

THE REP: WORKING

This education kit will help you facilitate a conversation with young people about their legal rights and responsibilities when employed. It includes classroom activities, workshop slides and background legal notes. This workshop is designed to last between 1-1.5 hours.





How to deliver a REP module

Use this information to inform your facilitation.

Kia ora! Thank you for being a REP volunteer. Your participation in The REP will help young Aotearoaians become more aware of their legal rights and responsibilities. By connecting young people with local support services, you will also help build a stronger community for all of us. So... what do you need to know about delivering a module?

Know your Community Law Centre

- The most important thing about The REP is the connection you can build between members of your community and your local Community Law Centre.
- If a class takes only one thing out of a workshop, it should be that if they have a legal problem they can get help from their local Community Law Centre or YouthLaw.
- Use The REP modules as a way of talking about how Community Law Centres, other community-based services and lawyers can actually help. Learn about local support services available for youth in your area.
- If anyone in your class asks for help or needs legal advice (which you are not allowed to give if you are not a lawyer), direct them to their local Community Law Centre.
- Consider going the extra step: go along with a student to a Community Law Centre so they feel supported.

Know the audience

- The second most important thing about The REP is that our education is meant to be interactive and fun. Getting your audience to relax and have a laugh is as important, if not more important, than talking about the law.

- Treat this resource as a guide only – try hard to deliver the material in a way that will suit your audience and that your audience will enjoy.
- REP modules are learner-led, so focus on what the class wants to talk about. There is no need to cover all the material in the time you have been given. See where the conversation goes, focus on what the class identifies as being important or relevant, and explore those ideas. Just to repeat: there is no need to get through all the material!

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- Every group you work with will be different, with different levels of knowledge, different needs, and different expectations. Let the group both guide and teach you; work together to build a picture of how the law actually works in New Zealand.
- Try and get to the heart of the matter: talk about the real world, and the greater social implications of the law. You will get much more out of it, and so will your class.

Know the activities

- In general, everybody likes to know why they are here, whether it's relevant, and how long it will take. Take your time to signpost what the module is going to cover and the activities by explaining or perhaps writing up a short plan on the board.
- These modules are structured so that all the important information can be covered through running the activities. The activities aim to get your class thinking about the issues being discussed and engage with them in a practical way.
- It is important to know and understand the way the activities are run, so you can lead them smoothly and effectively.
- If you can think of more diverse, more engaging and more fun games and exercises, please do. Just make sure you feed these new improved activities to us at The REP.

Know the law

- You need to be up-to-date with the area of law this module covers.
- That said, you are not expected to know everything! If you don't know an answer, a good technique is to reflect the question to the whole class or say you will find out and let them know. Remember, if you say you will find something out, make sure you do.
- The background material in this guide is to help you learn the law. The Community Law Manual is also a fantastic guide to all the areas of 'community' law. Check out the manual online for the relevant chapters to this module here: www.communitylaw.org.nz.
- It's always helpful to have some relevant examples up your sleeve of how the law works in practice. If in doubt, check out the news, talk to your friends, family, teachers, or the lawyers and other kaimahi at your local Community Law Centre.

Know some different teaching styles

- Everybody learns differently. Very few people enjoy being lectured to!
- The activities in this module attempt to cater for different kinds of learners:

- Some people like to visualise what they're learning (by seeing it written down, making a list or studying an image)
- Other people need to hear things to take them in (maybe by listening to a story or using rhythm or sound as memory aids)
- Some people learn by talking (by sharing with a neighbour or taking part in a discussion)
- Other people prefer to learn while moving around (when up on their feet and active)
- And others learn with their hands (getting creative, drawing or cutting things out)
- Work hard at improving your own facilitation practice so that everybody can get involved in the class.

From the outset, it is important to

- Establish a safe space. Be aware that the modules contain sensitive content. The key is how you leave the young people *feeling*, so make sure class members are comfortable at all times.
 - For example, if a young person blushes when answering a question, say "have a think about it" and move on to someone else or if a joke is made about a class member, divert the heat onto yourself
 - If you notice that a young person seems triggered, approach them quietly and one-on-one or flag it with their teacher
- Build rapport with the young people. Be respectful, honest and authentic. Young people have a lot of lived experience, so start with the assumption that they know more than you. If you give them the chance to step up, they will.



- Establish flexibility. There is no 'right' way to facilitate these modules. If the class is only interested in one topic, that's fine. Be responsive to your audiences' needs and their body language.
 - For example, if the energy is flat, mix the games up and start with an activity involving movement or with a pair exercise "talk to your neighbour about..."
- Make participation voluntary. Encourage everyone to be involved, but always ask for volunteers so no one is embarrassed by being singled out. Don't ask the young people to do anything you wouldn't do!
- Work with the teacher. Most classes are likely to have a teacher present during your session so check in before the class starts. If something disruptive happens, ask the teacher to step in.
- Have fun! If you're having fun, the class will have fun. Having funny anecdotes helps the class relate to the content and if the session is fun and interesting, young people are more likely to remember.

