

Effective dispute resolution best practice guide



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This best practice guide is for employers and managers. It explains how you can use best practice to avoid, manage and resolve disputes in your business.

It includes:

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It also has practical tips and case studies to help you move your business towards best practice.

Dispute resolution for regulated workers

Some independent contractors have special laws that apply to them. These types of contractors are called regulated workers. A regulated worker is an employee-like worker doing digital platform work (for example, work in the gig economy) or a regulated road transport contractor.

The Fair Work Commission (the Commission) can set rules about dispute resolution for regulated workers.

For more information on regulated workers visit fairwork.gov.au/regulated-workers

Working at best practice

Disputes and complaints can happen at any workplace. A dispute exists when one or more people disagree about something, and the matter remains unresolved. Often disputes can be settled quickly and informally in the course of everyday work. However, if people can't agree on a way forward or if the dispute is about a serious matter, you might need a more formal approach.

Best practice employers have simple, fair, confidential and transparent dispute resolution procedures in place. These employers take disputes seriously and address issues quickly and effectively, so they don't escalate.

Every workplace can enjoy the benefits of taking a best practice approach to dispute resolution. These may include:

- greater employee productivity through increased job satisfaction
- improved employee retention
- reduced stress for managers and employees
- better relationships with employees
- reducing the costs that come from resolving disputes externally (such as legal fees associated with dealing with claims made by employees against the employer).

Dispute resolution

Dispute resolution is how disputes are brought to an end. This can occur through:

- a negotiated outcome, where the parties concerned resolve the issue themselves
- a mediated outcome, where an independent mediator helps the parties arrive at their own agreement, or
- an arbitrated or adjudicated outcome, where an independent arbitrator or court decides how the dispute should be resolved and makes a binding decision or order to that effect.

Disputes can happen for many reasons, including:

- different personalities and personality clashes
- unresolved problems from the past
- competition between employees
- poor communication and leadership
- unclear responsibilities and roles
- bullying, sexual harassment and other unlawful and inappropriate behaviour.

Understanding the causes of conflict will help you to avoid disputes. See An employer's guide to workplace issues at fairwork.gov.au/employer-guide or visit our Workplace problems page at fairwork.gov.au/workplace-problems for tips on how to identify and resolve workplace issues.

Legal requirements under the Fair Work Act

Employees have access to the dispute resolution procedure set out in the award or agreement that covers them. This procedure can be used to settle disputes related to that award or agreement, or to the National Employment Standards.

Awards

Dispute resolution clauses can vary between awards, but generally have a similar approach to resolution procedures, including:

1. Resolution within the workplace

The employee and their manager must first try to resolve the dispute through discussion. If this is unsuccessful, then senior management discusses the matter with the employee to try and resolve the dispute. This could involve one or more escalations to senior managers, depending on the structure of the business. Union officials and workplace delegates can also play an important role in resolving workplace disputes. Employees may choose to seek advice from their union representative or involve them in these discussions.

2. Resolution outside the workplace

An employee, the employer or their representatives may refer the dispute to the Commission after all appropriate steps have been taken within the workplace. The Commission can deal with a dispute through conciliation, mediation or, if agreed by the parties, arbitration.

If the dispute still isn't resolved, the Commission can use any method of dispute resolution permitted by the Fair Work Act that it considers appropriate to ensure the dispute is settled.

Enterprise agreements

When negotiating a new enterprise agreement, the parties involved must agree to a dispute resolution procedure. Before approving an enterprise agreement, the Commission must check that it contains a dispute resolution clause which:

- has a procedure that requires or allows the Commission or another independent person to settle disputes about any matters arising under the agreement or the NES
- allows employees to have a representative.

For information on model dispute resolution terms that can be included in enterprise agreements, visit the Commission's website at fwc.gov.au/termsanddates

Check your award or agreement to see what dispute resolution process applies to your workplace. Visit fairwork.gov.au/employment-conditions

For more information on how the Commission can assist with disputes at work see fwc.gov.au/issues-we-help

Dispute resolution for regulated workers

A regulated worker may be covered by a minimum standards order, road transport contractual chain order and/or a collective agreement. Each of these workplace instruments will include terms on dispute resolution. For more information on regulated workers visit fairwork.gov.au/regulated-workers

Using best practice to avoid, manage and resolve disputes at work

The best way to handle a workplace dispute depends on the people affected and the nature of the conflict. For example, a dispute about someone's pay should be dealt with differently to a dispute involving a group of employees about proposed changes to their working hours.

