

POLICY 7 PERSONAL GRIEVANCE

The Employment Relations Act applies to all members who receive an honorarium or wage from the Theosophical Society of NZ Inc for services provided to the organization.

The standard personal grievance procedure as contained in the Employment Relations Act applies and sections relevant to the NZTS are set out below.

An employee is:

anyone who has agreed to be employed, under a contract of service, to work for some form of payment. This can include wages, honoraria, commission and piece rates.

An employee is not:

a volunteer, who does not expect to be rewarded and receives only a reimbursement for their expenses.

The employer:

- In this case being an organization, not a business, nor the usual concept of a 'boss' requires some differing applications.
- For ordinary employment issues the Management Team would deal with them, with confirmation from the National Council.
- For grievance issues, the details would be given to the National President who would be required to immediately inform the National Council by email.

The National Council would then decide if it needed:

1. A full National Council meeting to deal with the matter.
2. To delegate the matter to a subset of the National Council
3. Have the Management Team deal with it.

It may be able to be dealt with through an email meeting, a conference call or a face to face meeting or simply a neutral arbitrator who could be a member of the National Council. Whatever is felt required by the National Council, depending on the nature of the problem.

For the case of this Standard the National Council shall be deemed to be the employer of the National President and National Vice-President and the above would therefore also apply.

Information for employees on the services available for the resolution of employment relationship problems under the Employment Relations Act 2000

We can save time and help preserve our working relationship by solving our own problems as far as possible.

The following are suggestions for what you might do if you think there is a problem, and what help is available.

1. Clarify what the problem is from your point of view Make sure there really is a problem. Check your facts and make sure you have not assumed or misunderstood something.

You might discuss the apparent problem with family or friends or advisers, and find out what the law is and/or what our employment agreement says.

You can:

- contact Employment Relations Infoline
 - call free on 0800 800 863
 - get pamphlets/fact sheets from Department of Labour offices
 - talk to your union, a lawyer, community law office or industrial relations consultant.
2. Talk to an *'internal' mediator with appropriate skills appointed by National Council to act on its behalf.* The problem should be discussed either directly or through representatives. You may bring a friend, relative or colleague to support you in the discussion. You should make sure that you discuss all the facts so that you can clear up any assumptions or misunderstandings.

Semi internal mediator – someone acting on behalf of the national council. Appointed before an issue arises. Someone outside of TS Management with appropriate skills

3. If the problem has not been resolved by discussion, you can do some or all of the following things:
 - Contact [Employment Relations Infoline](#), who may provide information and/or refer you to mediation
 - Participate in mediation provided by the Employment Relations Service (or we can get our own mediator)
 - If we reach agreement, a mediator provided by the Employment Relations Service can sign the agreed settlement, and that will bind us
 - Choose to have the mediator provided by the Employment Relations Service decide the matter for us, and if so, that decision will be binding on us

- If mediation does not resolve the problem, you can take the problem to the Employment Relations Authority for investigation
- The Employment Relations Authority may direct us to mediation if it thinks that will still be useful
- The Authority can investigate and make a determination about the problem
- If you are dissatisfied with the determination of the Authority, you can take the problem to the Employment Court for a judicial hearing. (The Court may also tell us to go back and have more mediation.)

Note that if the problem is a **personal grievance**, then you must raise it with the employer within 90 days after the action complained of, or the date you became aware of it, unless there are exceptional circumstances. (A personal grievance may arise where an employee believes he or she has been unfairly treated or unjustifiably dismissed.)

If the problem is about minimum entitlements under the law, you may ask a **Labour Inspector** to enforce your rights under minimum rights legislation, such as the Minimum Wage Act or the Holidays Act.

Ending an employment relationship

If an employee believes that the employer acted unjustifiably in ending the employment relationship, the employee can **challenge the employer's decision**.

Resignation

Employees may resign at any time, provided they give reasonable notice (i.e. saying ahead of time what date they plan to leave). What is reasonable will depend on the circumstances, such as length of service or seniority, or what is agreed in the employment agreement.

Forced resignation (also known as constructive dismissal)

If the employer puts pressure (directly or indirectly) on an employee to resign, or makes the situation at work intolerable for the employee, it may be a forced resignation or "constructive dismissal". A constructive dismissal may be where, for example, one or more of the following occurs:

- the employer has followed a course of conduct deliberately aimed at coercing the employee to resign
- the employee is told to choose between resigning or being dismissed
- there has been a breach of duty by the employer (i.e. a breach of the agreement or of fair and reasonable treatment) such that the employee feels he or she cannot remain in the job.

