

Quick Guide to Managing Redundancy or Restructuring

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Associated Documentation

1. Consultation Document Template
2. Sample Individualised Statements
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4. Proposal Feedback Sheet
5. Template Confirmation of Redundancy Letter
6. Template Confirmation of Consultation – Not Redundant

Warning

The risk of a personal grievance being raised when going through a redundancy process is probably higher than for any other Human Resources function. It is therefore strongly recommended that you seek professional support for this process.

The following advice and associated documentation is intended to support you whether you seek professional advice or not, however, HRtoolkit and its associates hold no responsibility for the outcomes from the use of this documentation.

1. Introduction & Overview

a. Definitions?

Restructuring is the **term** used to describe the act of changing the structure of a business i.e. defining what roles are required, or not required. As a result of restructuring you may change an employee(s) job, or make employee(s) **redundant**. Even if you are only changing a job, not making a person redundant, you need to consult with them. **Redundancy** is also commonly used to describe the **act of restructuring**, we're going through a '**Redundancy Process**'. For this reason the terms Redundancy and Restructuring have been used interchangeably.

Another common term is **disestablishment**. This is the act of DIS-establishing an existing role, and is another word which is **interchangeable** with **restructuring**, making a role **redundant** etc.

b. What is redundancy/Restructuring?

Redundancy, or restructuring, is a situation where, **for genuine business reasons**, your staffing requirements have changed. E.g.

- You no longer require as many employees
- The position being filled by an employee is no longer required
- You are selling, transferring or outsourcing all or part of the business

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Redundancy or restructuring is not an alternative to performance management of a poor performer. However, if you are using a selection criteria, **performance can be used as a criteria for selection** (see later).

c. Who has special protection?

Legislation provides additional protection for the following groups of employees:

- cleaning services and food catering services in any place of work
- laundry services for the education, health, or age related residential care sector
- orderly services for the health, or age related residential care sector
- caretaking services for the education sector

If you employ people in any of these sectors then please refer to the Department of Labour (www.ers.govt.nz) for more information about your specific requirements.

d. What are the legal requirements in relation to redundancy/Restructuring?

If **you have a genuine business reason** for entering a redundancy/Restructuring process you need to:

- Consult with employees about the **PROPOSAL**
- Allow employees time to give **FEEDBACK** about the proposal
- Genuinely **CONSIDER** the **FEEDBACK**
- **CONFIRM** what you are doing

Throughout this process you need to act:

- In a fair and reasonable manner
- In accordance with your employment agreements

e. Why is redundancy/Restructuring so difficult/risky?

Because you are playing God with people's lives!!

Technically, the legal requirements of what you have to do are not difficult to fulfil. However, the emotional process of sitting in front of a person who you may well have known for a long time and saying 'you have done nothing wrong, but you don't have a job anymore' is horrendous and should not be underestimated.

In addition, an employee who finds themselves in a situation where they suddenly do not have a job (particularly in the current economic climate of rising unemployment) they have a high motivation to:

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- Fight to keep the job
AND/OR
- Fight to get as much money as possible out of the company

Therefore the risk that an employee will raise a personal grievance is high.

f. How do I minimise the risk of personal grievance?

- Follow a fair process
- Treat people honestly and with dignity and respect

g. What are the 'Hidden' Costs of restructuring and redundancies?

Loss of productivity, morale and loyalty with your remaining staff.

However well you 'sell' the need to do what you have done, and however right and justified you are with the action you have taken the remaining employees are still liable to be:

- Nervous about 'who's next'
- Potentially still thinking that you could have avoided doing it if you had really tried
- Distrustful that you really have their best interests at heart.

It takes a long time for employees to get over. But if you handle the process well and treat everyone honestly and with dignity and respect the chances of minimising this impact are significantly increased.

2. Definitions

a. What is a genuine Business Reason?

Basically reasons that are to do with the business, NOT reasons purely related to an employee's performance or behaviour.

