

Can employment claims be raised outside the 90-day limitation period for a personal grievance?

Generally, employees have a 90-day limitation to raise a personal grievance claim. But can employers breathe a sigh of relief once the 90 days have passed?

Personal grievances are the primary vehicle under New Zealand legislation for employees to raise claims about the decisions or conduct of their employer.

Section 114 of the Employment Relations Act 2000 (**the Act**) provides that employees have a 90-day limitation period to raise a personal grievance with their employer. In 2023, this was expanded to 12 months for sexual harassment personal grievance claims.

If an employee raises a personal grievance claim after the employee notification period has expired, their claim is considered 'out of time'. In that situation, an employee only has grounds to continue their claim if the employer consents to it or if the Employment Relations Authority grants leave on the basis of one of the exceptional circumstances listed under section 115 of the Act.

Exceptional circumstances include where the employer has been so affected or traumatised as to be unable to have properly considered raising the grievance within the employee notification period, where the employee made reasonable arrangements for a representative to raise a grievance in the appropriate time but the representative failed to do so, and where the employment agreement does not contain an explanation regarding the resolution of employment relationship problems.¹

How is the employee notification period calculated?

Under section 114(7) of the Act, the employee notification period begins on the date on which the

alleged action amounting to the personal grievance occurred or came to the notice of the employee (whichever is later).

This is a straightforward calculation when the alleged action amounting to a personal grievance is one definable act, for example:

- A decision to terminate employment;
- A single action that disadvantages the employee's employment (e.g. suspending without cause or consultation); or
- A single act of harassment or discrimination.

In these circumstances, it will usually be clear when the alleged conduct occurred, and therefore whether or not it is within the employee notification period.

However, employment relationship problems are often not as granular as an issue arising from a single definable act. Instead, conduct that could give rise to a personal grievance may cumulate throughout the employment relationship, sometimes crystallising at a specific point and triggering a personal grievance claim.

In a constructive dismissal claim where an employee resigns because of the employer's alleged treatment, whilst there may be one specific event which is 'the straw that breaks the camel's back', the claim could involve conduct dating back well before the employee notification period. For example, alleged bullying or mistreatment over a period of years.

In circumstances like these, it can be tricky to determine what conduct falls within the scope of a personal grievance claim. However, providing that a personal grievance has been raised within the employee notification period for the most recent conduct, this does not preclude earlier incidents being taken into account as well.

¹ For further discussion regarding these exceptional circumstances, please refer to this [article](#).

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In *Premier Events Group Ltd v Beattie (No 3)*², the Employment Court held, in relation to an unjustified disadvantage grievance, that the Authority or Court can hear evidence of events that occurred outside the 90-day period, as long as these were connected to events within the 90-day period. The earlier events could help establish a course of conduct as the basis for the grievance, and is often referred to as a continuous cause of action.

In a recent ERA determination, the ERA stated: *"I accept that in cases of bullying, there may well be a series of actions giving rise to the grievance. However at least one such instance must occur within the relevant timeframe. Although events outside the 90 day timeframe may inform a consideration of the merits of a grievance raised within time, they cannot establish a grievance in their own right."*³

In considering if a continuous cause of action extends to events that occur outside the 90-day period, the earlier events must be properly evaluated to determine if they are connected to the continuous cause of action. Specifically, the Court has said that *"it is a question of fact and degree whether separate acts are so close in time and quality as to be properly described as constituting a continuous cause of action."*⁴

In other words, consideration must be given to the length of time between separate actions and the degree to which those actions are connected to the ultimate personal grievance.

What about other types of claims?

Personal grievance claims are not the only types of claims an employee can raise, and where the employment relationship problem is not a personal grievance, employees have six years to take their claims.

This means that the following (non-exhaustive) claims all have a six-year limitation period:

- Non-payment or incorrect payment of employee wages;

- Issues around how entitlements under the Holidays Act 2003 are calculated;
- Breach of good faith or other common law duty such as the duty of fidelity;
- Breach of the employee's employment agreement, including any implied terms of the agreement.

Claims like breach of good faith and breach of employment agreement will sometimes be used by employees to 'get around' the 90-day personal grievance limitation period.

This is especially so because it may be relatively straight forward to conceptualise any personal grievance claim as a breach of good faith or breach of the employment agreement. In particular, good faith requirements like being *"active and constructive in establishing and maintaining a productive employment relationship"* (section 4(1A)(b) of the Act) are very broad, allowing almost any claim to be raised in that way.

Conclusion

Whilst the 90-day / one-year notification periods for a personal grievance raise a useful jurisdictional bar for employee claims, there are various ways in which conduct that occurs outside of those periods can still result in arguable claims against the employer. As an employer, it is not a simple matter of waiting 90-days and then thinking you are out of the woods.

Want to know more?

If this article raises any questions or concerns, please get in touch with one of our [Employment Team](#).

² *Premier Events Group Ltd v Beattie (No 3)* [2012] NZEmpC 79, [2012] ERNZ 257.

³ *Rookes v Tillmans Fine Furniture Ltd* [2024] NZERA 504.

⁴ *Waugh v Commissioner of Police* [2003] 1 ERNZ 236 at [97].