

Using Mediation Services Effectively



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INTRODUCTION

Mediation, and the requirement to act in good faith, is a cornerstone of the Employment Relations Act.

The objectives of the Act include:

- to resolve problems as informally as possible
- to maintain the employment relationship if possible and desirable.

Mediation services under the Employment Relations Act are provided by Workplace Services, a Service of the Department of Labour. Mediation services are available to any employer or employee with an employment relations problem. Mediation is simple, effective, free and fair.

This publication is one of several designed to help employers and employees avoid or effectively deal with employment relations problems. (Others are listed at the back of this booklet.) Its purpose is to help you understand the range of assistance available to you, and how and when to seek help.

The booklet starts at the point where you believe you have a problem and decide to seek help. It is important to get help as soon as a problem emerges. Don't wait until it has become significant and your employment relationship is damaged.

Mediation is the use of an independent person where a problem has emerged. That person has the role of encouraging those with a problem to explain what has occurred, to discuss the pros and cons of the difference that has arisen, and to come to a resolution that is satisfactory to both parties.

A range of activities can be described as mediation services. These include:

- email and telephone correspondence
- workplace discussions
- education activities
- mediation meetings.

The following pages discuss:

- issues referred to mediation
- the role and duties of the mediator
- typical mediation activities
- ways to make mediation work effectively for you.

Need more information?

Call the Department of Labour Workplace Contact Centre free on 0800 20 90 20, or visit our web site www.dol.govt.nz.

1. WHAT IS AN EMPLOYMENT RELATIONSHIP PROBLEM?

A problem is anything that harms, or may harm, an employment relationship.

It can include disputes between:

- employer and employee
- two or more employees
- a union and its members
- unions in the workplace
- a union and an employer
- an employer and other employers involved in multi-employer bargaining.

Examples of problems include:

- unjustified dismissals
- situations where actions such as warnings or demotions maybe unjustified
- claims of harassment and discrimination
- differences over the meaning of employment agreements
- restructuring and redundancy issues.

The Employment Relations Act requires that:

- every employment agreement includes a process for dealing with problems
- the employment agreement is in writing.

A sample process for dealing with problems is in Appendix B.

2. HOW DO I IDENTIFY THE PROBLEM?

First, think through the key facts about the problem, and gather any relevant information. Often the act of collecting the information is the first step towards resolving the issue. Be honest with yourself. Omitting important facts or amending the facts can make the problem worse.

The kinds of questions you might need to ask yourself are:

- What are the details of the employment agreement?
- What are the days and hours of work?
- What is the job description?
- What type of business is involved?
- When and how did the problem arise?
- Does the problem involve one employee or a group of employees?
- What actions have you taken already?
- Have you talked to the person or people involved about the problem?

Sometimes it's worth running through the problem with a friend or colleague to see what questions they have about your story. Often the underlying cause of a problem is not obvious.

For example, an employee who is performing poorly may have:

- inadequate training
- poor equipment
- lack of confidence in seeking assistance from a supervisor
- misunderstandings about entitlements such as sick or holiday pay
- health and safety issues, such as concern about long hours.

Equally, an employer concerned about performance may be influenced by:

- absenteeism
- poor time keeping.

Whether you are an employer or employee, it is worth spending some time at this stage trying to identify the underlying cause in order to see how the problem might be resolved.

3. WHEN SHOULD I SEEK ASSISTANCE?

Usually, the longer a problem is left, the larger it gets!

For this reason, the Employment Relations Act provides ready access to assistance at any stage in the employment relationship and requires people to work together in good faith. Get help as soon as you feel out of your depth. You may wish to seek assistance from your union or employers' organisation. (See Appendix A).

Alternatively, the Department of Labour can often assist by giving you basic legal information and helping you consider how this applies to your situation. You can ask questions anonymously if you wish.

4. HOW DO I CONTACT THE DEPARTMENT OF LABOUR?

Department of Labour Workplace Contact Centre 0800 20 90 20
Or www.dol.govt.nz

Information Officers at the Department of Labour Workplace Contact Centre are experienced in helping with day-to-day problems in workplaces. They can also help interpret the minimum legal employment conditions. In most cases, information officers can give you information to help you deal with your problem yourself by providing facts and commonsense suggestions.

If your question requires more assistance, information officers can help you to decide how to deal with the problem. They may refer you to other services established under the Employment Relations Act, or may provide information on other government agencies such as the Human Rights Commission or other parts of the Department of Labour.

