



Can I have a support person at a workplace disciplinary meeting?

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A disciplinary meeting can be one of the most daunting experiences of your working life. They are normally held as part of an investigation into your performance or conduct at work. The presence of a support person at a disciplinary meeting is important, to offer emotional support and/or to ensure your workplace rights are protected. This could be a trusted colleague, friend, family member, union representative or lawyer.

Your right to a support person

There is no law expressly requiring that support persons be allowed at any and all disciplinary meetings. The only legal protection of the right to a support person can be found in Part 3-2 of the *Fair Work Act*, which governs [unfair dismissal](#).

In considering whether a dismissal was harsh, unjust or unreasonable, the Fair Work Commission must take into account any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal.

There must be a request by the employee for a support person. This section of the Act will not cover situations where there is no request and the meeting proceeds.

What constitutes unreasonable refusal?

The law does not prohibit all refusals; it must be an *unreasonable refusal* of a support person. The employer does not have to inform you that you can have a support person, nor do they have to offer you one.

In some circumstances, the employer's refusal to reschedule a meeting so a particular support person can attend could be considered unreasonable. This will depend on a request for an adjournment being made, and insufficient notice being provided.

An example of where it would be unreasonable for an employer to refuse a support person is where they are needed to assist with communication where the employee speaks limited English.

What can a support person do at a disciplinary meeting?

The law states that the support person is there "to assist in any discussions relating to dismissal".

It is generally accepted that a support person plays a passive role and is not allowed to advocate for the employee. However, this is often exaggerated by employers who will often try to stop support persons from speaking at all. It has been held in the Fair Work Commission case of [Gomes v Qantas Airways Limited](#), that:

a support person must, at the very least, be able to speak for and on behalf of the person they are supporting when providing assistance.

You can ask your support person questions, they can seek clarification for you if you don't understand a question asked by your employer, or they can ask for a break so you can speak together in private.

It is also critical that your support person take good notes of what is said in the meeting.

Conclusion

This is a complicated area, and for that reason, if your performance or conduct at work is the subject of a disciplinary meeting, you should seek immediate advice from your union representative or an experienced [employment lawyer](#).

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