.beyondblue.org.au or www.lifeline.org.au



Attachment

Example letter to employee

You can refer to this example to help you write to your employee about workplace issues. If you need more information visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94.

John Smith

10 James Street

Rydalmere NSW 2998

15 October 2015

Dear Mr Smith

Thank you for taking the time to meet with me on 1st October 2015 to talk about your pay.

As discussed, under the General Retail Industry Award 2010 (the Award) employees are entitled to receive a 25% loading for each hour worked between 6.00pm and 9.00pm, Monday to Friday.

After reviewing your time and wages records, I've identified that this loading hasn't been applied to your pay. I apologise for this oversight and will ensure that this loading is correctly applied from now on. I've also calculated that you're owed an amount of \$487.36 back pay as a result of the error. This back pay will be paid to you as part of your next pay.

Thank you for bringing this matter to my attention. Please do not hesitate to let me know if you have any further questions or concerns.

Yours sincerely

Marie Simpson

Manager

MS Cards and Gifts Pty Ltd

Find out more
www.fairwork.gov.au
Fair Work Infoline – 13 13 94



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