The service is free, and your call is always confidential.

CASE STUDY: A new employee settles in

Jim is the new manager of a medium sized manufacturing business which employs 28 people. Before that he was an employee in a large company with a human resource manager.

Jim has hired Fred, an 18-year-old school leaver, as a process worker. If the first three months' trial goes well he will get an apprenticeship. Fred is constantly late, makes mistakes, and is cheeky to other workers in the factory, disrupting business and work relationships.

Jim decides to terminate Fred's employment, but he knows there are requirements under the Employment Relations Act regarding trial periods, so he phones Workplace Contact Centre 0800 20 90 20 for assistance.

The Information Officer explains to Jim that there is a proper process for establishing a trial employment period, which would require that the concerns Jim has be discussed with Fred. They suggest that he downloads the fact sheets on individual employment agreements and managing employment relations problems from their website, and that he calls back if he feels mediation might be of assistance.

Jim considers the information and calls back explaining that he wants to keep Fred as an Employee but only if he changes his behaviour so he plans to give Fred a formal warning. After some discussion Jim decides that it would be good to speak to someone who sets up mediations to get more information about the process. The information officer refers Jim's matter to the Department of Labour's mediation services. The Workplace Coordinator talks Jim through the mediation process and makes Jim aware that mediation is a good process for discussing employment relationship problems. However if Jim is considering disciplinary action such as a formal warning there is a proper formal process that would need to be followed and this could not be done in mediation.

A mediation meeting is scheduled and Fred brings his uncle to the meeting. It becomes clear that Fred wants to be successful in the job, but the work experience has been as unsatisfactory for him as it has for the company. Fred has been copying the banter of older employees without realising their negative reaction to his behaviour, doesn't know where to get assistance, and is discouraged because things are going wrong.

Jim gives Fred a clear job description and some goals to work towards, arranges weekly meetings to review his progress, and asks another worker to keep an eye on him. They arrange another meeting with Fred's uncle to review progress in a month's time. Fred's uncle agrees to drop him off at work each day and discuss how the previous day has gone.

Fred's performance and his relationship with other workers improve, and he gets his apprenticeship. Without help, both Jim and Fred would have paid for their poor communication. Jim may have faced the costs of a personal grievance, and the cost of replacing Fred. Fred may have lost his job and a chance to get a qualification, despite getting a modest settlement.

5. WHEN SHOULD A LABOUR INSPECTOR GET INVOLVED?

Labour Inspectors provide services under the Employment Relations Act and are responsible for protecting basic workplace rights guaranteed in the:

- Employment Relations Act
- Equal Pay Act
- Parental Leave and Employment Protection Act
- Wages Protection Act
- Minimum Wage Act
- Holidays Act
- Volunteers Employment Protection Act.

Employers and employees must meet the minimum entitlements in these Acts. They cannot agree to waive them. A Labour Inspector may assist when:

- the problem can't be resolved with a phone call to the Department of Labour Workplace Contact Centre or through advice from your union or employers' organisation
- the minimum rights can't be understood
- there is a disagreement on how minimum entitlements have been calculated.

Information Officers at the Contact Centre can refer such matters to a Department of Labour Workplace Service's area office for Labour Inspector assistance.

The Labour Inspector will discuss ways to approach the problem and any confidentiality issues involved. Inspectors have the right to:

- review wage and time records
- visit the workplace to verify the facts
- talk to the employer
- seek to create an understanding of the problem
- ensure any error is corrected.

Where possible, they assist the employer to set the matter right in the employer's own way. If they cannot obtain a voluntary agreement, Labour Inspectors have rights to deal with breaches of legislation, such as issuing demand notices. Where there are continuing differences about the facts or interpretation, these matters can be resolved in mediation or in the Employment Relations Authority (see section 23).

Inspectors can help employers before problems emerge by:

- providing assistance on wage and time records
- explaining minimum provisions, such as parental leave
- reviewing holiday leave systems for correctness.

Department of Labour Workplace staff are based around the country. They are available to speak about basic employment rights to schools, employer groups and union groups and can be contacted through the Department's Workplace Contact Centre on 0800 20 90 20.

6. WHEN SHOULD A MEDIATOR GET INVOLVED?

Many of the employment matters referred to the Department's Workplace Services revolve around preserving or improving workplace relationships. If you still need help after calling the Workplace Contact Centre to discuss your case, the matter can be referred to Workplace Services to seek mediation assistance.

