

# What Role Does An Employee's Support Person Play In The Disciplinary Process?

**Three key points to remember regarding support persons and disciplinary meetings...**

Most of us are aware that an employee is entitled to a support person or representative in a disciplinary meeting, but many people are not fully aware of what role this person plays.

Three key points to keep in mind are:

## 1. An employer should give an employee enough time to obtain a competent support person.

An employer needs to not only tell an employee that they are entitled to a support person, but also make sure that the employee is told that it is in their interests to obtain a competent representative. This entitlement is hollow unless an employee is given enough time to obtain a competent support person.

For example, an employer should not tell an employee late Friday afternoon that there will be a disciplinary meeting first thing Monday morning and that they are entitled to a support person at that meeting.

Realistically, the employer in this situation is limiting who the employee can have as their support person.

## 2. The purpose of the support person.

The support person is there to provide "wise counsel" and be an advocate for the employee. This is in the context of a situation where the employee may not be able to think clearly without assistance from someone who is "on their side". The support person enables the employee to be heard effectively, which is an important requirement of natural justice.

## 3. Active participation

As the purpose of the support person suggests, the support person is allowed to actively participate in the meeting on the employee's behalf. The support person isn't present just to provide a witness for the employee but also has a speaking role. The support person needs to be able to speak on behalf of the employee, intervene in the process and give explanations where necessary.

In a recent case an employee was awarded \$30,000 for the employer not following a proper disciplinary process which included failing to advise the employee they were entitled to a representative at the meeting.

In another case, an employer was found liable for refusing to allow the support person to play any part in the process except by way of emotional support to the worker.

An employer is required to get the disciplinary process right and an employee's support person is an important aspect of this process. Getting it right means that the employer should ensure the employee knows that he or she is entitled to a support person and is able to obtain a competent support person. The employer must also allow the support person to perform their role. Failure to get the process right can result in an employee having grounds for a personal grievance.

**John Parnell**



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# IN BRIEF RAINEY COLLINS GENERAL ISSUES

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## Welcome

to the Winter edition of Rainey Collins' newsletter. In this edition we look at important information that should be disclosed to your insurer, how to maximise the benefits of your whiz kids creations, some handy tips for managing your family trust, the role of an employee's support person and information regarding Enduring Powers of Attorney.

There are also some helpful tips about Kiwisaver and kids and about a refund service offered where urgent travel has to be undertaken to attend a family funeral.

These articles and others are available on our website [www.raineycollins.co.nz](http://www.raineycollins.co.nz). You can download them or send them to others.

I trust that you find the information of interest and use.

**James Johnston**  
Chairman of Partners



## I Didn't Know I Had To Tell My Insurance Company That!

**Dan recently had a nose-to-tail car accident, where he rear-ended another car causing major damage to his car and the car in front. Dan thought "No big deal, it'll be covered by my insurance" and exchanged insurance details with the other driver. However, when it came to making his claim, Dan was shocked when it was declined. He was faced with not only having to pay to fix his car ... but also for the other car!**

The problem was that Dan had received a speeding ticket the previous year and had not told his insurer when his policy came up for renewal. According to the insurer Dan had failed to disclose a relevant event. He had no idea that that was something he should have disclosed. The claim was declined for 'non-disclosure'.

Many of us are unaware of the type of information we need to give to our insurers. To help out we have prepared a list of tips to help to ensure you do not lose the valuable protection that insurance is supposed to provide.

### 7 tips to ensure you don't get caught without cover ...

1. Never give false or incorrect information to an insurer.
2. Always provide the insurer with any information that you think may affect its decision to insure you. This is otherwise known as all material information. There is no distinction under the law between innocent or deliberate non-disclosure. All that matters is that you didn't tell them, and you should have.