Below are initiatives and suggestions that can help you implement a best practice approach to managing disputes.

Recognise the signs of conflict

Best practice employers can identify and address the signs of conflict. By seeing the signs early, they have a better chance of resolving the conflict before it turns into a dispute.

Sometimes the signs of conflict can be obvious (for example, if you observe an argument in the workplace). Not all forms of conflict are so visible. Signs of conflict may include:

- **lack of employee motivation** — an employee might stop participating in team meetings or volunteering to take on new tasks
- **a change in behaviour** — employees might become more reserved, less engaged or even hostile
- **decreased productivity** — you might notice less output from your staff, or that they take longer than usual to do their work
- **absenteeism** — your employees might start coming to work late or taking more time off than usual.

Encourage open communication

Whatever the size or nature of the business, employees need to know who to speak to about their issues or grievances, and what action will be taken to attempt to resolve them.

Encourage employees to communicate their problems openly, honestly and respectfully. Managers need to know how to prepare for these conversations, what to say, how to listen and how to explore ways to resolve the issue.



CASE STUDY — Communication

Jamila works in a café. She thinks there might be a problem with her pay and tries to speak with her manager. The manager says Jamila's pay is correct, but that she doesn't have time to talk about it.

Jamila feels frustrated and distracted at work. She is still unsure about her pay and is now upset with her manager. Her manager notices Jamila's performance has declined but is unsure why.

A few weeks later Jamila contacts the Fair Work Ombudsman, who check her award classification and explain that her pay is correct.

While Jamila's employer wasn't doing anything against the law, this issue could have been avoided if she had taken the time to talk to Jamila about how she had determined the correct pay rate.

When preparing to talk to an employee about issues in the workplace, managers should consider the following questions:

- What are you trying to achieve?
- Are you prepared? Do you have all the right information and useful examples?
- When and where are you going to have the conversation? Is it timely? Is it somewhere that you both feel comfortable?
- Are you calm?
- Can you allow the employee to steer the conversation (within reason)?
- Are you prepared to listen and consider all points of view?
- Have you thought about possible resolutions?

During the conversation, remember to:

- refer to any conversations you've already had
- clearly outline the employee's entitlements (if that's what the issue is about)
- include any supporting information, such as relevant information from fairwork.gov.au
- stick to facts, rather than opinions, and give specific 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 might be facts or issues you don't know about
- allow the employee to bring a support person to any meetings — this might be a friend, co-worker, family member or union representative
- make a record of any discussions, including the date and time when they occurred.



PRACTICAL TIP: Our Difficult conversations in the workplace — manager course can help you prepare for these discussions 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 this and other free online courses at fairwork.gov.au/learning

Manage change

Many disputes occur when there has been a change in the workplace. Change can have a significant impact on employees, especially if it was unexpected. It can leave them uncertain or even anxious or afraid about what the change will mean for them, which can lead to misunderstandings and disputes. Good communication and a consultative approach can help to minimise conflict.

Create a strategy to communicate with employees about change. Consider:

- what the changes are — the explanation should put the change into context so employees can understand why it's happening and how it will affect them
- who will communicate with employees — this should be a senior manager, to give the messages authority and credibility
- when the message will be communicated — communicate early and often
- how the message will be communicated — for example email, team meetings, online forums
- what input employees can have in the process.



PRACTICAL TIP: Remember that if the change is significant, there might be specific communication and consultation requirements in your award or enterprise agreement.

Even if you aren't legally required to, consider consulting your employees about changes in your workplace as a matter of routine. Consulting with your employees gives them a stake in the decisions being made.

Best practice employers regularly share information with employees about the performance, goals and challenges of the business. This can help employees to see the whole picture and minimise disputes when change is required.

For more information, see our Consultation and cooperation in the workplace best practice guide available at fairwork.gov.au/bestpracticeguides

Put things in writing

Having written contracts of employment and clear workplace policies makes entitlements and rules clear for everybody.

This could save you time and money that might otherwise be spent sorting out misunderstandings, resolving disputes or even defending claims in a tribunal or court.



PRACTICAL TIP: Many workplace documents can become out of date over time. To stay on top of this:

- have a process to make sure that contracts of employment and job descriptions are updated (for example, when someone gets a promotion). You could schedule this for the same time as your annual pay or performance review
- review and update your policies. Make sure you consult with employees about any proposed updates.

Train managers and employees on how to resolve disputes

Make sure your managers understand your dispute resolution process.