Mediation is the main way to deal with problems that employers and employees are unable to solve without assistance.

Contacting the Department to talk about mediation does not commit you to taking any further action. You don't need to make a formal complaint to the other party before speaking to the Department, although it is always worthwhile talking about the problem to ensure all options are canvassed as soon as possible.

The Department's mediation services can help you to:

- obtain information on problem solving
- identify the skills you need to deal with the problem yourself
- be the trigger for you and the other party to recognise a problem exists
- resolve problems and improve workplace relations.

Help from a Department of Labour mediator is free and confidential.

7. WHAT IS THE MEDIATOR'S ROLE?

Mediators are not advocates for either party. They are independent people committed to the process of problem resolution. Mediators work with people to find solutions to the problem that will work for both parties.

Mediators come from a range of backgrounds. Among those employed by the Department of Labour are individuals:

- with extensive training in dispute resolution
- from both employer and employee backgrounds
- with an in-depth understanding of employment law
- with a clear picture of current trends in workplaces.

The mediator's role is to:

- help people find the best way to resolve their problems
- encourage parties to identify the real issues
- help the parties explain those issues to each other
- identify points of agreement between the two parties
- help people find a way through their problem that may not seem immediately apparent
- work with people to find answers that reflect good faith and common sense
- seek a resolution that allows both parties to move on.

Each mediation has a different format and dynamic. Mediation provides a confidential process where problems can be discussed, issues clarified and a conclusion reached that all those involved can accept.

Mediators also:

- record settlements
- perform a range of legislative duties under the Employment Relations Act
- provide information to unions, to community groups and advisors, to employer organisations or employment law seminars.

Each mediation office covers a geographic area and mediators spend time building relationships in the local community regularly visit cities where there is no mediation office, to undertake mediation meetings and provide information to local groups.

CASE STUDY: When the needs of the business change

Mary works for a telephone canvassing company. When she started work she signed a written employment agreement that provides for shift work.

The clause states that she will work 30 hours per week over six days at any time between 9.00am and 10.00pm. While the agreement provides for flexible hours of work, Mary has always worked from 9.00am until 2.30pm with a half-hour meal break.

Bill, the owner of the company, wants to extend the hours to provide for more operators in the evening when potential clients are at home. In order to do so, he proposes to introduce an afternoon shift commencing at 4.30pm. He believes that in fairness to all workers everybody should be required to work the new shift every second week. He has advised Mary that starting next month she will be required to work the afternoon shift.

Mary has a young family and needs to finish work in time to collect them from school. She is angry about the new rosters and rings the Department of Labour Workplace Contact Centre on 0800 20 90 20 for assistance.

The Information Officer asks if she has explained her concerns to Bill, and suggests that she approaches him to do so. Mary is also told about the option of seeking mediation.

After their initial discussion, Bill and Mary both feel that they need external assistance and agree to attend a mediation meeting.

The mediator gets Mary to explain why she is unable to work the afternoon shift, and gives Bill a chance to explain why he needs her to.

The mediator works with them to find ways Bill can have the work carried out and Mary can fulfil her parental responsibilities.

Bill agrees to revisit the requirement for everybody to work a rotating roster, and Mary accepts that she could work the afternoon shift on some occasions if it started at 5.00pm instead of 4.30pm.

They reach a compromise that allows Mary to continue working for Bill and that gives Bill the shift coverage his business needs.

8. WHEN SHOULD I CONSIDER A MEDIATION MEETING?

Often by the time people contact Department of Labour mediation services they are distressed, angry, no longer listening to each other, and unable to see any resolution beyond a continuing dispute or permanent breakdown in the relationship.

The most common trigger for considering a mediation meeting is the feeling by an employer, employee or union that they have made all the progress they can by dealing directly with the other party.

If you are in that position, there are some questions worth asking yourself:

- Have I made my problem clear to the other person?
- How important is the outstanding disagreement to me?
- What would make me feel that the matter is resolved?
- Is resolution worth pursuing, or is it diverting my energies from other important activities?
- Have I really looked at this from the other person's perspective and tried to reach an agreement?

It's worth talking the matter over with someone outside the issue to check your view of the situation. This does not have to be an employment relations advisor, although unions and employer organisations are likely to have seen similar issues before and can give assistance. Talking the matter over with a mediator can also help you identify the various ways other people have successfully dealt with similar circumstances.

