

know risk

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Members of the Ecclesiastical Insurance Group

Employment Issues

It's easy to get into legal difficulties in employment relationships. Dealing with performance or misconduct issues, and in particular carrying out disciplinary steps such as a dismissal, can result in claims. When problems do occur, your organisation may face claims for significant sums from disgruntled staff members.

Ansvar Insurance, your employment disputes insurer, has prepared this risk management sheet to assist you and avoid claims.

It tells you when to take advice and what to do if a claim is threatened.

This is not a complete guide and is not intended to replace advice from an experienced employment lawyer.

Things to do to minimise the risk of claims

- You must act 'in good faith'. The Employment Relations Act 2000 requires that all parties to employment relationships not mislead or deceive each other, and consult with each other about matters which may affect the employment. Parties to an employment relationship have an obligation to be 'active and constructive in maintaining a productive employment relationship' and must be 'responsive and communicative'.
- Use professionally drafted employment agreements, and know what is in them.
- Have written job descriptions for all staff.
- Deal with performance problems calmly and professionally. Follow a proper process.
- Deal with performance/misconduct issues when they arise.

- Have properly documented employment procedures and policies. In particular have a documented performance appraisal system, and review performance regularly.
- Understand your employees' minimum employment rights: The Holidays Act 2003, the Health & Safety in Employment Act 1992, the Human Rights Act 1993, the Minimum Wage Act 1983, the Parental Leave and Employment Protection Act 1987, and the Privacy Act 1993.
- Understand what rights unions have.
- Keep your cool. Things go wrong when managers become irritated and act before they think.
- Prior to beginning any performance and/or disciplinary issues always offer the employee the opportunity to seek legal advice and to have a support person or representative present at any meeting.

Things to avoid

- Rushing into things.
- Putting off dealing with performance or misconduct because it's 'too hard'.
- Disciplining, dismissing or otherwise dealing with staff without following fair procedures.
- Changing employment conditions without getting the agreement of staff in writing.
- Dismissing or disciplining a staff member because you don't like them.
- Harassing, bullying, or badgering a staff member with the intention of getting them to resign.
- Ignoring sexual or other harassment.
- Restructuring the workplace without following a proper procedure - take advice.

New Zealand

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Warning signs

Signs of potential employment relationship problems include the following:

- Staff members whose performance drops and who are resistant to reasonable performance appraisals and counselling.
- Staff members who threaten to resign, or do resign, complaining about the organisation.
- Conflict between staff members.
- Workplace 'blow-ups'.
- Complaints about non-promotion or non-appointment.
- Proposal to restructure the organisation or change employees' duties or work hours.
- Regular or extended sick leave, in particular 'for stress'.

When should you get advice?

You should get advice in all of the following situations:

- When you are considering disciplining a staff member for poor performance, absenteeism, or any other perceived problem.
- When you are considering disciplining a staff member for misconduct.
- When you receive complaints of discrimination or harassment.
- When you are considering restructuring the organisation in a way which may affect the employment of staff.
- When you receive a claim.
- When reviewing employment agreements and/or policies or prior to changing an employee's terms and conditions of employment.

Steps to take when a claim is made or threatened

When a claim is made or threatened you should do the following:

- Contact Ansvar Insurance on 0800 123 344
- Do not attempt to deal with the claim yourself.
- Do not admit liability.
- Do not settle the claim.
- Do not reply to correspondence other than to say you are obtaining advice and will reply further later.

This material is for information purposes only. It is not intended to give specific legal or risk management advice nor are any suggestions, checklists or action plans intended to include or address all possible risk management exposures or solutions.