



Termination of Employment

An employee who is dismissed may bring proceedings for unfair dismissal if federal unfair dismissal laws apply to them or their employment.

WHAT IS UNFAIR DISMISSAL?

Unfair dismissal is defined in the *Fair Work Act 2009* (FW Act) as the harsh, unjust or unreasonable termination of employment.

WHO DO UNFAIR DISMISSAL LAWS APPLY TO?

The federal unfair dismissal laws only apply to employees of a constitutional corporation, employees of the Commonwealth, employees within Victoria or a territory and certain waterside, maritime and flight crew workers.

Employees that are excluded from federal unfair dismissal laws include:

- seasonal workers
- employees engaged for a specified period or task
- short term or casual employees
- employees who have not completed a minimum employment period
- employees dismissed in the case of a 'genuine redundancy'
- employees who earn \$108,300 a year or more.

Special arrangements apply for small businesses with fewer than 15 full-time equivalent employees until 1 January 2011. After that, the special arrangement will apply to small businesses with fewer than 15 employees based on headcount.

SMALL BUSINESS FAIR DISMISSAL CODE

The Small Business Fair Dismissal Code sets out the circumstances in which a summary dismissal (a dismissal without notice or warning) is warranted, including cases of theft, fraud and violence. For under-performing employees, the Code simply requires the employer to give the employee a valid reason, based on the employee's conduct or capacity to do the job, why the employee is at risk of being dismissed and a reasonable chance to rectify the problem.

HOW DOES FAIR WORK AUSTRALIA DEAL WITH UNFAIR DISMISSAL CLAIMS?

Unfair dismissal applications must be lodged with Fair Work Australia (FWA) within 14 days of the termination.

Before considering an application, FWA must determine:

- that the federal unfair dismissal laws apply to the employment of the applicant
- whether the application was made within 14 days of termination
- whether the dismissal was a case of genuine redundancy.

If the application meets this criteria, FWA may attempt to conciliate the unfair dismissal claim. If this is unsuccessful, a hearing may be held to resolve the matter.

In determining a claim at hearing, FWA must consider whether:

- there was a valid reason for the dismissal
- the steps taken by the employer leading to the dismissal were reasonable
- the termination was made for genuine operational reasons.

If the applicant is successful, FWA may order that the employee be reinstated, or the payment of compensation to the employee if satisfied that reinstatement is inappropriate.

WHAT IS UNLAWFUL TERMINATION?

It is unlawful to terminate a person's employment on grounds set out in the FW Act. This is called unlawful termination. Employees who are excluded from making unfair dismissal claims are not excluded from making unlawful termination claims.

An employee can apply to the FWA if they believe their employment was terminated for an unlawful reason, including:

- temporary absence from work because of illness or injury
- trade union membership or participation in trade union activities
- non-membership of a trade union
- acting, having acted or seeking office as a representative of employees
- the filing of a complaint, or the participation in proceedings, against an employer

- race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, or social origin
- absence from work during maternity leave or other parental leave
- temporary absence from work because of the carrying out of a voluntary emergency management activity.

FURTHER INFORMATION

Fair Work Australia

- Hotline: 13 13 94
- Website: www.fwa.gov.au

Please note: The Australian Government has proposed changes to the building industry legislation. The contents of this fact sheet will apply until the BCII Act is amended.



Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50