

Employment Issues During COVID-19

What happens if I have been let go from my job and they are now saying it is because of the virus but I have been having issues with them before this and I had made a complaint to higher management.

We understand that these are unique and challenging times for employers and employees during this COVID-19 situation. Some businesses will suffer significant downturn and may need to lay off employees, terminate employees or close down entirely.

The Fair Work Act 2009 and the Fair Work Regulations 2009 are the main laws governing the employer relationship in Australia. There are also 10 National Employment Standards that apply to all employees covered by the National System.

What is redundancy?

You can be dismissed in the case of a genuine redundancy. For a redundancy to be genuine there are three elements that need to be met:

1. the employee's job was no longer required to be performed because of changes in the operational requirements of the business;
2. the employer becomes insolvent or bankrupt; or
3. the employer has complied with obligations in a modern award or enterprise agreement applied to the employment to consult about the redundancy.

If you have been made redundant, you may be entitled to:

- notice pay;
- redundancy pay; and
- any entitlements you have such as annual leave or long service leave.

The amount of notice and redundancy pay will depend on your situation (e.g how long you have worked for your employer, what is in your employment contract, enterprise agreement or award).

If you think that the reason for your dismissal was not genuine, you may be able to make an application to the Fair Work Commission ('FWC') for an unfair dismissal or unlawful termination.

What is unfair dismissal?

Employees have the right to make an application to the FWC if they believe their employment was terminated by their employer in a way that was harsh, unjust or unreasonable.

The FWC is still receiving unfair dismissal applications during this COVID-19 crisis. If you want to make an application, you will need to complete the online form or download and complete the Form F2 and send it by email to the FWC. Once an application is filed, the FWC will then deal with the matter.

Who can make an unfair dismissal claim?

To be eligible to make an application, you must be an employee of the employer.

If you decide to make an application to the FWC, your application must be made within 21 days of the dismissal taking effect. The 21-day period starts the day after the dismissal.

There is a minimum employment period that you will need to meet to apply for an unfair dismissal. You will need to have been employed for at least 6 months or for at least 12 months if you are working for a small business.

What types of remedies are available for unfair dismissal?

1. Reinstatement—you can continue your employment with your employer.
2. Compensation—compensation for unfair dismissal is capped at 26 week's wage of the annual wage of the employee. The maximum amount of compensation that the FWC can currently award is \$74,350.

If you think you have been unfairly dismissed, you need to contact the FWC as soon as possible.

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What is unlawful termination?

Unlawful termination occurs where discrimination has occurred and an employee has been let go for a discriminatory reason. An unlawful termination is termination on the grounds of:

- a person's race, colour, sex, sexual preference, age, disability, pregnancy, religion;
- temporary absence from work due to injury or illness;
- trade union membership or non-membership;
- being absent from work during maternity leave or other parental leave; or
- making a complaint or taking part in proceedings against an employer.

If you believe you have been unlawfully terminated, you can make an application to the FWC within 21 days after the termination takes effect.

What happens once an application for unfair dismissal or unlawful termination is made?

1. The FWC will check your application to make sure it is completed and valid.
2. The employer will be served with your application.
3. The FWC will deal with the dispute by holding a conciliation conference. The aim of the conference is to try and help the parties resolve the matter.
4. If the conference is unsuccessful, a certificate will be issued.
5. The parties will then need to decide whether the dispute is referred to arbitration.
6. If the parties do not agree to arbitration, the employee can make an application to the Federal Court of the Federal Circuit Court to deal with their matter.

If you want more information, you can contact the Fair Work Ombudsman

Website: www.fairwork.gov.au

Phone number: **13 13 94**