People will be influenced by their own background, experience and communication skills when resolving disputes. However, you can help managers work at best practice by providing training and coaching on:

- establishing the key facts and issues
- listening
- encouraging open dialogue
- focusing on the employee's specific needs
- guiding a discussion to find ways to resolve the dispute.

You should also tell employees about your dispute resolution process during induction training and other staff communications. Make it clear that if there is a dispute employees are expected to:

- express the issues from their perspective
- be open, honest and respectful in their communications
- listen.

Dispute resolution shouldn't interfere with day-to-day work. While the process is underway, employees should continue to comply with the employer's directions and perform any work that is safe and appropriate.

Create a simple dispute resolution process

Whatever the size or type of business, the best dispute resolution processes will:

- **Be simple and credible** — it's important your employees know their issues or grievances will be taken seriously.
- **Be sensitive** — employees want to be reassured their issue will be handled confidentially, and that raising the issue or grievance will not harm their job prospects.
- **Seek clarification** — enable the facts and issues in dispute to be clarified but also encourage open expression of opinions and recognise the importance of feelings.
- **Encourage listening** — listening to an employee will draw out what the dispute is really about. It might be due to a simple misunderstanding. It might be about issues that are quite different from the issues initially raised by the employee. Good listening will help managers determine the real issues and work out how they can be best resolved. A good dispute resolution process reassures employees that they are being heard.
- **Set expectations** — begin with an expectation that the dispute can be resolved between the people concerned, while also recognising that more serious issues may need to be escalated.
- **Establish an escalation process** — provide a path for escalation if the dispute can't be resolved by discussion with the employee. It won't always be possible to escalate the dispute through senior management. If this is the case and you're unable to resolve the dispute, you could seek third-party assistance to help resolve the matter.
- **Be consistent** — consistency is a key aspect of a credible dispute resolution process. Employees need to know that the business will approach all disputes with the same organisational values and objectivity and that, wherever possible, disputes will be resolved by the same process.
- **Be quick** — prompt resolution of disputes is always desirable. It shows that the employer takes dispute resolution seriously. The longer unresolved disputes exist, the greater the chances of ongoing conflict or distractions in the workplace.
- **Be transparent** — employees must know what the process is, understand the steps and know what the potential outcomes are.

A good dispute resolution process promotes fairness. If people feel they are fairly treated, then it is more likely that they will be engaged in their work and motivated to contribute.

Proactively manage complaints

Dealing with complaints may seem time consuming and frustrating but knowing about the issues that upset your employees can have significant benefits for your business.

It lets you fix problems before they escalate and better protect your business from risk. For example, in dealing with a complaint you might identify that a policy isn't as clear as it should be. This gives you an opportunity to fix it and potentially avoid future disputes.



PRACTICAL TIP:

- Have a clearly written and accessible complaints procedure. This procedure could be accompanied by policies which explain what's considered appropriate behaviour in the workplace.
- Create a workplace culture of trust, transparency and open communication. If employees feel safe, they're more likely to tell you what's on their minds.
- Make sure managers and senior people in your business know about the complaints procedure and are trained to handle complaints effectively.
- Set up a simple way for employees to report problems and complaints. Some businesses use a telephone hotline, an email address or a 'complaints and suggestions box' to do this. Others prefer complaints to be made in person to the employee's manager or another senior person in the business.
- Nominate more than one person that employees can address their complaint to. This is important because their manager may be the person being complained about.
- Let your employees know that their complaint will be taken seriously, investigated fairly, resolved promptly and without retaliation of any kind.

Get help with a dispute

If you haven't been able to resolve the issue internally, you may want to ask a third party to assist. The approach you choose will depend on the issue you're trying to resolve.

Industry association

Your industry or business association can provide you with tailored advice and assistance to help you understand your rights and obligations. A list of unions and employer associations formally registered under the national workplace relations system can be found from the Commission at fwc.gov.au/registered-organisations. There might also be other industry and business bodies in your area that can help.

Requesting assistance from the Fair Work Ombudsman

You or your employee may choose to request assistance from the Fair Work Ombudsman.

When someone asks for our help, we review the information provided and decide what action, if any, we will take. Our decisions are guided by our Compliance and Enforcement Policy. For more information go to fairwork.gov.au/compliancepolicy

If your dispute is about pay or entitlements, we may offer you our no-cost dispute assistance service.