Some examples of genuine business reasons can be:

- Down turn in the economy, meaning you can no longer afford to employ as many people as you currently do
- Down turn in the economy meaning that you no longer have work to keep everyone busy and are not likely to for the foreseeable future.
- Changes in technology (or the type of technology you are using) meaning that the number of employees you require has reduced, or the skills you require in your employees has changed
- Identification that the business would be better served by employing a specialist rather than having several 'amateurs' doing part of a role. For example, new business development may be the

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responsibility of all managers, however, the business may be better served by reducing the number of managers by one and replacing that salary with a specialist Business Development Manager.

- Growth of the business meaning that the business needs to recruit more specialist people. For example, you may employ a General Manager with responsibility for HR and Accounts, but the business is growing and the company would be better served with a specialist HR Manager and Finance Manager, but you don't need the General Manager in addition, therefore the General Manager becomes redundant.

Some examples of what are **NOT** genuine business reasons are:

- An employee isn't really doing their job right so I want to fire them and replace them with someone better – the cause is the person not performing, they should be performance managed, not made redundant
- An employee just swore at a customer, I want to get rid of them! – this is a disciplinary issue, not a redundancy issue

b. When is a position redundant?

The rule of thumb is that a position is redundant if it has significantly changed by more than 20%.

Obviously this is a fairly subjective test and dependant on the outcome that you want to achieve, you may wish to argue that the change is more or less than 20%. If in doubt, it is recommended that you use language along the lines of 'It is our opinion that this does constitute a change to your role, however it is marginal as to whether the change is significant. You therefore have the option to either accept the new role with the associated changes in duty, or you may wish to opt for redundancy.' This then leaves the choice with the employee, and reduces the risk that the employee can subsequently claim that you were either trying to 'make significant changes to their job' or 'making them redundant when there were not significant changes to their job'.

c. What is a fair and reasonable process?

Unfortunately this is another very subjective test. As a result there is no way to guarantee that everyone (including an employment court judge) will agree that a process is 'fair and reasonable'.

To minimise the risk of issues ensure that:

- You have clearly defined and honest business reasons for what you are doing
- You are treating all people equally, not clearly favouring or disfavouring some individuals

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- The ultimate test is 'put yourself in their shoes', and see how what you are doing looks from their angle!

3. Planning and Preparation

Remember the 5 P's = Proper Planning Prevents Poor Performance

a. Establishing the Business Reason & what you are doing

To ensure the smooth running of a redundancy/ restructuring process it is important that you clearly define what you are trying to achieve and why. This will ensure:

- You have a strong reference point to ensure you have achieved your goals
- That all management involved have a clear and common basis on which to discuss in more detail with employees what is happening and why
- By having a clear understanding of the business reasons it is generally a lot easier to deal with the emotional impact of what you are doing to your employees. Knowing that you are doing an unpleasant thing for the right reasons, is a lot easier than just knowing that you are doing an unpleasant thing, but you aren't sure why.

b. Decide which roles need to be disestablished or significantly changed?

In light of what you are trying to achieve you then need to establish which roles need to be disestablished or changed.

For example:

- You currently have 5 electricians, but only have sufficient ongoing work for 3 electricians. So 2 electrician positions need to be disestablished.
- You currently have 1 secretary and 1 receptionist, but you want to merge these into 1 administrator with responsibility for reception. You need to disestablish both the secretary and receptionist role and create 1 new role of administrator for which you would probably need to consider both the incumbents of the old receptionist and secretary role. Note that one or other of the roles may be within 20% of the new role and therefore there may be a default person for the new role.
- You currently have a senior IT Development Manager, however you can no longer justify that role, and really need a significantly more junior IT Administrator instead. You need to disestablish the IT Development Manager position. You may want to offer the IT Development Manager the position of IT Administrator with the

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appropriate salary for that role, or you may decide to go straight to a recruitment process.

c. If I create a new position what should I do?

As you will see from the above examples it is entirely possible (and very common) to create new positions during a redundancy/restructuring process.

When a new role is identified you should:

Consider whether this role is **significantly similar** (within 20%) to an existing role that is being disestablished. If it is, then you need to confirm the incumbent of that role to the position

If it is **marginal** if the role is more or less than **20% different** from a disestablished role then the lowest risk option is to offer the employee the choice to take the role, or take redundancy.