If you do decide to seek a mediation meeting you can contact the Department of Labour by calling the Workplace Contact Centre, 0800 20 90 20. An Information Officer will listen to your request and discuss an appropriate action. If a mediation meeting is the best action, the Information Officer will refer the matter to Workplace Services so a meeting between you and the other party can be arranged.

When a meeting date has been agreed, both parties will be advised in writing of the time and venue. Examples of possible venues include the workplace, a marae, a local hotel or the Department of Labour Workplace Services office.

You are not required to prepare a written submission for the meeting, but you should think through the facts of your case and make some notes for your own use.

If you have any special needs at the mediation, such as a translator, it is important that they are discussed with staff when the mediation is being arranged.

9. HOW DO I RECEIVE NOTICE OF A MEDIATION MEETING?

When a problem occurs, the two parties are encouraged to discuss and if possible resolve matters themselves before seeking a mediation meeting. Once one or both of the parties have requested a meeting, the Department of Labour Workplace Services area office closest to you will contact you to arrange a meeting.

Attendance at mediation meetings is voluntary, but participation in mediation can be seen as part of the good-faith duties of the employment relationship under the Employment Relations Act. If you refuse to participate, the other party can take their complaint to the Employment Relations Authority, which can require you both to attend mediation.

While you are waiting for the meeting you can still seek a resolution with the other party, or obtain information from the Department of Labour that might help you reach an acceptable outcome.

If you continue to work on the problem and reach an agreement before the scheduled meeting, you can ask a mediator to record that agreement. In this case the agreement has the same status as an agreement reached in a mediation meeting and becomes a full and final settlement.

10. SHOULD I REPRESENT MYSELF?

A mediation meeting is not a court. People often represent themselves, so, if you feel confident, you can prepare for the meeting yourself and explain the facts.

The mediator's role is to ensure that both parties are given the opportunity to pursue an acceptable outcome. If you represent yourself, the mediator will make sure you are not disadvantaged in the mediation process.

The mediator may:

- suggest adjournments to help you gather your thoughts
- explain legal concepts in plain English
- suggest that you seek assistance if you are out of your depth
- help you focus on the issues.

You can change your decision about having a representative at any stage in the process.

11. DO I NEED TO EMPLOY AN ADVISOR OR REPRESENTATIVE?

If you feel unsure about representing yourself, you can employ an advisor, or ask a friend or family member for assistance and support.

Engaging an advisor does not necessarily mean they will, or need to, represent you before or during mediation.

You may need assistance at two stages: (1) preparing for the mediation meeting and (2) attending the meeting.

You don't need any technical knowledge, but you do need to be able to listen, respond and maintain enough distance from the problem to be open-minded about the facts presented. An external advisor is often useful in that role. This can be a friend, whanau member, experienced community leader, or a professional advisor.

12. HOW DO I CHOOSE A REPRESENTATIVE?

The complexity of the problem will influence the level of assistance you need.

If you employ a professional advisor, cost becomes an issue. It's important that recouping costs doesn't become a major feature of a mediation meeting, especially if what you really want is to repair the relationship and get back to working together.

You need to keep the size of the problem in perspective and not let the cost of an advisor or legal costs become the major problem for you.

If you are a member of a union or an employers' organisation, they will have experienced staff who can assist you.

If you employ an employment advisor or a lawyer you should be very clear on your brief to them, including:

- the work you want them to do
- the objective you are trying to achieve
- how much you are prepared to pay.

13. HOW SHOULD I PREPARE FOR THE MEDIATION MEETING?

When you enter into mediation you are starting down a road that will have a conclusion. Mediation should reveal the strengths and weaknesses of both parties' views, and the flexibility they are willing to show. It is a process that allows the parties to move on, whether in the same employment relationship or not.

In the mediation meeting you are participating in a structured discussion where you must be able to discuss the problem and respond to facts or comments made by the mediator or other parties.

There are no technical requirements for presenting your story. Preparation is essentially drawing the facts together so you can explain to others what happened, what your views are and what you want.

The facts you should be prepared to cover at the mediation are:

- the key cause of the difference between yourself and the other party
- any secondary matters that contribute to that difference
- what your employment relationship was like before the problem developed
- any evidence to support what you are saying
- what you are seeking, be specific if you can.

The mediator will give assistance and support your decision-making. The aim is to end with a resolution that is within the law and both parties feel comfortable with.