Evaluations

- Getting feedback is essential to improving The REP. Leave enough time at the end of the class to hand out and collect the evaluation forms. And remember to feed this back to us at The REP.
- Don't forget to fill in your facilitation evaluation form!

Last, but not least...

... Smile! Enjoy yourself, have a laugh, and thanks again for volunteering your time.

WHAT YOU WILL NEED

- Projector and laptop
- Slides (Ctrl+L for fullscreen)
- Facilitator notes
- Printing materials
 - Activity #1: 1 x per group
 - Activity #2: 1 x per class member
 - Activity #3: 1 x per class
- Scissors 1 x per class member
- Evaluations 1 x per class member
- Chocolate
- Community Law Centre flyers

Opening



THE REP: WORKING



GREETINGS

- “Kia ora, talofa lava, ni hao, hello” (introduce yourself, your name, a bit about yourself).
- “This session is brought to you by the Community Law Centre and The REP: the Rights Education Project”.
- Introduce the Community Law Centre:
 - Community Law Centres provide free legal advice, on most topics. You can see a lawyer, for free, on anything to do with employment, family, criminal, tenancy, debt, and beyond
 - Make sure the class knows where to find their local Community Law Centre and how to contact YouthLaw. For example: “Your nearest Community Law Centre is in Wellington Central at 203 Willis Street on Level 8 or in Lower Hutt at 59 Queens Drive on Level 2. Come in and see us some time!” and “You can call YouthLaw on **0800 UTHLAW (0800 884 529)** to talk to someone who can help!”
 - Community Law Centres are situated throughout New Zealand and you can locate your nearest one at: www.communitylaw.org.nz/our-law-centres/
- Introduce The REP:
 - We are here to let you know your legal rights and responsibilities. We present the law on a number of areas, but if you have anything you are particularly interested in, we are always open to new ideas!

Icebreaker

ICEBREAKER

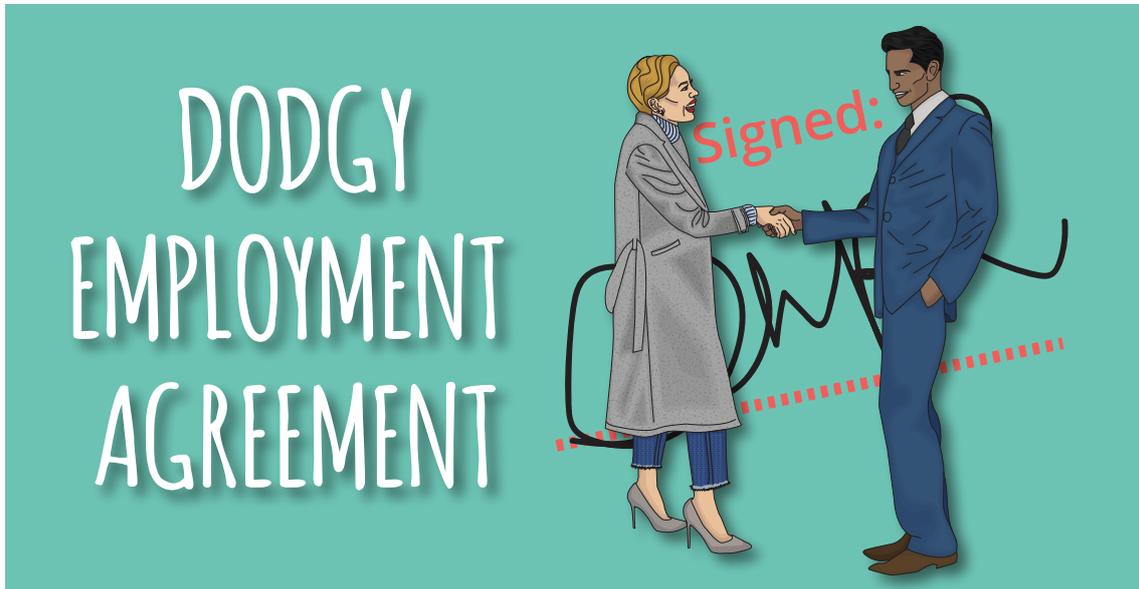


INSTRUCTIONS

- This module begins with an ‘icebreaker’ to make it easier for participants to feel comfortable contributing to the workshop.
- The idea of this icebreaker is to encourage participation and to introduce the class members. Work hard to remember the names of everyone in the class.
- This icebreaker introduces The REP: Working module by asking the class members to say their name and answer a question.
- Ask the class “Do you have a job?” or “If you could do any job, what would it be?”
- Start off by introducing yourself and if you have a job or what job you would want to do.

SECTION 1

Employment agreements and types of employment



ACTIVITY #1 INSTRUCTIONS

- Divide the class into groups.
- Hand out a 'Dodgy Employment Agreement' worksheet to each group. The instructions are on the sheet:
 - Dream up the dodgiest employment agreement and win chocolate!
 - Finish the sentences below with the worst things a boss could ask you to do at work...
- Who can come up with the dodgiest employment agreement? The dodgiest agreement wins chocolate!
- As you go through each group's answers, start a conversation about what the class thinks employers can actually put in an employment agreement.