If a new role is definitely **greater than 20% different** you have several options:

Option	Pro's	Con's
Offer it to a disestablished employee on the same salary etc	➤ Easy option in the short-term as there is no change to salary for the employee	<ul style="list-style-type: none"> ➤ You have not achieved the identified change in salary expenditure ➤ Risk that other employees will consider that they should have had the opportunity to get the job ➤ Unlikely to achieve any behaviour change required with the identification of a new role
Offer it to a disestablished employee but with the salary appropriate for the new role	➤ Achieves the salary expenditure changes identified	<ul style="list-style-type: none"> ➤ Risk that employee in question will feel "forced" to take a salary cut ➤ Risk that other employees will consider that they should have had the opportunity to get the job ➤ May not achieve the

		behaviour change required with the identification of a new role
Ask for applicants from within the company to go through a recruitment process (<i>usually the preferred option</i>)	<ul style="list-style-type: none"> ➤ Clear and open to everyone ➤ Achieves the changes you have identified through creation of the new role ➤ Hopefully avoids a redundancy ➤ You can always advertise externally if you don't get any suitable internal applicants 	<ul style="list-style-type: none"> ➤ A recruitment process can be time consuming ➤ You may get a better applicant by going externally
Immediately advertise it externally	<ul style="list-style-type: none"> ➤ Maximises chances of getting the right applicant 	<ul style="list-style-type: none"> ➤ It creates a poor company image to recruit new people at the same time as making current employees redundant

See the **Consultation Document Template.doc**, "who can apply for the new positions" section for suggested wording in relation to a selection criteria.

d. Establish the selection criteria

Where you wish to reduce the number of a particular category of staff (e.g. Full-time Sales Assistants reduced from 5 to 3), you need an assessment criteria to assess which of them will be made redundant and you are required to consult about the selection criteria that you will be using. (see the **Assessment Criteria Matrix.doc** for examples)

To help you define your assessment criteria the **Assessment Criteria Matrix.doc** lays out a sample 5 point rating scale for the following categories:

- Length of Service
- Industry experience (not just with current company)
- Attendance
- Performance
- Increased/decreased performance over the last six months
- Average size of sales
- Attitude & Work Ethic
- Demonstrated Additional Skills

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- Health & Safety Compliance
- Achievement in relation to set Goals with higher score for over achievement of goals
- Professionalism

You would generally anticipate using about 4 or 5 of these (or other) selection criteria and these can be adapted to suit the needs of your business.

You can use any criteria that can be equally applied to all staff. Therefore performance can be used as a criteria, however likelihood to have children is **NOT a legal selection criteria**.

When determining the criteria to be used, keep in mind that the assessment of an employee should not in any way come as a surprise to them. E.g. it is not fair to mark them as a poor performer if this has never been discussed with them in either an informal or formal sense.

By using a clearly defined and written criteria, and being open and honest with employees about their ratings, you will significantly reduce the risks of any grievances. Though employees may not like the assessment, provided you are fair and honest it is very difficult for them to claim you were 'picking' on them.

***Legal Note** individual ratings should be treated as strictly confidential and only discussed with the person to whom they apply during a consultation process. However, there is a risk that, in the event of a personal grievance, you could be asked for evidence that you have fairly applied the criteria, and the assessments you have given may at that point require to be revealed.*

e. Who do you need to do consult with?

As a **legal minimum** you need to consult with any employee who may potentially become redundant or have a significant change to their position.

It is also recommended that you distribute consultation documents and allow for feedback from all other employees who are co-located with potentially redundant employees, or who are liable to talk to potentially redundant employees. In most cases this will mean everyone within the business.

The reason for this is to:

- Ensure that the message that the company wants to portray is being consistently portrayed
- Give all employees the opportunity to have their say

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Irrespective of how much you ask that confidentially be maintained IT WILL NOT HAPPEN. You are therefore much better served in the vast majority of cases by being open and honest with all employees. However do keep in mind that those most affected need to be spoken to on a one on one basis before you communicate with unaffected employees.

f. **Write the Consultation document**

Once you have established

- the business reasons for what you are doing
- Which roles will be disestablished/significantly changed
- What recruitment process you will be using (if applicable)
- What selection criteria you will be using
- Who you are going to consult with

You are ready to write the consultation document. See **Consultation Document Template.doc** for more help on this.

