

Factsheet Eight

Unfair Dismissal

An unfair dismissal is one which is. 'harsh, unjust, or unreasonable.' This may occur where there was no valid reason for the dismissal, the employee was not afforded procedural fairness, or the dismissal was otherwise unfair in the circumstances.

If you believe you have been unfairly dismissed, you may be able to lodge an application with the Fair Work Commission. If your claim is successful, the Commission may order that you be reinstated (returned to your job) or where reinstatement is not appropriate, award compensation.

An unfair dismissal application **must be lodged within 21 calendar days** after your dismissal takes effect. Strict time limits apply, so you should seek advice as soon as possible.

In exceptional circumstances the Fair Work Commission may allow an unfair dismissal application to be lodged after the 21-day time limit. However, extensions of time are granted only rarely. You will need to provide evidence explaining the delay, and the Commission must be satisfied there are exceptional circumstances that justify an extension.

Who can make an unfair dismissal claim?

Only employees can make an unfair dismissal claim. Genuine independent contractors and subcontractors are not eligible. On the other hand, some workers described as contractors are in fact legal employees. If you are unsure about your employment status, you should obtain advice as soon as possible.

Not every employee is eligible to bring an unfair dismissal claim. Eligibility depends on a number of factors, including whether:

- you have completed the minimum working period (generally six months, or 12 months if your employer is a small business employer with fewer than 15 employees);
- you are a casual employee who, immediately before the dismissal, had been employed on a regular and systematic basis for the required period and had a reasonable expectation of continuing employment.

You are not eligible if:

- your annual earnings exceed the high-income threshold, and you are not covered by a Modern Award or Enterprise Agreement. This amount is indexed (adjusted) on 1 July each year;
- your employment ended because of a genuine redundancy; or you are employed under a fixed term contract of employment or a training arrangement for a specified period of time (or season) and the contract, task, season or training period has ended;
- your employer is a small business employer that complied with the Small Business Fair Dismissal Code;

Other eligibility requirements and exceptions may also apply. If you are unsure whether you can make a claim, seek legal advice as soon as possible.

How does the Fair Work Commission decide whether a dismissal was unfair?

When determining whether a dismissal was harsh, unjust or unreasonable, the Fair Work Commission considers a range of factors including:

- whether there was a valid reason for the dismissal related to your capacity or conduct;
- whether you were notified of that reason;
- whether you were given an opportunity to respond;
- whether you were warned about unsatisfactory performance before being dismissed (where performance was the reason for the dismissal); and
- the size of the employer's business and the availability of dedicated human resources;

The Commission will consider all of the circumstances of the case.

As of 1 July 2026, the filing fee or cost of lodging an unfair dismissal application is \$92.70. The maximum compensation that can be awarded is the lesser of 26 weeks' pay or half of the Fair Work Act high income threshold applicable at the time of the dismissal.

What if I was forced to resign?

If you resigned because your employer's conduct left you with no reasonable choice but to resign, your resignation may amount to a constructive dismissal.

A constructive dismissal occurs where, although the employer did not expressly dismiss you, their actions effectively brought the employment to an end. Examples may include:

- creating an intolerable working environment;
- fundamentally changing your role without your agreement;
- directing or pressuring you to resign; or
- engaging in conduct that leaves you with no realistic option but to leave

If you resigned in these circumstances, you may still be able to make an unfair dismissal application. Whether a resignation amounts to a constructive dismissal will depend on the particular facts of your case. Because constructive dismissal can be complex and are subject to the same 21-day time limit, you should seek advice as soon as possible.

Where can I get more help?

NT Working Women's Centre Ph: 1800 817 055 www.ntwwc.com.au	Your Union Unions NT Ph: 8941 0001 www.unionsnt.com.au	NT Anti-Discrimination Commission Ph: 1800 813 846 adc.nt.gov.au
Australian Human Rights Commission Ph: 1300 656 419 www.humanrights.gov.au	Fair Work Ombudsman Ph: 13 13 94 www.fairwork.gov.au	Fair Work Commission Ph: 1300 799 675 fwc.gov.au
NT Police Ph: (emergency) 000 If calling from a mobile: 112	Office of the Commissioner of Public Employment (OCPE) Ph: 8999 4129 www.ocpe.nt.gov.au	NT WorkSafe Ph: 1800 019 115 www.worksafe.nt.gov.au

Your HR Department

Aboriginal Interpreter
Service

Ph: 1800 334 944

www.ais.nt.gov.au

To access an interpreter
Interpreting and Translating
Service NT

Ph: 1800 676 254

www.itsnt.nt.gov.au/

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