3. If you don't think something is relevant or you are unsure, tell them anyway. It is better to over-disclose than under-disclose. You have a duty of disclosure, which means they don't even necessarily have to ask you.
4. Disclose new material information when you renew. Insurers ask a whole raft of questions when you first sign up for a policy. Your duty to disclose goes further than that list.
5. When renewing your policy, tell the insurer anything that has happened in the last year which could affect the renewal of the policy. As in Dan's case, for car insurance, this could be something like a speeding ticket, or something more severe like a drink driving conviction.
6. In the case of health insurance, income protection and life insurance ... you also have to tell the insurer about anything that happens between you making the application and the insurance cover beginning. This can be as simple as mentioning a doctor's visit, or something more serious like developing a health problem.
7. Keep a copy of your answers to questions, and a note of everything else you disclose. Remember to also record the date, and who you spoke to. Then store that information with your policy documents to help reduce the risk of any problems in the future.

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## Is Your Child A Whiz Kid?

Recently we came across a couple of computer-savvy whiz-kids who created products in between school and homework that gained interest from the United States.

Whether it's a website, a computer game or computer programme, or anything else marketable that gains investor interest, it pays to think beyond the lump sum that might be on the table at the time the investor makes their approach. This is because the future earnings from sales could be far more valuable. You should get a share of that profit.

More importantly, the idea at the heart of the product has significant profit potential if used to develop new future products. Your whiz kid could turn the \$50,000 you're being offered now into millions simply by being able to continue using core aspects of the product in the future. Unless you protect those ideas the contract might take away all options for future use. Why should the company making that first offer reap all those future opportunities and rewards that result from your child's intellectual property?

Often an agreement will be pre-drafted and provided to you when the approach is

made. It pays to read this agreement very carefully, and obtain professional advice regarding the implications of its contents.

Retain as much control over the future use of the product as possible and this may require some negotiation. Ensure that any ideas and/or material created in the course of developing the product are retained if possible so that they can be used again by your whiz kid to create something new in the future. If you're handing over the product in its entirety negotiate a share of the profit from all future sales.

Despite what you might be led to believe you are in the position of power. An approach won't be made if there is no value in the creation. You don't have to give it away to the first person or company with a lump sum offer in hand. This could be your opportunity to secure your child's future. Think carefully, get professional advice and ask lots of questions!

Kirsten Ferguson



## KiwiSaver for Kids

Kids can have a KiwiSaver account and take advantage of the tax-free \$1,000 government kick-start too. Pocket money doesn't count as "income" so they won't have to save anything until they're earning taxable income. You'll need to apply to get an IRD number for your child but that can be done as soon as they're born.

As with all KiwiSaver schemes your child will receive the \$1,000 payment for opening the account and will receive subsidised fees so, if opened when your baby is born, or whilst your child or children are still very young, by the time they're up to buying their first home there's a nice nest-egg built up with the help of compound interest.

Some KiwiSaver providers may require you to pay a minimum deposit, which will vary between providers, but is generally around \$500. Some may even require a minimum annual contribution but what better gift from grandparents at birthdays and Christmas?

## Setting Up Enduring Powers of Attorney

More retirement villages are now requiring that incoming residents have in place Enduring Powers of Attorney (EPOA) for Personal Care and Welfare as well as for Property. What this means is that if you or a loved one are considering a retirement village, the option may not be available until EPOA's have been completed.

This measure protects both the potential

resident of the retirement village and the retirement village operators. First, it means that the potential resident can rest assured that, should they become incapacitated, someone they trust will be able to take care of their affairs. Second, the operators of the retirement villages will have the security of knowing who they can go to for instructions straight away. Rather than having the expense and stress of Court

proceedings to organise their affairs, the retirement village and your family can put all their energy into what is most important – giving your loved ones the best care possible.

Holly Drummond



## Property Reminder... Photo ID Needed

A large percentage of property transactions are now completed electronically through Landonline. If you are completing a property related transaction when you come in to sign the transaction documents please remember to bring a form of photo ID such as your driver's license, passport, firearms license or photo Credit Card.