ACTIVITY #1

Dodgy employment agreement

- An employment agreement is a contract between an employer and a worker.
- Employment agreements must be in writing and your employer must give you a copy.
- You still have rights if you don't have an employment agreement!

Job description

- Your job position should be clear.
- Your duties in your employment agreement must accurately reflect the description of the duties you will be expected to carry out (for example, you can't be asked to clean the kitchen all day if you were employed to make coffee).

Pay

- You must be paid at least the minimum wage.
- When and how your wages are paid should be clear.

Trial Period

- If you are on a trial period, it must be in your employment agreement otherwise it will not apply.
- If you begin working (even for an hour) before you sign the employment agreement, any trial period does not apply.

Leave

- Your employment agreement must comply with the law around minimum holidays.

Hours and place of work

- It is important that your hours and place of work are specified in your employment agreement. 'Zero-hour' contracts are now illegal, which means employers can only have clauses requiring you to be available if they have also guaranteed a minimum number of work hours, there is a genuine reason and you are compensated for making yourself available for work.

Type of employee

- You are entitled to know whether you are a full-time, part-time, fixed-term or casual employee.
- Permanent employment is ongoing and the most common type of employment, and can be full-time or part-time.
- Fixed-term employment is temporary employment based on a genuine reason. Fixed-term contracts end on a specified date or when a particular event occurs, for example, a fixed-term employee might be brought in to complete a project.
- Casual workers work when and if needed, and can say 'no'.
- Contractors are different to employees as they don't have access to minimum employment rights, for example, paid annual holiday or sick leave. Contractors' rights are what they have written into their contract.

continued...

Problems

- An employment agreement must lay out the process for solving problems such as who to complain to and what happens next.
- Your employer must give you several warnings and a real chance to improve if they are unhappy with the quality of your work.
- If you can't resolve a problem with your employer, visit your local Community Law Centre or contact YouthLaw to find out what your options are.

LEGAL NOTES

Learn this information and integrate it into your facilitation. Don't read it out word for word!

Employment agreements

- An employment agreement is a contract between an employer and a worker
- Employment agreements must be provided and should include:
 - A description of the work (for example, you can't be asked to clean the kitchen all day if you were employed to make coffee)
 - Whether you are on a 90-day trial period
 - Hours of work
 - Whether you are a full-time, part-time or casual employee
 - Location of your place of work
 - Rate of pay
 - Holiday entitlements
 - The process for solving problems (who to complain to and what happens next)

Why you need one

- A written employment agreement ensures that employees know what is expected from them by their employer and what their duties are.
- It protects both the employee and the employer. If a dispute arises, you can refer to a signed copy of the employment agreement.
- If you never receive a written employment agreement, you still have rights and your employer might be liable for a fine.

Getting a copy of the employment agreement

- Employers are required by law to provide an employment agreement to all employees. If an employer doesn't provide one, you are entitled to ask for a copy.
- Employers can't take away a job offer because you asked for a copy of the agreement.
- You should take time (overnight is reasonable) to consider the agreement, and ask other trusted people to take a look. You can also visit your local Community Law Centre and have it looked over by an employment lawyer for free!

'Collective' agreements

- A 'collective' agreement means there is one agreement for a group of workers, rather than everyone having their own agreement with their own 'terms and conditions'.
- The idea is that together, workers have more 'bargaining power' and can ask for a fairer deal.
- If there is a 'collective' or 'union' agreement at a workplace, the employer must tell you about it.
- You don't have to join a collective agreement but will have to negotiate an individual employment agreement from the start of your employment (see the next sections for more on unions).

Permanent employees (full or part-time)

- Permanent employment is ongoing and the most common type of employment.

Fixed-term employees (full or part-time)

- Fixed-term employment is temporary. Fixed-term employment will end on a specified date or when a particular event occurs. For example, a fixed-term employee might be brought in to cover parental leave or to complete a project.
- There must be a genuine reason, written into your employment agreement and based on reasonable grounds, for the fixed-term.

Casual workers

- Casual workers work when and if needed, and can say 'no'. There's no expectation they will keep the job indefinitely.
- An employment agreement is still necessary.
- Casual workers might actually be considered part-time or even permanent workers, with more employment rights, if they've worked over a long enough period of time or their work is more like regular work.

Contractors

- Contractors don't have an employment agreement with an employer, but they do have a contract for service.
- Contractors rights are what the contractor has agreed with the other party. If you are a contractor, it is a good idea to have a written contract.
- Contractors don't have access to minimum employment rights, for example, paid annual holiday or sick leave.

