



Employment Relations Fact Sheet

Ministry of Internal Affairs
Government of the Cook Islands

Employment Disputes

This fact sheet will provide workers and employers with general guidance and information on their rights and obligations in relation to employment disputes.

What is an Employment Dispute?

Under the *Employment Relations Act 2012* (the Act) an employment dispute is defined as:

- a) a dispute between an employer and employee, or a former employee and former employer, about -
 - i. the interpretation, application or operation of an employment agreement; or
 - ii. an alleged breach of an employment agreement; or
- b) a failure by the employer to provide at least the minimum terms and conditions; or
- c) a personal grievance.

In basic terms, an employment dispute is simply a disagreement between an employee and employer concerning the terms and conditions of employment.

What constitutes a personal grievance?

An employee has a personal grievance against a current or former employer if the employee claims one or more of the following:

- a) their employment has been unjustifiably terminated;
- b) their employment or a condition of their employment is adversely affected by an unjustifiable action by the employer;
- c) their employer has discriminated against them;
- d) they have been sexually harassed by their employer;
- e) they have been racially harassed by their employer; or
- f) they have been subjected to duress.

Dispute Resolution Process

If a dispute arises between an employee and an employer the following dispute resolution process (*outlined in Part 6 of the Employment relations Act 2012*) should be followed:

1. The employer and the employee must try to negotiate a resolution of the dispute between them.
2. If they cannot resolve the dispute between themselves, either party may refer the dispute to mediation. This is where a neutral third party is appointed to mediate and assist the employer and employer to reach a resolution.
3. If a mediator cannot be agreed upon by both parties, the parties may write to the Secretary of Internal Affairs who may appoint a mediator for

them. The mediator must decide how the costs of the mediation are to be borne by the parties.

4. If there is no resolution from the mediation, either party may refer the dispute to arbitration. The Court will appoint an arbitrator to determine a resolution for the employer and employee including who will be responsible for the payment of any court costs.

What resolutions can be provided for an employment dispute?

If an employment dispute has been resolved, the final settlement, decision or award in relation to the dispute may include one or more of the following:

- a) reimbursement by the employer or former employer to the employee of a sum equal to the whole or any part of the wages lost by the employee as a result of the dispute, to a maximum of 3 months;
- b) reinstatement of the employee to their former position or to a position not less advantageous than their former position; or
- c) payment of compensation by the employer to the employee.

What role does the Ministry of Internal Affairs have in resolving employment disputes?

Under the Act, the only authority the Ministry has in regard to employment disputes is the ability to appoint a mediator if the employee and employer are unable to resolve the dispute or agree on a mediator themselves. The Ministry has no other authority under the Act in regard to employment disputes.

If you have an employment dispute the Ministry is able to provide you with factsheets relating to the rights and obligations of both employees and employers. These factsheets are available on the Ministry of Internal Affairs website at www.intaff.gov.ck.

How can employment disputes be minimised?

To help minimise the chance of a dispute arising, the Ministry can provide advice on the development of employment contracts to help ensure the minimum standards under the Act are covered.

Ultimately, all employers and employees are responsible for knowing what their rights and responsibilities are under the Act. Foreign, as well as local workers are encouraged to check the Ministry's website for information and contact the Labour and Employment Relations Division with any questions before entering into an employment contract.

A contract template as well as information on the minimum standards under the ACT is available on the website at www.intaff.gov.ck.

Can I seek legal advice regarding an employment dispute?

Yes. All employees and employers have the right to seek legal advice regarding any matters pertaining to employment.

Need more information?

Contact: employment@cookislands.gov.ck or +682 29370

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Version 25 September 2015