## Did You Know... ?

A recent bereavement has drawn to our attention that Air New Zealand offers a bereavement refund service where urgent travel has to be undertaken to attend a family funeral. This service enables you to obtain a refund for the difference between what is usually a very expensive last minute fare and a much cheaper fare. Special conditions apply, but ask for a Bereavement Refund form when making your booking.

## Don't Let Your Trust Get Busted... 5 Handy Tips

So, you've set up your Family Trust and you have transferred your home into it – you can rest easy, right? **WRONG.** If you do not run your Trust properly, you may not have the protection you thought you had.

Take a recent example: Stuart and Jenny started up their own business. To protect their personal assets from any potential claims from creditors of the business, they set up a Family Trust and transferred their home into it. Unfortunately, their business did not thrive as they had hoped it would. After some years the business regrettably failed, and they had to cease trading.

Because Stuart and Jenny had neglected just one of the Trust maintenance duties below, to maintain their gifting programme, business creditors were able to come after them personally and they ended up having to pay significant money that could have been protected by the Trust.

If you do not run your Trust properly, the same thing could happen to you ...

**How Do I Ensure That My Trust Is Operating Properly?**

### 1. Decision-making:

- Ensure that all trustees are included in every decision regarding trust property.
- Record all decisions in writing, executing proper trustee resolutions for major transactions.
- Ensure that all documentation is properly signed.

### 2. Finances:

- Ensure all the Trust's transactions go through a separate bank account in the Trust name and that you keep separate records of those transactions.
- If the Trust has independent income, prepare annual accounts for the Trust and file an annual tax return.

### 3. Trustee Meetings:

- Hold annual meetings of trustees.
- Ensure minutes are taken of all trustee meetings.
- Record resolutions for major transactions.

### 4. Gifting:

It is essential that you begin and maintain a gifting programme if you have transferred property to your Trust. This is because you cannot simply give assets to your Trust without incurring gift duty over certain limits– they must be transferred at:

- Fair value for any property;
- Market value for shares;
- Rating valuation for real estate (or such other amount as the IRD may determine).

This means that when you transfer your family home to your Trust, your Trust is in debt to you in the amount of the equity you held in the house at the time of transfer. Because this debt remains your personal property until you gift it, your creditors have access to it. In order to fully protect

your assets, you need to gift \$27,000.00 of this debt back to your Trust every year (or \$54,000.00 if two trustees are gifting) until the debt is extinguished. You need to ensure that:

- Gifting is done correctly and on time every year.
- Your gifting programme is adjusted to include any further advances to the Trust.

### 5. Administration:

It is a good idea to keep all of your Trust-related documents together in a separate file or folder so that all information is readily accessible and you know you are on top of everything.

### How We Can Help You

Many people do not realise how important it is to properly maintain their Trusts, and some do not even know that they have any ongoing responsibilities at all. Trusts are great protection, but neglecting them can be costly and can undo all the good work and intentions.

We can help you by sending you reminders every year for your gifting, as well as taking you through the other steps necessary to ensure your Trust is properly maintained and affords you and your family the protection that it should.

Claire Coe



## I Didn't Know I Had To Tell My Insurance Company That!

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If you don't disclose everything material to your insurance company, your insurance policy can be avoided (i.e. treated like it never existed). This can affect other claims which you may have made under the policy and your ability to obtain insurance in the future. The insurance company can even seek a refund on any money it has paid out to you for other earlier claims, as the policy is treated like it never existed!

The consequences of non-disclosure can be devastating, so make sure you tell the insurance company everything you think could be relevant when you sign up to a policy, however minor. Ensure that when you are renewing your policy, you tell your insurance company if any of your circumstances have changed. To ensure that you are never caught without cover, we recommend telling the insurance company

about your speeding ticket or other relevant event at the time it happens, rather than waiting for renewal. It is better to be safe than sorry!

Alan Knowsley