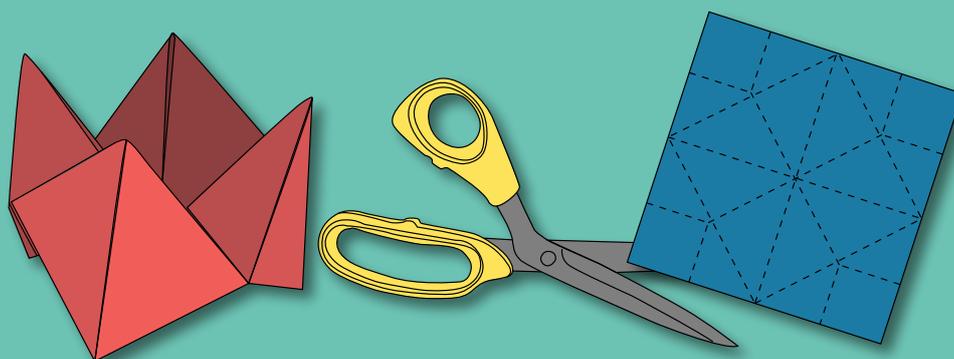
'Zero hour' contracts

- 'Zero hour' contracts require employees to be available for work without being paid for their time spent being available and without any guaranteed hours.
- Under new law, such 'zero hour' contracts are now illegal.
- Employers can only have 'availability clauses' where the employment agreement states guaranteed hours of work, there is a genuine reason for the clause and the employee is given reasonable compensation for making themselves available for work.

SECTION 2

Minimum employment rights

CHATTERBOX RIGHTS



ACTIVITY #2 INSTRUCTIONS

- Hand out a 'Chatterbox' worksheet and scissors to each class member.
- Ask the class to cut out the chatterbox.
- How to fold the chatterbox:
 - Place the chatterbox face down and fold in half, then open and fold in half the other way
 - Open the chatterbox up and fold each corner into the middle point
 - Turn the paper over and fold the corners into the middle point
 - Fold your small square in half and open then fold the other half and keep closed
 - Place your thumb and forefingers under the four flaps and pop it open
- Once you have finished, ask the class to find a partner and ask each other the questions.
- Try and remember the answers to win chocolate!

LEGAL NOTES

Learn this information and integrate it into your facilitation. Don't read it out word for word!

Note: These are minimum rights – employers can agree to anything more than these but nothing less. For example, your employer could agree to you taking annual leave before you have been working for six months.

Trial periods

- 90-day trial periods can be offered to anyone who has never worked for that particular employer or business before. The Government has announced that the law will soon be changed so that trial periods will only be able to be offered to anyone who works for a small business (less than 19 employees) and has never worked for that particular employer before.
- The trial period must be written in the employment agreement, otherwise you are not on one.
- If you begin working (even for an hour) before you sign the employment agreement, any trial period does not apply.
- You can be fired during the trial period and your employer doesn't have to give a reason, but a process must still be followed. In "good faith" an employer should still give you a reason if you ask for one. The employer must still listen to your thoughts about any problems before you are fired.
- If you suspect an employer is abusing the trial period (for example, as a way of firing people before the employer has to take full responsibility for them as an employee), it is important to visit your local Community Law Centre for advice or contact YouthLaw.

Minimum wage

- The 'Starting out' pay rate affects three different groups of people:
 - 16 & 17 year olds starting their first job
 - 18 & 19 year old beneficiaries who have received their benefit for more than six months
 - 16-19 year olds who are training for 40 credits a year with an approved provider such as an industry training programme
 - 20 year olds who are training for 60 credits a year with an approved provider such as an industry training programme
- Starting out wage: \$13.20 an hour (April 2018).
- People in these groups can be paid no less than 80% of the adult minimum wage.
- Adult minimum wage: \$16.50 an hour (April 2018).

Minimum breaks

- Employees are entitled to rest and meal breaks which:
 - Give you a reasonable chance during the work period to rest, refresh and take care of personal matters and
 - Are appropriate for the length of time you have worked for an employer
- However there are no specific rules for how long, or when, rest and meal breaks should be. Employers and employees should bargain in good faith over the timing and length of breaks. The Government has announced that the law will soon be changed to make sure that workers have minimum break times.
- Common practice is that rest breaks are 10–15 minutes long and meal breaks at least 30 minutes long, but these times vary across industries and occupations.
- An employee and employer can agree to compensation instead of breaks. Employers must compensate employees if no break is given where a break would be appropriate. There are no set rules as to what appropriate compensation is but where provided it must be of similar value to the break.
- In 2018, the government indicated that set break times may be re-introduced.

Annual leave

- Every full-time worker is entitled to four weeks' paid holiday per year.
- You can take these with the agreement of your employer and you should be allowed to take at least two weeks' leave in a row.
- When you leave your job, you get paid for the holidays you haven't taken.

Public holidays

- There are 11 public holidays each year, for example, Christmas, Easter and New Year's Day.
- These days are paid days off (if you would usually work on the day of the holiday) and are in addition to your annual leave.
- You can be required to work on a public holiday if it falls on a day you would ordinarily have worked and is required in your employment agreement. If you are required to work on a public holiday, you will be entitled to an alternative paid day off in lieu of the public holiday worked, in addition to payment of at least time and a half for the time actually worked.

- You can ask your employer to transfer a particular public holiday to a different date. However, this must not reduce the total number of paid public holidays that you're otherwise entitled to in any year. You must agree on this transfer in writing.

Sick Leave

- Employees are entitled to a minimum of five days of paid sick leave a year.
- Employees can take sick leave if:
 - They are sick
 - Their spouse or partner is sick
 - Someone who depends on them for care is sick or injured
- If you are sick for more than three days in a row, an employer can ask for proof (a medical certificate). If the employer is willing to pay for a doctor's appointment, they can ask for proof after one day.