14. WHAT HAPPENS AT A MEDIATION MEETING?

When you arrive the mediator will brief you on the process, and you are able to ask any questions or comment if any part of that process makes you uncomfortable.

The mediator will:

- introduce all the people involved
- ask each party to outline their understanding of the problem
- invite them to describe the outcome they wish to see from the meeting.

You will each be given a chance to explain your view and make any supporting documents or information available to the mediator and each other.

Be truthful about the outcome you really want. For example, if an employee believes the working relationship is beyond repair, they might ask for a good reference and compensation for their upset and costs. If an employer will consider reinstatement, it's best to say so at the start. Clearly stating your goals will not disadvantage you.

The mediator may:

- seek additional information
- question either side further
- ask whether particular responses to the problem have been considered
- help interpret a document or legal issue
- discuss the potential risks to each party (costs, injury to reputation, reduced employee productivity, further legal action, and so on).

The mediator's role includes:

- providing a fair process that allows parties to participate fully
- managing the group's expectations and emotions
- focusing their attention on reaching a successful outcome.

This is not a court of law. You are not under oath and you will not be cross-examined, but you will need to explain your point of view. Information and comment exchanged during the meeting are "without prejudice" and cannot be used later in discussions about this or any other problem.

If proceedings become tense, it's the mediator's job to make sure things keep going smoothly.

It's common to take a break to:

- consider how things are going
- confirm things that have been said
- consider your responses
- gather further information.

The mediator will be available to both parties to talk issues through or explain the process. Mediators are experienced in showing differences in a new light and identifying possible solutions.

The mediator will bring people back together to ensure that momentum is not lost, and encourage both parties to take a new look at their situation.

The mediator will:

- record areas of basic agreement
- identify and continue to work through areas of disagreement
- propose ways to resolve the issues.

But decisions remain in your hands unless you both choose to ask the mediator to make the decision. Giving the mediator power to decide is discussed further in section 17.

Mediation meetings vary in duration, depending on the issues and the attitudes of the parties, with an average mediation meeting taking about four hours. Where the issues are complex, more time may be needed so that all the facts and potential solutions can be canvassed.

15. WHAT HAPPENS WHEN AGREEMENT IS REACHED?

If you come to an agreement, the mediator generally records your decision and obtains your signature. The mediator will record when and how agreements such as reinstatement of an employee, payment of a settlement or a formal apology are to take place.

Once you have signed, the agreement becomes a full and final settlement and cannot be reopened by either party.

Parties to the mediation are responsible for ensuring that the agreement is followed through. If you believe that the agreement has not been implemented as agreed or has been breached, you can ask the mediator to follow up. If necessary you can seek enforcement through the Employment Relations Authority or the Employment Court.

16. WHAT HAPPENS IF AN AGREEMENT CAN'T BE REACHED?

Sometimes you will end up just not agreeing on an answer to the problem. At this point the mediator will help you to recognise that no progress can be made unless one party or both change their position.

If it looks like more information or assistance could lead to a settlement, the mediator can arrange an adjournment. You can agree on a time to meet again with the mediator, or make a commitment to work things through yourselves and contact the mediator for assistance or to record an agreement.

If it looks unlikely that you will reach an agreement, both parties can agree in writing to allow the mediator to decide the outcome (see section 17 for further information).

If you can't see a possibility of agreement, the mediation ceases and you are left either to come to terms with your differences or to pursue the matter with the Employment Relations Authority or the Employment Court. These institutions can direct you to try mediation again if they believe you should be able to reach agreement.

17. IS THE MEDIATOR ALLOWED TO DECIDE THE OUTCOME?

At any stage of mediation the parties can together agree to give the mediator the authority to make a decision on the outcome.

This can help where everyone agrees on the facts but not on the best way to resolve the problem, or where agreement is close but the parties feel unable to make a move.

The parties must give written consent in order for a mediator to make a decision. If you give written consent to the mediator, then the mediator's decision is binding. You cannot appeal the outcome if you don't like it.

18. WHEN SHOULD I DECIDE TO SETTLE?

When deciding to settle it is important to remain realistic. A settlement should reflect the effect of the disputed event on the parties. A settlement will not necessarily involve money.

When guiding you to a reasonable settlement the mediator looks at:

- the investment in the employment relationship
- the nature of the problem
- the circumstances
- how the behaviour of both parties may have contributed to the problem.
- how relevant law may affect the outcome.

