



The Role of an Industrial or Legal Representative as a Support Person

The role of a support person, including legal or industrial representatives, extends to various workplace proceedings such as disciplinary meetings, redundancy consultations, performance reviews, and workplace investigations.

An employee may bring a suitable support person to these meetings, interviews, and potentially other phases of these processes, depending on the circumstances.

Can an employee have an industrial or legal representative represent them during a disciplinary, redundancy, performance, or workplace investigation meeting?

An employee may have a support person of their choice, including an industrial representative from their union or a legal representative. Depending on the relevant industrial relations framework that applies to the employee's employment, an industrial or legal representative may also be allowed to "represent" the employee in the meeting.

What can an industrial or legal representative do, beyond acting as a support person?

An industrial or legal representative may, if allowed by the relevant industrial relations framework:

- Advocate on behalf of the employee and ensure that procedural fairness is maintained.
- Represent the employee's interests in line with industrial legislation, union rules, or workplace policies.
- Ask clarifying questions to assist in understanding the process.
- Provide advice to the employee to ensure their rights are upheld during the meeting.
- Act as a support person, offering emotional and practical assistance throughout the process.

Should I acknowledge the industrial or legal representative's involvement in the meeting?

Yes. The role of the industrial or legal representative should be clearly identified at the beginning of the meeting, ideally on record. This ensures all parties understand each other's roles, which helps the meeting run smoothly and prevents misunderstandings or disruptions.

What should I do if an industrial or legal representative questions or objects to the line of questioning during a meeting?

As the meeting facilitator, you are responsible for determining what is relevant to the meeting. If an industrial or legal representative objects to the line of questioning, respectfully remind them that it is your role to make decisions about what is relevant. Ensure the questioning remains focused on the matter at hand and is conducted in a respectful and professional manner.

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Can an industrial or legal representative respond to questions on behalf of an employee during an interview?

No. The interview is intended for the employee to provide their own evidence and response to the allegations or concerns raised. It is not appropriate for the industrial or legal representative to influence or craft responses on behalf of the employee, nor is it acceptable for them to answer questions on the employee's behalf.

As long as your questions are relevant and asked respectfully, the employee is required to answer them directly.

What should I do if an industrial or legal representative is disruptive during a meeting?

If an industrial or legal representative is disruptive, remind them of their role, which should have been clearly outlined at the start of the meeting. If the disruption continues, document the behaviour and request that the representative stop. If the disruption persists, you may decide to take a short break to de-escalate the situation and make a record of this. If the behaviour continues after the break, you may suspend the meeting for the day, again documenting the decision.

What should I do if an employee or their legal representative claims privilege against self-incrimination and refuses to answer any questions?

If an employee claims the privilege against self-incrimination, particularly in a case involving potential criminal conduct, the employee has the right to do so. If this occurs, you may consider suspending the meeting to seek further direction. You should explain to the employee that invoking the privilege may lead to the unchallenged evidence being accepted by the decision-maker. The meeting can continue by assessing the available evidence, without any contradiction or challenge from the employee. You should not draw any adverse inferences solely because the employee invoked the privilege. However, since the privilege is complex in workplace matters, seeking independent advice is recommended.

For any questions about the role of an industrial or legal representative, or their suitability for workplace meetings, contact our team to see how we can help.

Contact Us

