

WHAT HAPPENS WHEN YOU ARE SUMMONSED TO BE A WITNESS?

In any Court case it is sometimes necessary for a witness to be summonsed to give evidence.

A witness summons may be issued requiring you to give evidence, or to produce documents to the Court, or a combination of both. It will state the time and place of the hearing.

If you are served with a summons and have any doubts about it or your rights relating to it, you should seek legal advice promptly. This information is prepared to provide you with some assistance but is not a substitute for legal advice.

The Court's power to issue a witness summons is contained in clause 6 of schedule 3 to the Employment Relations Act 2000. A link to that section is provided [here](#).

You may be summonsed to give evidence by any party to the proceeding; that means by the plaintiff, defendant or any other party. The Court also has power to issue a witness summons, at the direction of a Judge, if he or she considers that step is appropriate. For general information about giving evidence in court, please see the Ministry of Justice's information page [here](#).

There are forms prescribed for a witness summons. You can access them [here](#).

Every person who is summonsed to give evidence is entitled to be paid witnesses fees, allowances, and travel expenses according to a prescribed scale, under the Witnesses and Interpreters Fees, Allowances, and Expenses Regulations 2023 (and also by reference to clause 7 of schedule 3 to the Employment Relations Act 2000). A link to the Witnesses and Interpreters Fees, Allowances, and Expenses Regulations 2023 is provided [here](#). Eventually those Regulations will be phased out and replaced by other Regulations.

You should consider discussing with the party who has summonsed you when your evidence is likely to be given to attempt to reduce any unnecessary inconvenience to you.

Responding to a witness summons is a serious matter and it must be complied with. Provided all of the requirements of clause 7 of schedule 3 are met you are required to attend Court until your evidence is given or your attendance is excused.

A failure or refusal to attend Court in response to a witness summons exposes you to the risk of conviction for an offence and a fine not exceeding \$5,000. Offences are dealt with in section 195(1) of the Employment Relations Act 2000 and a link to that section can be found [here](#).

You may consider you should not have been summonsed. In that case, you may have grounds to apply to the Court to set aside the witness summons so that you do not have to attend Court. The power to set aside a witness summons and the grounds on which the Court might do that are in Regulation 34(3) of the Employment Court Regulations 2000 which can be accessed [here](#). Examples of situations where the summons might be set aside are if:

1. you do not have information relevant to the case;
2. you do not possess or control the documents referred to in the summons;
3. it would be oppressive for you to be required to give evidence;
4. inadequate time has been provided for you to be present at the hearing; or
5. if you have not been paid or had tendered to you the fees and expenses provided for in the Witnesses and Interpreters Fees, Allowances, and Expenses Regulations 2023.

Applying to the Court is a formal process. There is no prescribed form to apply to set aside a witness summons but you might use and adapt the form for interlocutory applications on notice found [here](#).¹ Any application will need to explain why the witness summons should be set aside and be supported by evidence in an affidavit.

¹ Labelled as “High Court Form G31: Interlocutory application without notice” in the section Other Forms.