Mediators will help you consider things such as:

- the effect on the reputation of the injured party
- the length of the relationship
- previous expectations of the injured party about income and career
- harm or loss to the business
- efforts that both parties have made to deal with the problem.

If you change your mind about the outcome you want, you should tell the mediator or the other party. Consider your advisor's opinion, but also take responsibility for your own decision.

Don't base your decision on external matters, such as "holding out" for enough money to pay bills or fix the car. That may be important to you, but may not realistically resolve the dispute.

Neither is it wise to take an inflexible position that doesn't recognise the other party's needs at all.

It is also important to remember that many satisfactory solutions do not involve money.

Settle when you feel the offer before you is satisfactory. There is no guarantee that the offer will be available a week or even an hour later.

Once you have settled and signed an agreement you cannot change your mind.

19. IS MEDIATION CONFIDENTIAL?

Information exchanged during mediation is confidential and cannot be disclosed to outside parties or to other employment institutions like the Employment Relations Authority or Employment Court, unless agreed by the parties or the mediation was in the course of bargaining for a collective agreement.

20. MEDIATION IN COLLECTIVE BARGAINING

Mediators can become involved at any stage of the collective bargaining process. If the parties are having difficulty reaching agreement and think that mediation might help, either party can seek mediation. Often both parties will agree that mediation is necessary – however it is always best to first discuss with the other party whether they think that mediation might be helpful.

The Employment Relations Act requires that the parties who are entering into a collective bargaining process first reach an agreement about the process they will use for conducting the bargaining in an effective and efficient manner. This is called a bargaining process agreement. For guidance on what a bargaining process agreement should contain see the Code of Good Faith on the Department of Labour website.

If at any point in the bargaining process the parties reach impasse they can seek the assistance of a mediator. The mediator will assist them to overcome the impasse and then will leave the parties to continue bargaining.

Because in Collective bargaining the parties have to report progress and consider options with parties that are outside the mediation such as union members or company board members the confidentiality obligations that normally apply to mediation do not apply to collective bargaining. However how this information is to be shared and how information is given to the media is something that the parties should agree as part of the Bargaining Process Agreement. There are times when the parties will want to agree that the progress of the discussions is to be kept confidential. Reaching an agreement on what will be reported publicly or on maintaining confidentiality sometimes helps things along, particularly if a range of options is being discussed.

Mediators will record agreements reached but the parties remain responsible for keeping track of changes to the collective agreement.

When agreement is finalised the whole new agreement should do to the union members for ratification. After ratification a copy of the agreement should go to the Secretary of Labour at the Department of Labour.

CASE STUDY: Mediation in collective bargaining

Ben runs a printing business that employs 22 staff. All staff were on individual employment agreements but he has employed a number of printers who were used to being on a collective agreement and who have talked to their fellow employees about those benefits.

One day a union organiser visited Ben's firm. Twelve employees joined the union and as a result Ben has received a notice from the Union initiating bargaining for a collective agreement.

Ben felt completely out of his depth. He talked things over with his wife, who reminded him that staff relations had always been good.

Ben phoned the Department of Labour for advice, and now understands that he must send a copy of the notice initiating bargaining and its proposed coverage clause to all his employees, whether they are union members or not. He then organises a preliminary meeting with the Union Organiser in order to agree a Bargaining Process Agreement. Agreement was reached quickly.

Ben is concerned that the difference between the conditions in the current individual agreements and proposed collective agreement are substantial. He does not want to have too much difference between the employment conditions for union employees and non-union employees and the parties reach an impasse on this issue.

Ben contacts the Department of Labour and a mediator is allocated the case. The mediator contacts both parties to find out what the difficulties are. A mediation meeting is scheduled.

Over two days of meetings the parties are assisted to find common ground and solutions to the employer's concerns and the union's desire to have a collective agreement.

Agreement is reached and that agreement goes to the union members for ratification. Following ratification Ben met individually with the non-union members to renegotiate their individual employment agreements.

21. MEDIATION IN ESSENTIAL INDUSTRIES

More than 100,000 New Zealanders work in essential industries. These are defined under the Employment Relations Act as areas where industrial action over collective bargaining can cause major social or economic disruption to the community.

Fourteen days' notice of industrial action in essential industries is required, and the Secretary of Labour must be advised if industrial action is to be taken. The services of a mediator will then be offered to the parties.