The **Consultation Document Template.doc** aims to provide you with a range of sample phrases to help you put together a consultation document specific to the needs of your business. EVERY CONSULTATION DOCUMENT IS UNIQUE.

It is not a legal requirement to consult in writing. HOWEVER, it is strongly recommended that you do provide the information in writing as:

- It minimises the risk of the message being misinterpreted. People recall very little of what they hear, and even less when there is a risk of their position being made redundant. If they have a copy in writing of what was said then they can refer back to it, and also refer their friends and family to the document
- It provides a clear legal defence in the event that a grievance is raised

The consultation document should be used to:

- **Lay out the proposal** to employees at the start of any consultation process (**NB LEGALLY YOU MUST**) **1)** present a proposal, **2)** allow the employee time to consider the proposal and provide feedback, and only after this, **3)** confirm what you are doing. This process can be completed within about 5 days.
- You should **read out the proposal document** and then provide the document to the employee. By using the proposal document as a **word for word script** there can be no later arguments about what was or was not said (again, risk minimisation).
- **Lay out the facts** in as honest and clear a way as possible. Many of your employees will have already worked out that things need to change (remember, you employ people because of their intelligence, don't expect them to lose that intelligence just because it is a redundancy/restructuring situation). If you are open

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and honest with people they are less likely to 'fill-in the blanks', and, the 'canteen' version of the situation will often be a lot worse than the reality.

- **Sell the proposal.** You need to lay out the facts to minimise the risk of employees bringing a grievance, but you also need to 'sell' the proposal to the surviving employees to ensure that they remain as supportive of the company as possible. If an employee continues to be unhappy about the way in which a company has acted there are two main risks:
 - That they will look for other work and ultimately resign
 - That they will not be as productive as you would like or need (considering that you now have fewer employees, to potentially do a similar amount of work)

g. Personalise the consultation documents

Once you have created a main consultation document you can personalise this for each employee. **Sample Individualised Statements.doc** have some samples of personalised statements which can be included in the template consultation document in the 'what does this mean for me' section.

Tip Use mail merge to create the personalised letters, particularly if you have a lot of staff that you need to consult with.

h. Provide Feedback sheets

It is a **legal requirement** that employees are given the opportunity to provide feedback to the proposal. It is **NOT essential that feedback be given in writing**, however it is strongly recommended that, as a minimum, the person who receives the feedback keeps a note of:

- Date and time of the feedback being given
- Summary notes of the nature of the feedback

The purpose of this is to provide evidence that feedback was given and received in the event of a grievance being raised.

As an aid to this process there is a **Proposal Feedback sheet.doc**. It is **NOT essential that employees fill out a feedback form**. However, experience has shown that, by providing a feedback form, this helps to focus the employees on the business reasons behind what you are doing. It also minimises the risk of getting into protracted emotional discussions which are very difficult for everyone concerned.

Questions can be added or deleted as you wish to suit your needs

i. Agree the timetable of events

In order to ensure the process runs as smoothly as possible it is important to plan the timing of events. The following is a recommended timing based on a normal Monday to Friday operation:

- I. **Monday** – Present the proposal to all employees you have identified to be consulted with.
 - a. **First** talk 1:1 with any employees who may be made redundant
 - b. **Second** talk 1:1 with anyone who may be subject to changes, but not redundancy
 - c. **Third** talk to all other employees, preferably as 1 group
 - d. **Ideally have talked to everyone within 1 working day**
- II. **Tuesday** – be available to talk to all employees
- III. **Wednesday** – 5pm deadline for submission of feedback so be available all day for 1:1 feedback meetings
- IV. **Thursday** – collate and consider all feedback and decide on any changes to proposal
- V. **Friday** – Confirm the way ahead and start 1:1 discussions about the selection criteria.
- VI. **Monday** – Complete 1:1 discussions about selection criteria with a view to confirming who is staying and who is going as soon as possible
- VII. **Monday to Friday week 2** – complete any internal interviews for new positions if applicable with a view to finalising who has been successful in the new roles as soon as possible, and ideally no later than the end of the week.