Disputes usually occur because people don't know what the law is, or because communication has broken down. FWO Officers are experts in workplace relations. Their role is to help both parties understand the law, communicate, and make informed choices. This may involve:

- identifying the issues in dispute
- providing advice and information about each party's workplace rights and obligations
- facilitating discussions and exploring ways to resolve the dispute (if possible)
- explaining proposed resolutions, and possible alternatives, so parties can make informed decisions
- providing information about other options to pursue the dispute if it isn't resolved.

For more information visit our Fixing a workplace problem page at fairwork.gov.au/fixing-workplace-problems

Legal advice

You or your employee can seek legal advice from a legal representative 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. To find a community legal centre go to the Australian Community Legal Centres website available at clcs.org.au

Your employee might choose to take legal action. The small claims process under the Fair Work Act can be used to recover employee entitlements or other debts up to \$100,000. In some cases, the court may allow the successful applicant to recover any court filing fees paid from the respondent. 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 go to fairwork.gov.au/smallclaims

Mediation

If you haven't been able to resolve the workplace issue with your employee, an accredited mediator might be able to assist you. Generally, mediation is a voluntary process, so both you and your employee must agree to mediation. Dispute resolution procedures in an enterprise agreement or contract may require the parties to mediate.

Mediators don't take sides, give advice or decide who's right or wrong. They help you work through the issues and reach a solution that everyone can accept.

Some community organisations and private dispute resolution providers offer free or low-cost mediation services. For some matters, the Commission may be able to assist through an informal mediation process. You can find more information about mediation at the Commission at fwc.gov.au



Conciliation

Conciliation is very common in workplace disputes and is undertaken in most unfair dismissal cases in the Commission. Conciliation is a voluntary process to help an employer and employee resolve an unfair dismissal dispute. The process allows each party to negotiate in an informal setting to identify if there is a solution to the issue.

Conciliation is very similar to mediation except that the conciliator:

- will likely have some specialist workplace relations knowledge
- may give expert advice or information.

You can find out more about the conciliation process through the Commission at [fwc.gov.au/conciliation](https://www.fwc.gov.au/conciliation)

Arbitration

Arbitration is a less common way of resolving workplace disputes. What makes arbitration different from other types of dispute resolution is that the parties agree that an independent and impartial person (the arbitrator) will listen to each side and then make a decision that's binding on everyone.



Best practice checklist

A best practice workplace involves more than just understanding and complying with the law.

This checklist will help you work at best practice when managing disputes and complaints within your business:

- ☐ **Develop a policy** — develop a dispute resolution policy that suits your business. This will help ensure the dispute resolution process is consistent, fair and works for both the employees and the business.
- ☐ **Provide training** — make sure employees and managers know about the dispute resolution process and how to use it. This can be done by providing training and awareness sessions.
- ☐ **Communicate** — talk with your employees. Regular communication is important as it helps to build trust and good working relationships.
- ☐ **Listen to concerns** — take all concerns seriously. Listen to your employees and show them that you take their concerns seriously. Although some issues might seem minor at first, they could be an indication of a larger problem.
- ☐ **Regular meetings** — hold regular meetings. These allow you to communicate current issues, workplace rules and changes.
- ☐ **Be proactive** — proactively deal with any workplace issues. Many workplace conflicts happen because of misunderstandings and can be resolved more easily if discussed at an early stage.

Where to find more information

Resources

- To learn more about effective dispute resolution
 - visit our Workplace problems page at fairwork.gov.au/workplace-problems
 - see the Fair Work Commission's Issues we help with page which explains when and how they can assist with dispute resolution in the workplace. Visit fwc.gov.au/issues-we-help
 - use the Attorney-General's Department's Guide to Dispute Resolution available at ag.gov.au/legal-system/alternative-dispute-resolution
- You can access our free online training for employers and managers at fairwork.gov.au/learning. Available courses cover best practice approaches to difficult conversations in the workplace, hiring employees, managing employees, managing performance, diversity and discrimination, workplace flexibility and record-keeping and pay slips.
- You can find all our best practice guides at fairwork.gov.au/bestpracticeguides. These easy-to-follow and practical guides will help you transform your business from compliant to best practice, so you can get the most out of your employees.

Links

Fair Work Commission
fwc.gov.au

Contact us

Fair Work online: fairwork.gov.au

Fair Work Infoline: **13 13 94**

Need language help?

Contact the Translating and Interpreting Service (TIS) on **13 14 50**

Help for people who are deaf or have hearing or speech difficulties

You can contact us through the National Relay Service (NRS).

Select your [preferred access option](#) and give our phone number: **13 13 94**

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this fact sheet is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

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