If an employee has been forced to resign, they may have a [personal grievance](#).

Taking a personal grievance

As with any employment problem, employees who believe they have a personal grievance should follow the first steps for [resolving employment relationship problems](#).

There are, however, some special requirements for dealing with personal grievances.

An employee who has been dismissed can only challenge this by taking a personal grievance. Employees cannot pursue a claim for wrongful dismissal under common law, as was possible under previous legislation.

Choice of procedure

In some situations, employees who believe they have a personal grievance may also be able to complain under the Human Rights Act.

This may happen, for example, when an employee believes they have been discriminated against, sexually harassed or racially harassed.

Employees must choose either to take a personal grievance through to the Authority or to take their claim under the [Human Rights Act](#).

They cannot use both procedures for the same complaint.

Raising a personal grievance with the employer

An employee must let the employer know in writing about his or her grievance, and that they want something done about it, **within 90 days** of the action complained of, or the date they became aware of it, whichever is the later.

If the employer is not told about the grievance within 90 days, the employer need not consider it unless the Employment Relations Authority allows the employee to raise it after 90 days.

The Authority will only allow that if it accepts that the delay was caused by exceptional circumstances. Exceptional circumstances include situations where:

- the employee was so affected or traumatised by the action complained of that he or she was unable to consider raising the grievance in time
- the employee made reasonable arrangements with an agent to raise the grievance on the employee's behalf, but the employee's agent unreasonably failed to do so in time
- the employee's employment agreement does not contain a plain language explanation of services available to help sort out employment relations problems

- the employer has failed to respond to an employee's request to give the employee a written statement of the reasons for the dismissal (see below).

Employer's reasons for dismissal

An employee who has been dismissed may ask the employer for a written statement setting out the reasons for the dismissal. They must do this within 60 days after the dismissal or after the date they became aware of it, whichever is later.

The employer must give the statement to the employee within 14 days after being asked. This information may be important in later efforts to resolve the problem. Also, if the employer does not provide this statement, the employee will be able to raise a personal grievance after the 90-day period.

Three-year limitation period on personal grievances

Employees may not start a personal grievance action in the Employment Relations Authority or the Employment Court more than three years after they have raised it with the employer.

Remedies for personal grievances

An employee with a grievance claim may ask the employer for any remedy the employee thinks appropriate. If the grievance goes to the Employment Relations Authority, the following types of remedy can be asked for.

- Reinstatement

The Authority may order that an employee be put back in his or her previous position or a similar one that is not worse for the employee.

If the personal grievance is found to be valid and the employee asks for reinstatement, the Authority must order it if it is practicable.

The employer must carry out the Authority's decision, even if the decision is under appeal, unless the Authority or the Court orders otherwise.

- Interim reinstatement

The Authority can order the employee to be reinstated until the personal grievance is heard, if the employee asks for this. The Authority may impose conditions when ordering reinstatement.

- Reimbursement

If an employee has lost wages or other money as a result of the grievance, the Employment Relations Authority can order the employer to pay all or part of the lost amount. Unless the Authority thinks that the [employee was partly to blame](#), it must

order the employer to pay at least all lost money up to three months' ordinary time wages, and may award more.

- Compensation

The Authority may order the employer to pay money to the employee for:

- any effects on the employee personally, such as humiliation, loss of dignity or injury to his or her feelings
- the loss of any benefit which the employee might reasonably have expected if the grievance had not arisen.

Recommendations in cases of sexual or racial harassment

When an employee has been sexually or racially harassed, the Authority may make recommendations to the employer on what to do about the harasser. This may include transfer, disciplinary action, or helping to change his or her behaviour to prevent them harassing again. The Authority can also recommend any other action to prevent further harassment of the employee or any other employee; for example, that the employer develop and implement an educational programme in the workplace or adopt a formal harassment policy.

Contributory fault

The Authority must reduce the remedies if the employee is found to be partly at fault in a grievance case.

Reference:

Employment Relations Act 2000 www.ers.dol.govt.nz

Passed by the National Council on 17 April 2005