This timing is based on extensive experience with running these processes and the three key considerations are:

- Allow time for people to digest and understand the proposal
- Not allow so much time that they dwell on the proposal
- Maximise the time when managers will be available to talk to employees

Though it is not always possible, if you can manage to give due consideration to all the feedback, and complete the process within one Monday to Friday period (and therefore avoid it running over a weekend) this is generally much easier on everyone emotionally.

A consultation process should never be started on a Friday as this creates 2 days to think about everything with no opportunity for management to correct misunderstandings, and frequently results in increased resistance to the process.

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j. **What are the biggest risks to the process going according to the timetable?**

Though you need to plan the timetable there are several things that can create delays to the timetable:

- Employee representatives not being available within the timeframe that you have dictated
- Employees being on leave and being unable to give feedback.

Legally you need to allow the employee time to give feedback, and to have a representative present with them. You therefore need to allow for these delays, they are unavoidable. However, experience has shown that, in most cases, talking through the impacts on everyone else involved will minimise any malicious delays.

Tip: Excessive delays at this point is often an indicator of an increased risk of personal grievance. It is therefore recommended that you seek professional advice if this happens.

k. **What happens if I don't get feedback from everyone?**

You need to wait until all feedback has been received from any grouping of affected employees before you can complete the process.

You **DO NOT** need to wait for feedback from **Non-affected employees**. You **DO NOT** need to wait for feedback from staff where their feedback will **not impact the decision** about the staff in question. You **DO need** to wait for all feedback from everyone with a grouping of employees.

For example. If you are disestablishing 2 of 5 Electrician positions you need to wait for feedback from all 5 Electricians. However, if you are disestablishing 2 of 5 Electrician positions PLUS disestablishing the Receptionist, you do not need to wait for feedback from the Receptionist before making a final decision about the Electricians.

l. **Employee's entitlement to a Representative**

Legally employees are entitled to a representative of their choice at any discussions that you have about their employment. This may range from a family member, to a union representative through to an Employment Lawyer. It is recommended that you seek professional advice if a Union or a Lawyer becomes involved.

4. Conducting the meetings

a. First Meeting – Monday

The purpose of this meeting is ONLY to present the proposal document. It is recommended that you do not get into extensive discussions at this stage until the employee has had a chance to think about the proposal.

Therefore it is recommended that you:

- Give the employee a copy of the proposal document
- Read the proposal document out loud to the employee
- Close the meeting

b. Feedback Meeting – Tuesday or Wednesday according to employee request

The purpose of this meeting is for the employee to give you feedback about the proposal. Therefore, your main purpose is to **Listen** and **Clarify** any questions or queries they may have.

The feedback sheet (**Proposal Feedback sheet.doc**) is provided as an aid for recording feedback. It is not essential that it be specifically completed, however it can be a useful tool to support the process. As a minimum you need to keep a note of:

- Date and time of the feedback being given
- Summary notes of the nature of the feedback

c. Consideration of employee feedback

Once you have collated the feedback, you need to give this genuine consideration. Generally this is achieved by reconvening a meeting of the management team running the process.

Tip: experience has shown that employee feedback is often of considerable interest and value to the business. In addition, if you are seen to take the employees feedback on board (even if only in a minor way), this has a considerable impact on how well the employees view the company actions.

d. Confirmation of Outcome meeting

The purpose of this meeting is to:

- Confirm the decision going ahead and present this to the employees in writing (**Template Confirmation letters.doc**). Note, if you are going through a criteria assessment process you will not be

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able to confirm who has been made redundant until you have completed that process.

- Advise of any changes that have been made to the proposal as a result of the feedback
- If they are redundant advise them that this meeting marks the start of the notice period.
- If you are doing criteria assessment, advising them when this will happen.

e. Criteria Assessment Meeting – Friday or Monday

The purpose of this meeting is to:

- Discuss the assessment scores given to the employees
- Take on any feedback the employees have about the scores given and adjust them if this is appropriate
- Take on board any other factors that they wish to be considered in relation to their success or not in getting one of the roles

5. Tips and Pitfalls

a. How will employees respond?