Parental leave

- For mum or dad (or shared).
- Same-sex couples are also able to get parental leave (the pregnant partner is entitled to the mother's entitlements).
- If adopting, the couple can nominate a 'primary carer' who will be entitled to the mother's entitlements.
- Entitlements and conditions for mum (or nominated partner):
 - 18 weeks' paid leave (to increase to 22 weeks in 2018), if you've worked for that employer for more than six months.

- If you have worked for more than 12 months you are entitled to up to one year of unpaid leave (the employer must keep the position open for you). If you have worked for more than six months, you are entitled to six months' unpaid leave.
- You must have worked at least 40 hours per month for six months for that employer.
- Entitlements and conditions for dad (or nominated partner):
 - Up to one week's unpaid leave if you've worked for that employer for more than six months, or two weeks' unpaid leave if you've worked for more than 12 months.

Bereavement leave

- If an immediate family member passes away, you are entitled to three days' paid leave (if you have been working there for six months).
- If someone close to you passes away, you are entitled to one day of paid leave (if you have been working there for six months).
- If you haven't been working there for six months continuously, you can still qualify for bereavement leave if you have worked an average of 10 hours per week and at least one hour every week or 40 hours per month.
- Remember, you can also come to an agreement with your employer even if you have been working for less than six months!

SECTION 3

Money matters



ACTIVITY #3 INSTRUCTIONS

- Draw an imaginary line from one side of the room to the other.
- One end of the line represents “YES” and the other “NO” in response to each question.
- Ask the class members to move to the end of the line to show what they think in response to each question. If they are unsure, they can stand in the middle.
- Read out the questions on the next page. After you ask each question, ask the class members to discuss why they chose to stand there with those around them.
- After a minute or two, ask for volunteers from different places on the line to share their answer with the class.
- Reward good contributions to the discussion with chocolate!

ACTIVITY #3

Two extremes

YES

NO

Does your employer have to give you a pay slip?

YES: Employers are legally required to keep records of your pay and provide you with payslips.

Can your employer deduct money out of your pay if you break something by accident?

NO: Without your agreement in writing, your employer can only deduct money from your income for a limited number of reasons. However, that doesn't mean that you won't have to pay the employer back if you owe them a debt, for example, getting a speeding ticket in the work car. Your employer can't just deduct the money from your pay.

Does your employer pay your income tax for you?

YES: Only if you're an employee. If you are a contractor often you have to pay your own tax.

Can your employer deduct money out of your pay?

NO: Your employer can only automatically deduct money for a small number of things, for example, ACC levies, student loan, fines and child support.

Are you a KiwiSaver member? (What is KiwiSaver?)

YES or NO: KiwiSaver is a government savings scheme that helps you save for retirement or to buy a house. You can opt out within 30 days of starting a new job.

Does it cost money to be in a union?

YES: Unions require a regular membership fee and in exchange they will negotiate for higher pay and better conditions and provide support for you if something goes wrong with your employer.

LEGAL NOTES

Learn this information and integrate it into your facilitation. Don't read it out word for word!

Payslips

- The payslip tells you what the employer is paying the employee, and what the employer is paying on the employee's behalf (for example, tax, ACC, other deductions).
- If you don't get a payslip, ask your employer to give you one as they are legally required to pay you and keep records of your pay.

Deductions

- Employers (of permanent staff) must deduct Pay As You Earn (PAYE income tax) tax and ACC Levies (tax collected to help people who are injured in accidents) from your pay.
- Contract workers may need to manage their own tax – don't ignore it or you'll end up with a huge tax bill!
- Employers generally can't deduct money from an employee's pay without the employee's permission, or without a court order. For example, if you work in a café and a customer walks out without paying, your employer can't take the cost out of your wages.
- Automatic deductions may be:
 - Student loans
 - Child support
 - Fines/debts
 - ACC levies

KiwiSaver

- KiwiSaver is a government savings scheme that helps you save for retirement or to buy a house. Part of your pay goes towards savings that can be used in the future.
- When you start a new job, you are automatically signed up to KiwiSaver. You don't have to join, but if you don't want to sign up, you must OPT OUT. You have up to 30 days to opt out.

- You can choose if you want to contribute 3%, 4% or 8% of your wages.
- The employer also pays an extra 3% into your KiwiSaver off your wages every week, however, if you are under 18 your employer does not need to make any contributions.
- Generally, if you join KiwiSaver, you are locked into the scheme, and the money is locked into a savings account until you turn 65 or buy your first house.
- But, you can apply for a "savings holiday" if you lose your job, become terminally ill, or are going through tough financial times.
- For further Kiwisaver advice:
 - www.sorted.org.nz
 - Budget advisors can give advice for free

Unions

- Employees have the right to join a union, and employers can't stop them from joining (but you don't have to join).
- Unions can be helpful:
 - If you are on a 'collective' agreement you have the benefit of the union campaigning for better wages and better working conditions
 - A union rep can attend meetings between employers and employees
 - The union can help you to lodge formal complaints and help you with the Employment Relations Authority
- To join, you pay fees on an ongoing basis.
- Visit www.unions.org.nz to find out which union is best for you.
- Most unions can't help if you are not a member. It's best not to wait until there is a problem to join a union as many unions will not support you at that point.

