



EVIDENCE MATTERS FOR EMPLOYEES

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Raising a personal grievance

As an employee or ex-employee, when you raise a personal grievance claim with your employer, you're simply advising them that they have made an error regarding your employment rights in some way and that you want it rectified or you want to be compensated for their error. That error could be an unjustified dismissal, unfair treatment in the workplace, a pay issue, or any of the many issues you can find advice for on our website.

Evidence supports your claim

When raising a personal grievance, you must advise your employer what they have done wrong, but more importantly, you must be able to show by their actions, inactions, and correspondence that they have indeed done what you're claiming they have done. In the multitude of cases we have worked on, only once has an employer in a confidential mediation admitted they made a mistake and wanted to fix it. In practise, this is a rather sad state, however, it shows us that if an employer is not willing to admit

any wrongdoing, they may be willing to lie or omit evidence that does not support their position.

Why you need to keep evidence

You may claim that you were unjustifiably dismissed when your employer called you late on Friday night and told you over the phone you were dismissed and not to come back to work. If you keep a record of your phone call, including date, time, and duration and send your employer a message or an

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email and put in writing your version of the conversation ASAP, they are less likely to be able to dispute it. Unfortunately, we often see employees who do not address a dismissal straight away and when the employer is later questioned, the employer claims the employee resigned.

If you lose your cell phone with messages and call logs proving your side of the story, you may lose the evidence that was needed to win your case.

Put conversations into writing

It's important that you document verbal conversations and meetings. If you're having issues at work and every conversation has been verbal and you do not follow those conversations up with an e-mail outlining your concerns or what was agreed to even if you think they have been resolved, further down the track, if your situation got worse and you want to do something about it, they could deny those conversations. If you put the basics of those conversations in writing and they do not reply, then you could claim they are true because they were unrefuted.

Employers will not provide evidence for you

An employer who's facing litigation for a personal grievance will be unwilling to provide any information that strengthens your case and weakens their case. It's your responsibility to ensure that the evidence you wish to rely on is kept. If you have e-mails on your work computer or messages and call logs on a work phone that you think support your case, you must make a copy for yourself; your employer will not provide these. Your employer may have an obligation to provide certain information but 99 times

out of 100, they will not, and there's nothing that can be done to make them. We've had employers who have been directed by the court to provide information and still do not, and what they may get in exchange is a penalty that's often awarded partly to the Crown, not fully to our employee clients.

All evidence matters

When we work on a case, a key event timeline is created in unison with evidence to create an exact outline of what happened in support of your claim. We require all information; you may think something is not relevant to your case, however, it may prove something that you had not even thought of. A text message to a co-worker asking if they want a pie from the bakery may show that you were working on a day your boss said you weren't. A month-long messenger conversation with a manager may show that there was a good relationship between you and them when your employer is claiming you not fitting into the team. All evidence matters.

Examples of evidence

- **Emails:** need to be forwarded to include time and date stamps
- **Work emails:** a copy forwarded to your personal email address
- **Phone records:** show the exact time, date, and duration of particular phone calls
- **Work phone:** make sure you copy all messages and call logs from here too
- **Letters:** keep all letters for the timeline
- **Messages:** keep all messages, and screenshot them with the date and time if you need space
- **Meeting notes:** always take notes at a meeting and then photograph them
- **Audio recording of meetings:** you can record meetings that you are party to
- **Contracts:** show employer and employee obligations
- **Timesheets/driving logs/rosters:** can be used to assist with unpaid wage issues
- **Report additional hours:** always report additional hours by email or writing
- **Payslips:** used to calculate unpaid holiday pay; if you're not getting payslips, ask for them
- **IRD records:** shows your income during your employment and in a wage loss period

- **Google Maps timeline:** activate this feature on your phone to show when you work
- **Job searching:** every job application after dismissal strengthens your lost wage claim

Get support

Getting support from an advocate promptly can help to ensure that all evidence is gathered, and it's not lost. We can advise you of things you need to ask your employer to strengthen your case and the things that you should never say because they have contradictory meanings.

The key to success

Every piece of evidence is a puzzle piece, and once we have all the pieces, we can assemble the full picture, which will help to prove your versions of events are more favourable and that your version is the truth bringing us one step closer to success in achieving a resolution or compensation.

What we can do for employers and employees

We're Employment Law Advocates that represent both employers and employees under Section 236 of the Employment Relations Act 2000.

That section permits advocates to represent in the employment jurisdiction. We're not practising lawyers.

We represent in direct negotiations, the Employment Mediation Service, the Employment Relations Authority, and the Employment Court. ■

For more details, contact Miranda Anderson at 0800 946 549 or Miranda@WinKiwi.co.nz or visit AndersonLaw.nz.