It is impossible to predict how any individual will respond to a redundancy/restructuring process. However experience has shown that:

- The vast majority of employees will already have worked out that things are not going well, so are rarely surprised when they hear that changes are going to happen
- Pretty much everyone will show a degree of anger when you present a proposal that their role may be redundant. However, **ANTICIPATE** this and show **EMPATHY**, and the vast majority will fairly quickly calm down.

b. How do I best handle employees emotional response?

There is no single way to deal with all people. Some tips during the time of consultation to help smooth the process as much as possible are:

- **Be actively available** for your employees to talk too you. I.e. open door, NOT tied up in meetings all the time etc
- **Listen.** Often people understand what is happening, but need the release of having someone to talk to.
- **Seriously consider what they have to say.** Your employees will often have good ideas about how to make the best of your company
- **Remember they are the ones facing life without an income.** However bad you may be feeling, they are probably in a worse situation so be empathetic.

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- Be **honest**. The quickest way to breed distrust is to be dishonest about minor things, as, if you 'lie' about the little things what are the chances that you have lied about the big things? If you lose the trust of your employees, the whole process will become significantly more difficult and risky.

c. **Redundancy/Restructuring is easier than performance management...**

It can be very tempting to use redundancy or restructuring as an excuse to avoid performance management, however the legal risks associated with this option are great. If you make a person 'redundant' and they subsequently challenge whether there was a genuine business reason for the redundancy, their poor performance is not a defence, in fact it can often be seen as an admission that the 'redundancy' was not genuine, but rather a performance issue.

NB Refer to Life at work/poor performance for tips on how to make performance management easier.

d. **How long do I have to wait before I can recruit again?**

There is no limitation.

Provided the business reasons were genuine for the redundancies at the time they were made, if the business requirements change (even if the following day) it is acceptable to start recruitment even though you have recently gone through a redundancy process.

You do not HAVE to re-hire any people that you have genuinely made redundant.

HOWEVER, it is prudent to consider the image you portray to both the remaining employees and those you have made redundant. You may genuinely have been awarded a new contract the day after you made people redundant, however many people will question whether you knew about this in advance.

e. **Tips to cope with the stress of the process**

There is no way to avoid the emotional stress associated with a redundancy/restructuring process however a few quick tips to help you as a manager cope with it are:

- Remember that by doing this to a few people you are saving the jobs of the rest
- Remember how many creditors can be paid with the money that you are saving on paying wages

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- Remember that by paying those creditors you are also helping save them from potentially going bust
- Acknowledge that it is a stressful time, and do something about that stress before it gets too much.

However, also keep in mind that you do still have a job at the end of the process, whereas the employee you are talking to doesn't, you are in a better position than them, be empathetic to that.

Everyone copes with stress differently, some examples are:

- Make sure you don't give up all the things you do for yourself. It is easy to become a workaholic during pressure times and let everything else slide, but taking that hour out to go to the gym/play with the kids/read a book/etc will pay dividends for helping manage the stress
- Take time out – even a 10 minute walk at lunch time can help clear your head and give you space to 'think'
- If you are a smoker, have a cigarette, if you are a drinker, have a drink after work. As long as you don't go OTT, don't unnecessarily add to the stress by denying yourself that which helps you calm down.

6. What happens if I get a personal grievance?

If the employee does raise a grievance then it is strongly recommended that you **immediately seek professional advice** in order to resolve the situation as quickly as possible. Irrespective of whether you have done everything absolutely correctly, the employee has a right to raise a grievance, and as an employer, you need to defend yourself or agree some settlement (usually financial). The legal costs associated with defending a grievance through the process can very quickly escalate out of all proportion to any loss of pride from admitting an error, or beyond any financial levels that the employee would accept as a settlement sum! Often a settlement is the most pragmatic business decision.

If you do agree a settlement seek professional advice to ensure the agreement is legally binding.

In the event that you do get a personal grievance, you can anticipate the following sequence of events:

- You need to respond to the grievance in writing
- If this does not resolve the issue, you or the employee can request mediation from the Department of Labour's Mediation Services
- If mediation does not resolve the issue, the Employment Relations Authority can undertake an investigation and make a determination

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- If either party does not agree with the determination from the Employment Relations Authority, then you will need to go to Employment Court for a full judicial hearing.

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