SECTION 4

Problems at work



ACTIVITY #4 INSTRUCTIONS

- Divide the class into five groups and hand out a 'You're fired!' card to each group.
 - Each card has a case study and questions
- Ask the groups to discuss whether what happened in their scenario was okay and what they could do.
- Ask for a volunteer from each group to feedback to the class about their card.

ACTIVITY #4

You're fired

Fatima works at a fast food restaurant. One day, the manager comes up to Fatima and tells her that she must remove her hijab when she is serving customers. Fatima is really upset and tells her manager 'no!' and that her hijab is really important to her for religious and cultural reasons. She is told that it is her choice but if she chooses to wear the hijab she will be fired.

NOT OKAY. Fatima could raise a *personal grievance* for *unjustified dismissal* OR Fatima could complain to the Human Rights Commission that she was being discriminated against because of her religious beliefs. She can only choose one of these options. Fatima should contact her local Community Law Centre or YouthLaw.

James works as a bouncer for one of the clubs in town. He had a few drinks at the bar next door before starting his shift. Early in the night, one of the patrons at the bar gets a bit rowdy. James overreacts and pushes the man into the wall, harder than he meant to, and he hits the back of his head. He has to be taken to hospital. James is fired for serious misconduct.

OKAY. Employers must act in "good faith" which means they must fairly investigate an incident before taking action. However, if an employee does something that amounts to serious misconduct, employers can fire them on the spot. Serious misconduct includes behaviour that is violent, dishonest, bullying, endangers the health and safety of other employees and the use of illegal drugs in the workplace.

Pearl has been working as an admin assistant for two years. Pearl is really sick for a week and is diagnosed with glandular fever. She calls her boss to discuss her situation and is told by her boss that she has already taken the five days' paid sick leave she is entitled to and if she isn't back the next day, she shouldn't bother coming back at all.

NOT OKAY. Pearl could raise a *personal grievance* for *unjustified dismissal*. Employers can only fire you if you are sick for an unreasonably long time and this will prevent you from doing your job. You can't be fired because you have used all your paid sick leave entitlements, but further sick leave will be unpaid unless otherwise agreed with your employer.

Wiremu is a building apprentice. Since he started, the builder supervising him has been really critical of his (without offering any help) and hassling him about his cultural beliefs. Wiremu decides he has had enough and goes to speak to the worksite manager. He hopes the manager will help him deal with the behaviour, but he is told to "toughen up or leave". Wiremu is gutted and decides that he really doesn't have any choice but to leave.

NOT OKAY. Wiremu could raise a *personal grievance* for *constructive dismissal* due to the bullying and workplace harassment. Or, Wiremu could complain to the Human Rights Commission that there was racial harassment at his work. He can only choose one of these options for the racial harassment. Wiremu should contact his local Community Law Centre, YouthLaw or Worksafe.

*Tui works as a barista in a café. She has been having a bit of a hard time with her girlfriend so isn't having the best day at work. When a customer comes back for the second time to complain that their coffee is cold, she mutters under her breath, "Well, if you want me to burn the f**king milk...". The customer overhears and complains to the manager who fires Tui on the spot because the customer is always right.*

NOT OKAY. Tui could raise a *personal grievance* for *unjustified dismissal*. If an employee does something which amounts to minor misconduct, they cannot be fired on the spot. There is a process an employer must go through. However, numerous incidents of minor misconduct can amount to serious misconduct, for example, repeated lateness.

LEGAL NOTES

Learn this information and integrate it into your facilitation. Don't read it out word for word!

Employee / Employer obligations

- The law makes it quite difficult for an employer to fire an employee.
- Employers and employees must always “act in good faith”.

“Good faith”

- The common sense meaning of “good faith” is having a good relationship. This means:
 - Treating each other well (for example, being communicative, raising issues within a reasonable time and being honest)
 - You need to do what an employer asks so long as it's reasonable, doesn't endanger your safety, and doesn't break the law
 - Doing the job carefully and properly
 - Not doing something which makes the employer look bad or damages their business
- Your employer has to act in good faith to you as well.

