

Understanding entitlements when employment is terminated

Are you worried that you may lose your entitlements after your employment has been terminated?

Although losing your job or being terminated can be stressful and can happen for various reasons, you should be aware of the type of entitlements you may be owed. You can usually find out by checking whether your employer has complied with redundancy or dismissal obligations specified under your award, registered agreement, employment contract, or workplace policies.

Where there is any suggestion of unfair or unlawful termination, a 21 day time limit applies.

What to do after your employment is terminated

If you have not been given a reason for your termination, the first thing you should do is ask your employer why your employment has been terminated. It is important to know this as it may affect the notice your employer needs to give you, for example, the amount required to be paid may differ for an employee who has been made redundant as opposed to one who has been dismissed.

If you are covered by an award you can check your entitlements by using 'f' on the Fair Work Ombudsman website, or if covered by a registered agreement, by checking the Fair Work Commission website.

Obviously, it is also important to read your employment contract. You may discover that you are entitled to a longer notice period or more redundancy pay than your award or registered agreement specifies. You can also check any workplace policies that might apply to your situation.

If you believe you are owed certain entitlements and your employer refuses to pay your entitlements after you request them to do so, you can contact the Fair Work Ombudsman. The Fair Work Ombudsman can investigate your complaint and take further action if appropriate.

You can also commence legal proceedings in the Federal Circuit and Family Court of Australia. You generally have six years from when you should have been paid to commence legal proceedings. We strongly recommend you seek legal advice from an experienced lawyer before doing so.

What if my employer is not able to pay my entitlements?

Sometimes employers are unable to pay entitlements because they have either gone bankrupt or into liquidation. However, you may be able to recover some or all of your entitlements by making a claim under the Fair Entitlements Guarantee (FEG).

FEG is a statutory scheme designed as a last resort to cover eligible employees for unpaid entitlements if they have lost their job because of the liquidation or bankruptcy of their employer.

You may be eligible for assistance under FEG if:

- you are an Australian citizen or the holder of a certain permanent or special category visa;
- you are entitled to one of the benefits mentioned above; and
- you lost your job because of, or less than 6 months before, your employer's liquidation or bankruptcy

Claims must be lodged within 12 months of losing your job or the date of the employer's liquidation/bankruptcy.

You may be able to recover:

- up to 13 weeks unpaid wages and any unpaid annual leave
- up to five weeks unpaid payment in lieu of notice
- long service leave
- up to four weeks redundancy pay for each full year of employment

How can I calculate my entitlements?

You can calculate any final pay, notice and/or redundancy pay under an award or the National Employment Standards in the Fair Work Act using their Pay and Conditions Tool.

Working out the exact entitlements you are owed can be complex, depending on your type of employment. If you are unsure, we recommend you seek legal advice.

Has my employer complied with the rules of termination?

If you believe you have been dismissed unfairly or unlawfully, or if you are not satisfied with your employer's response, we recommend you speak with an employment lawyer as soon as possible. If you were unfairly or wrongfully dismissed, you may be entitled to pursue a claim for damages.

If you have been unfairly dismissed and want to make an unfair dismissal application to the Fair Work Commission, you must do so within 21 days of the date you were dismissed. This also applies if you want to make a claim for general protections dismissal.

Conclusion

It is important to understand your entitlements on termination of your employment, so you receive what you are legally entitled to.

The type of entitlements you are owed will depend on whether you were made redundant or dismissed. It is important to check your entitlements under any award, registered agreement, employment contract, or workplace policy.

If you or someone you know wants more information or needs help or advice, please contact us on (07) 5538 2766 or email jeff@dwyerlaw.com.au.