

## Factsheet Eight

### Unfair Dismissal

Unfair dismissals are those which are 'harsh, unjust, or unreasonable' and include terminations by an employer where there is no valid reason or there has been no procedural fairness.

If you believe you have been dismissed in a way which is harsh, unjust or unreasonable, you may be able to make a claim for unfair dismissal to the Fair Work Commission. It may be possible to be reinstated (get your job back) or to receive compensation for the wages and other entitlements lost in the period between the dismissal and re-employment.

**Unfair dismissal applications must be lodged within 21 calendar days after the dismissal takes effect.**

Only employees can make a claim for unfair dismissal. This means that if you are engaged as an independent contractor or subcontractor then you cannot make a claim. However, in some circumstances workers who are called contractors are legally recognized as employees. If you do not know what your employment status is or are unsure whether you are a genuine independent contractor or not, you should get advice as soon as possible.

Not every employee can make a claim for unfair dismissal. You are excluded from making a claim if any of the following applies to you:

- You have been working for your employer for less than 6 months, or, if your employer is a small business employer, less than 12 months;
- You are working for a small business employer (an employer with less than 15 employees) who has complied with the Fair Dismissal Code;

- You are a casual employee (except where you have worked on a regular and systematic basis for the required amount of time as described above and prior to the dismissal you had a reasonable expectation of continuing employment);
- You earn over \$ 175,000 per year and you are not covered by a Modern Award or agreement. This amount is indexed (adjusted) each year;
- You are employed under a fixed term contract of employment or a training arrangement for a specified period of time (or season) or for a specified task such as a project and the contract, task, season or training period has ended;
- Your dismissal was for 'serious misconduct;'
- You are an independent contractor; or
- Your dismissal was a genuine redundancy.

In deciding whether your dismissal was unfair, the Fair Work Commission will look at:

- 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 any opportunity to respond to the reason;
- Whether your employer unreasonably refused any request you made to have a support person present at any discussions relating to the dismissal;
- Whether you had been warned about unsatisfactory performance before the dismissal (if this was the reason for the dismissal); and
- The size of the business and the absence of dedicated human resource management specialists.

As of 1 July 2024, the filing fee or cost of lodging an unfair dismissal application is \$87.20. The compensation limit for a successful unfair dismissal claim is \$87,500, or 6 months of the dismissed employee's annual income, whichever is less.

### **What if I was forced to quit my job?**

This may mean that your resignation could be considered a constructive dismissal.

Constructive dismissal means that even though your employer did not say you were sacked, the employer's behaviour left you with no reasonable choice but to resign. This is relevant if you are making a claim for unfair dismissal or unlawful termination where you must be able to show that your employment was terminated 'at the initiative of the employer', not because you decided to voluntarily resign. In some cases, an employer may not say 'you're sacked', but still force you to leave because of the things they say, do or fail to do. Or they may direct you to resign or otherwise you will be sacked.

## Where can I get more help?

NT Working Women's Centre Ph: 1800 817 055 <a href="http://www.ntwwc.com.au">www.ntwwc.com.au</a>	Your Union Unions NT Ph: 8941 0001 <a href="http://www.unionsnt.com.au">www.unionsnt.com.au</a>	NT Anti-Discrimination Commission Ph: 1800 813 846 <a href="http://adc.nt.gov.au">adc.nt.gov.au</a>
Australian Human Rights Commission Ph: 1300 656 419 <a href="http://www.humanrights.gov.au">www.humanrights.gov.au</a>	Fair Work Ombudsman Ph: 13 13 94 <a href="http://www.fairwork.gov.au">www.fairwork.gov.au</a>	Fair Work Commission Ph: 1300 799 675 <a href="http://fwc.gov.au">fwc.gov.au</a>
NT Police Ph: (emergency) 000 If calling from a mobile: 112	Office of the Commissioner of Public Employment (OCPE) Ph: 8999 4129 <a href="http://www.ocpe.nt.gov.au">www.ocpe.nt.gov.au</a>	NT WorkSafe Ph: 1800 019 115 <a href="http://www.worksafe.nt.gov.au">www.worksafe.nt.gov.au</a>
Your HR Department	Aboriginal Interpreter Service Ph: 1800 334 944 <a href="http://www.ais.nt.gov.au">www.ais.nt.gov.au</a>	To access an interpreter Interpreting and Translating Service NT Ph: 1800 676 254 <a href="http://www.itsnt.nt.gov.au/">www.itsnt.nt.gov.au/</a>

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