Problems at work

- If the employer is unhappy with the quality of your work, they must give you several warnings and give you a real chance to improve. They may also need to give you training or other support to improve.
- Your employer can't have unreasonably high expectations of you – what they expect must be achievable.
- When an employee can be fired:
 - In some circumstances if you have a serious illness or injury that would prevent you working for an unreasonably long time or if you are no longer legally allowed to do your job (for example, your work visa expires)
 - An employer can fire an employee for repeated minor misconduct (for example, lateness)
 - An employer can also fire an employee if they have done something seriously wrong – this is called serious misconduct
- Serious misconduct:
 - If you have done something very serious like theft or assault, an employer can fire you immediately
 - This should be provided for in the employment agreement

- The employer still has to find out what happened by listening and taking into account your side of the story
- Serious misconduct includes:
 - Dishonesty or theft
 - Violence, abuse or bullying
 - Sexual / racial harassment
 - Abandonment / punctuality
 - Use of illegal drugs at work
 - Behaviour that endangers the health and safety of other employees
 - Anything sufficiently serious that it undermines the trust and confidence that the employer has in you
- If the employer does any of the following things, you have the right to complain and can get support to raise a “personal grievance”:
 - Fires you for no reason, or says there was serious misconduct when there wasn't (called “unjustified dismissal”)
 - Treats you so you feel like you have to leave (and do in fact leave), for example, by cutting your hours or refusing to pay you (called “constructive dismissal”)
 - Does anything which negatively affects your work conditions that they don't have a good reason for, for example, demoting you without a reason (called “disadvantage”)

Discrimination at work

- Discrimination is when someone is treated differently from someone else in the same situation, based on a prohibited ground of discrimination.
- What are prohibited grounds of discrimination? Your age, gender, pregnancy status, ethnicity, religion, sexual orientation, political beliefs, disability, marital or family status, employment status, union involvement.
- It is illegal to be picked on at work because of something like this.
 - There are exceptions to this, for example, if gender is a genuine occupational qualification such as women-only employees in a lingerie shop
- No one should ever have to put up with harassment or discrimination. If you feel like you have suffered harassment or discrimination at work you can raise a personal grievance OR complain to the Human Rights Commission (you can only choose one option).
- See The REP: Human Rights (in development) for more on discrimination.

Sexual or racial harassment at work

- Sexual or racial harassment at work is serious and illegal.
- You shouldn't have to put up with any behaviour at work that makes you feel uncomfortable.
- It doesn't matter what the person who is harassing you thinks, or whether they believe their behaviour is bad enough to be harassment: it's about whether the conduct was unwelcome or offensive, from your perspective.
- Examples of sexual harassment:
 - Sexually offensive comments or jokes
 - unwanted comments or teasing about a person's sexual activities or private life
 - Offensive hand or body gestures
 - Physical touching such as patting or pinching
 - Showing posters or magazines of sexual stuff (you don't have to be a woman to be sexually harassed by pictures of naked women)
 - Persistent and unwelcome contact from workmates at work or home
 - A hint or promise in exchange for sex, or a threat if you don't do a sexual activity
 - Sexual assault or rape
- Examples of racial harassment:
 - Offensive comments about a person's race
 - Copying or making fun of the way a person speaks
 - Jokes about a person's race
 - Calling someone racist names
 - Deliberately mispronouncing or mocking a person's name
- What can you do?
 - Harassment can be subtle, and can happen over a long period, so it's a good idea for you to write down stuff as it happens and talk it over with someone you trust
 - If you can, tell the person harassing you that you don't like what they are doing and that you want them to stop – otherwise you will do something about it
 - You do not have to confront the harasser if you do not feel confident and safe – you can ask someone to speak on your behalf for example, your union representative could intervene or write a letter
 - If it is your employer who is harassing you, you can raise a personal grievance or complain to the Human Rights Commission (you can only choose one of these)

Bullying at work

- Bullying at work is repeated and unreasonable behaviour that can lead to physical or psychological harm.
- Workplace bullying is unacceptable and you should not have to put up with it.
- Bullying behaviour can take many forms. Examples of bullying:
 - Constant put-downs, especially in public
 - Frequent nit-picking and fault-finding
 - Use of threatening language
 - Refusal to acknowledge achievements
 - Being denied break entitlements
 - Frequent embarrassing comments about your appearance
 - Being singled out and treated worse than your colleagues
 - Being overloaded with work or having most of it taken away
 - Threats about job security
- Your employer has a duty to provide you with a safe working environment free from bullying.
- What can you do?
 - Ask a trusted colleague, friend or family member for moral support
 - Keep a record of each incident (making sure to record who was there)
 - If you feel comfortable, raise the bullying with your employer either in person or in a letter
 - If you do not feel comfortable talking to your employer, you can ask someone to speak on your behalf, for example, your union representative or health and safety officer
 - If your employer doesn't take any action, you can raise a personal grievance
 - If you believe you were bullied due to discrimination, you can complain to the Human Rights Commission
 - You can contact WorkSafe: www.worksafe.govt.nz
 - If you want to resign, it is best to get advice from your local Community Law Centre first

Raising a personal grievance

- A personal grievance is a formal protest about something that's happened at work.
- You can raise a personal grievance and then decide how you want to proceed.
- It is always a good idea to put a personal grievance in writing.
- It is worth writing down everything that happens and getting advice from your local Community Law Centre, YouthLaw or Employment New Zealand.
- A personal grievance must be given as a letter to an employer within 90 days of the event or from finding out about the event.
- Personal grievances can kickstart the formal dispute resolution process, which includes mediation (provided for free by the Ministry of Business, Innovation, and Employment).
- You can ask for an apology, your job back, compensation for lost wages or "hurt and humiliation" or a written reference.
- If no personal grievance is raised, you can't access any of these solutions, though in some circumstances other solutions may be available.