The mediator provides the same services as those normally offered to parties during other negotiations, but in particular will seek to assist the parties in understanding how a strike or lockout can be avoided.

22. MEDIATION OUTSIDE THE DEPARTMENT OF LABOUR MEDIATION SERVICES

Other organisations and individuals can provide mediation in employment relationship matters, if the parties agree.

A private mediator can be a good option when:

- the point of difference is technical, or specific to a particular industry
- you want to establish a consistent mediation framework in your workplace.

There are costs involved in employing a private mediator. Part of any agreement to use this form of mediation should be agreeing on how much and who pays.

Only Department of Labour mediators have the authority to sign settlements so that they are legally final and binding under the Employment Relations Act. If a private mediator is used, a Department of Labour mediator can be asked to sign the settlement. Contact the Department on 0800 20 90 20 or your local Department of Labour Workplace Services area office for advice on this process.

23 THE EMPLOYMENT RELATIONS AUTHORITY

The Employment Relations Authority was established under the Employment Relations Act to determine the law and facts in employment relations disputes. It has powers to determine the outcomes of disputes.

The Authority can use a variety of ways to sort through issues. For example, it can:

- call for evidence from the parties or anyone else
- hold investigative meetings
- interview the parties or anyone else.

The Authority must also consider whether mediation will still be helpful, and can refer parties back to mediation.

APPENDIX A: INFORMATION & GUIDANCE IS AVAILABLE FROM THE DEPARTMENT OF LABOUR

If you require further information and guidance about any matter covered in this publication or about any other employment relations matter:

- Call Department of Labour Workplace Contact Centre free on 0800 20 90 20; or
- Visit our website at www.dol.govt.nz. Where you can also find easy-to-read publications, pamphlets and fact sheets on specific employment issues to assist you to create and manage better workplace relationships.

There is information on:

- Employment relationship problems
- Hiring new employees
- Going to the Employment Relations Authority; plus an
- Employers' guide to employment rights
- Good Faith.

There are shorter pamphlets and fact sheets on key topics, such as:

- Employment relationship matters including minimum employment rights and employment agreements
- Parental leave entitlements
- Holidays and other leave
- Minimum pay and deductions
- Solving workplace problems
- Union membership matters.

All are available on request from the Department of Labour Workplace Contact Centre. You can also download them or order them online from our website.

Labour Inspectors

Labour Inspectors enforce certain employment relations laws relating to minimum conditions of employment, such as minimum wages and holidays and the keeping of wages and holiday records. They carry out investigations to ensure these records and systems, agreements and policies meet at least the minimum required by law. They investigate in an impartial manner at all times and work with employers to ensure that problems are resolved in a manner that stops them reoccurring.

If it appears that you may have breached any of these laws, employees can ask a Labour Inspector to investigate the matter on their behalf. Inspectors are based at area offices around New Zealand.

Go to Mediation

Our Mediators can, if invited, assist you in dealing with and fixing workplace problems that arise. They operate informally, can provide you information, visit your workplace, and meet both parties separately or together or by a series of meetings. They can also assist you in more formal situations such as collective bargaining or dispute resolution.

Mediators are based at offices around New Zealand.

Apply to the Employment Relations Authority

If you have tried mediation, or believe the problem cannot be solved by mediation, the Employment Relations Authority is available to formally investigate issues, determine whether mediation could assist, and rule accordingly.

The Authority is based at Auckland, Hamilton, Wellington and Christchurch and will travel to other main centres.

If a party is not happy with the decision of the Employment Relations Authority the Employment Court is available to all parties.

The Department's Workplace Contact Centre can provide you email, fax, mailing and street addresses of your nearest Department of Labour Workplace Services area office offering the services of Labour Inspectors, Mediators and for contacting the Employment Relations Authority, or you can find contact details on our website.

Other legal obligations

This booklet focuses on matters mostly under the Employment Relations Act, the Holidays Act, the Minimum Wage Act, the Parental Leave and Employment Protection Act and the Wages Protection Act. You should also be aware that other legislation impacts on employment relationships. For example, the antidiscrimination provisions of the Human Rights Act and the Equal Pay Act apply to all employment relationships. Also, the Privacy Act and the Injury Prevention, Rehabilitation and Compensation Act may well also have an impact.

The Department of Labour's Workplace Contact Centre on 0800 20 90 20 will put you in touch with the appropriate source of advice on these matters.

