

Timeframe for raising sexual harassment grievance extended

New laws provide employees with an extended timeframe of 12 months to raise a personal grievance claim in cases of sexual harassment.

The Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill has now come into force.

The new law introduces two significant updates to the existing Employment Relations Act 2000.

- An employee will have 12 months to raise a personal grievance in respect of a sexual harassment claim. All other personal grievances remain restricted by the current 90-day window. This change will apply to both current and new employees.
- All employment agreements must include a resolution of employment relationship problem clause, which is already mandatory. This clause will now need updated to refer to the two different timeframes for raising a personal grievance, 12 months for sexual harassment, and 90 days for all other grievances. This change will apply to all new employment agreements entered into.

Background

One of the objectives of our legislative framework is to ensure personal grievances are dealt with expeditiously. For that reason, there is a time limit on raising personal grievances.

This 12-month legislative change was foreshadowed in 2020 when Ministry of Business, Innovation and Employment published an issues paper seeking feedback and submissions on New Zealand's current system for dealing with bullying and harassment. The paper found only 14 cases in the Employment Relations Authority between 2015 and 2019 dealing with sexual

harassment and none in the Employment Court. It specifically noted this did not seem to reflect the known prevalence of sexual harassment.

A number of factors seem to have contributed to the decision to extend the time period for raising the grievance to 12 months. These included:

- cultural norms of shame and fear that can hold victims back;
- power imbalance;
- embarrassment;
- minor matters may build over time;
- upset and trauma preventing people from reporting;
- fear of retaliation;
- victim blaming;
- to allow time for people to come to terms with what had happened and obtain necessary support to come forward.

Implications for new employees

Have your employment agreement templates reviewed and updated immediately. Ensure the resolution of employment relationship problem clause refers to the two timeframes, 12 months for a sexual harassment grievance and 90 days for all other claims. If clauses are not updated, an employee will have strong grounds to apply for leave to raise a personal grievance for a sexual harassment claim beyond the new 12 months' timeframe.

Implications for current employees

While it is best practice to extend these updates to current employee agreements to ensure consistency, it is not immediately necessary.

Proposing changes to current employment agreements which alter existing terms and conditions (rather than

Timeframe for raising sexual harassment grievance extended (Continued)

purely additional statutory entitlements) will depend on the extent of the proposed changes:

- For minor updates to a single clause, a letter of variation would likely be the simplest option. This can be signed by the parties and attached to the current employment agreement.
- If the updates are more extensive, a new employment agreement could be offered.

It is also timely to review any workplace policies that may also reference personal grievances to ensure this new timeframe is reflected.

Wider implications

Businesses have an obligation to provide safe and healthy work environments free from sexual harassment. If an employee makes a claim of sexual harassment, then the employer needs to investigate. This may be more difficult if the events occurred some time ago.

An alternative pathway open to employees is through the Human Rights Review Tribunal (**HRRT**) under the Human Rights Act 1993. The timeframe for raising a complaint is also 12 months from the incident of sexual harassment but the results of compensatory awards in the HRRT have in some instances been significantly higher.

Want to know more?

If you have any questions about this update, please contact our specialist Employment Team.