Closing



WRAPPING UP

- Hand out the evaluation forms: make sure everyone fills one in.
- Thank everyone for participating. Find your own way to wrap up the class.
- Remember to link people in with their local Community Law Centre or YouthLaw if needed.
- Follow up on any questions or issues: bring the correct answers to your next class.
- Make sure to pass on any feedback you have about this module to: info@wclc.org.nz
- Have a rest!

ACTIVITY #1

Dodgy Employment Agreement

- Dream up the dodgiest employment agreement and win chocolate!
- Finish the sentences below with the worst things a boss could ask you to do at work...

EMPLOYMENT AGREEMENT

between Dodgy Employers Inc. (employer) and (employee)

1. Job description

Your duties will be to...

2. Pay

You will be paid \$..... per hour

3. Trial period

You will/will not be on a trial period (circle option). Your trial period will last for... weeks/months (circle option).

4. Leave

You are allowed ... weeks of annual leave (holidays)

5. Hours and place of work

You will work between ... o'clock and ... o'clock, at ...

6. Type of employee (e.g. contractor, casual, fixed-term, part-time, full-time)

You will be a

7. Problems

If you have a problem at work, you should follow these steps:

SIGNED:

(Employer)

.....

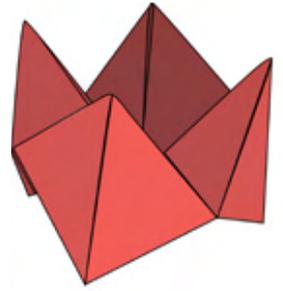
(Employee)



ACTIVITY #2

Chatterbox Rights

- Cut out the chatterbox below.
- How to fold the chatterbox:
 - Place the chatterbox face down and fold in half, then open and fold in half the other way
 - Open the chatterbox up and fold each corner into the middle point
 - Turn the paper over and fold the corners into the middle point
 - Fold your small square in half and open then fold the other half and keep closed
 - Place your thumb and forefingers under the four flaps and pop it open
- Once you have finished, find a partner and ask each other the questions.
- Try and remember the answers to win chocolate!



W

NO EMPLOYMENT AGREEMENT?

YOU STILL HAVE MINIMUM RIGHTS!

WANNA JOIN A UNION?

GOOD IDEA, PAY A FEW BUCKS...

0

TRIAL PERIOD?

MUST BE IN YOUR AGREEMENT & MAXIMUM OF 3 MONTHS AND PAID!

NEED A BREAK OR A SITDOWN?

YOU ARE ENTITLED TO REST/MEAL BREAKS WHICH GIVE YOU A REASONABLE CHANCE TO REST, REFRESH AND TAKE CARE OF PERSONAL MATTERS

MAKE IT YOUR BUSINESS TO KNOW YOUR WORKERS' RIGHTS!

SICK?

5 DAYS LEAVE (AFTER 6 MONTHS)

THE "STARTING OUT" WAGE IS \$312.20 - TALK TO THE MINISTER OF BUSINESS, INNOVATION & EMPLOYMENT

PAID LESS THAN \$12.60/HOUR?

HOLIDAY?

THERE ARE 11 PUBLIC PAID HOLIDAYS A YEAR. ANNUAL LEAVE IS FOUR WEEKS PAY (AFTER 12 MONTHS)

VISIT YOUR COMMUNITY LAW CENTRE FOR ADVICE

FIRING FOR NO REASON?

R

ACTIVITY #4

You're fired!

Fatima works at a fast food restaurant. One day, her manager comes up to Fatima and tells her she must remove her hijab when she is serving customers. Fatima is really upset and tells her manager 'no!' and that her hijab is really important to her for religious and cultural reasons. She is told that it is her choice but if she chooses to wear the hijab she will be fired.

Is this okay? What can they do?

James works as a bouncer for one of the clubs in town. He had a few drinks at the bar next door before starting his shift. Early in the night, one of the patrons at the bar gets a bit rowdy. James overreacts and pushes the man into the wall, harder than he meant to, and he hits the back of his head. He has to be taken to hospital. James is fired for serious misconduct.

Is this okay? What can they do?

Pearl has been working as an admin assistant for two years. Pearl is really sick for a week and is diagnosed with glandular fever. She calls her boss to discuss her situation and is told by her boss that she has already taken the five days' paid sick leave she is entitled to and if she isn't back the next day, she shouldn't bother coming back at all.

Is this okay? What can they do?

Wiremu is a building apprentice. Since he started, the builder supervising him has been critical of his work without offering any help and hassling him about his cultural beliefs. Wiremu decides he has had enough and goes to speak to the worksite manager. He hopes the manager would help him deal with the behaviour, but he is told to "toughen up or leave". Wiremu is gutted and decides that he really doesn't have any choice but to leave.

Is this okay? What can they do?

Tui works as a barista in a café. She has been having a bit of a hard time with her girlfriend so isn't having the best day at work. When a customer comes back for the second time to complain that their coffee is cold, she mutters under her breath, "Well, if you want me to burn the f**king milk...". The customer overhears and complains to the manager who fires Tui on the spot because the customer is always right.

Is this okay? What can they do?