You can get assistance from other Department of Labour services

1. Health and safety in the workplace is another area where employers and employees need to be able to work effectively together. Often unsatisfactory management of safety issues can eventually result in employment relations problems, as well as unsafe working environments. Information about Health and Safety in Employment (HSE) is available on www.dol.govt.nz. There are offices throughout NZ.

You can:

- find out about workplace health and safety law, visiting www.dol.govt.nz or call the Department of Labour Workplace Contact Centre free on 0800 20 90 20
- get advice on workplace safety and health
- report a workplace accident, injury or illness
- find out how to identify and manage hazards in the workplace or prevent injuries in your workplace.

2. Immigration New Zealand is available on www.dol.govt.nz or by calling 0508 55 88 55 (outside Auckland) or 914 4100 (from the Auckland area).

You can:

- find out about immigration in New Zealand
- get information for new migrants to settle in New Zealand
- get information on how to apply for a permit to work or study in New Zealand
- get information on how to apply for a visa to work or study in New Zealand.

3. The Department of Labour Work Directions Group is available on 04 915 4000. Work Directions advises government on a range of labour market matters and provides information to assist employers and employees in the workplace.

You can:

- get information on skills, research, trends and demographics
- get information on the changing nature and future of work, work/life balance, skills needs and research.

Assistance from unions and employers' organisations

You may wish to seek assistance from your union or employers' organisation. A phone call could help to resolve your problem or avoid costly mistakes. You can get union contact details at www.nzctu.org.nz or employers' organisation contact details at www.businessnz.org.nz.

APPENDIX B: SAMPLE PROBLEM-SOLVING PROCEDURE IN AN EMPLOYMENT AGREEMENT

The written employment agreement between an employer and an employee must include a problem-solving procedure. Such a procedure might be:

If our employment relationship is to be as successful as possible, it is important that we deal effectively with any problems that may arise.

This procedure sets out information on how problems can be raised and worked through.

1. What is an employment relationship problem?

It can be anything that harms or may harm our employment relationship, other than problems with the fixing of new terms and conditions of employment.

2. Clarify the problem

If either of us feels that there may be a problem in our employment relationship, the first step is to check the facts and make sure there really is a problem, and not simply a misunderstanding.

You may want to discuss a situation with someone else to clarify whether a problem exists, but in doing so you should take care to respect the privacy of other employees and managers, and to protect confidential information belonging to the employer.

For example, you could seek information from:

- friends and family
- the Department of Labour on 0800 20 90 20
- pamphlets/fact sheets from the Department of Labour
- your union, a lawyer, a community law centre or an employment relations consultant.

3. Discuss the problem

If either of us believes there is a problem, it should be raised as soon as possible. This can be done in writing or orally. Provided you feel comfortable doing so, you should ordinarily raise the problem with your direct manager. Otherwise, the problem can be raised with another appropriate manager. A meeting will usually then be arranged where the problem can be discussed. You should feel free to bring a support person with you to the meeting if you wish. We will then try to establish the facts of the problem and discuss the possible solutions.

4. The next steps

If we are not able to resolve the problem by talking to each other, we each have a number of options:

- We can contact the Department of Labour on 0800 20 90 20, which can provide information and/or refer us to mediation.
- We can take part in mediation provided by the Employment Relations Service (or we can agree to get our own mediator). Mediation will normally be confidential.
- If we reach agreement, a mediator provided by the Employment Relations Service can sign the agreed settlement, which will be binding on us.
- We can both agree to have the mediator provided by the Department of Labour decide our problem for us, in which case that decision will be binding on us.
- If mediation does not resolve the problem, either of us can refer the problem to the Employment Relations Authority for investigation.
- The Authority can direct us to mediation, or can investigate the problem and issue a determination.
- If either of us is not happy with the Authority's determination, we can refer the problem to the Employment Court. (The Court may also tell us to go back and have more mediation.)
- In limited cases, there is a right to appeal the decision of the Employment Court to the Court of Appeal.

5. Personal grievances

If the problem is a personal grievance, then you must raise it within 90 days of when the incidents that gave rise to the grievance occurred or came to your attention.

A personal grievance can only be raised outside this time frame with the agreement of the employer, or in exceptional circumstances.

FOR FURTHER INFORMATION ON WORKPLACE SERVICES
VISIT WWW.DOL.GOVT.NZ OR PHONE 0800 20 90 20

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Department of Labour
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