

# General Protections Dismissals

***This information is based on the law as at November 2010. It is intended as a guide only and not to replace the need for legal advice about specific situations.***

This tip sheet provides some basic information about your rights under the *Fair Work Act 2009* if you have lost your job or you think you may be about to lose your job. This Act gives you a right to bring a claim against your employer if you believe your employment has been terminated in breach of the general protections provided under the *Fair Work Act*. (for information on unfair termination please see our tip sheet titled '**Unfair Dismissals**').

However, not everyone can make a claim under the Act and there are certain things which you should know before lodging an application. The law in this area can be complicated and this is only a brief guide to some of the common issues. If you are considering making a claim you should seek further advice.

## **How do I make a claim?**

To make a claim that your dismissal was in breach of the general protections you must get an application form, complete all relevant sections and lodge it with Fair Work Australia (FWA). You can do all this at the Canberra Registry, 2nd Floor, CML Building, 17-21 University Ave, Canberra, phone 6209 2400 and fax 6248 9774.

## **What does it cost to make a claim?**

There is a filing fee which is currently \$60.60 but will increase annually and it must be paid when you lodge your application. This fee can be waived if it will cause hardship. There is a form you will need to fill in and lodge with FWA if you want to have the fee waived.

## **Was my employer in breach of the General Protections?**

The general protections provisions of the *Fair Work Act* are designed to protect employees from discrimination and to protect the rights of employees in the workplace.

The Act says that employers must not take adverse action against employees who have exercised or propose to exercise a workplace right.

Employees have many rights in the workplace including things like:

- a temporary absence from work because of illness or injury;
- trade union membership or participation in trade union activities
- non-membership of a trade union;
- seeking office as, or acting or having acted in the capacity of, a representative of employees;
- filing a complaint or participating in an action against an employer involving alleged violation of laws or regulations;
- not being discriminated against on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

'Adverse Action' means treating employees unfavourably, which includes but is not limited to dismissing them or demoting them.

### **How much time do I have to bring a claim?**

If you intend to lodge an application claiming that your employer's conduct is in breach of the general protections, you must lodge in with Fair Work Australia (FWA) within **60 Days** of the adverse treatment. There is some scope to bring claims outside of this time limit but it is limited.

If you wish to lodge an application you should contact the Centre or Fair Work Australia for more information.

### **What happens once I have lodged my claim?**

If you have been dismissed, once you have lodged your application FWA will convene a private conference. The conference may involve the use of mediation or conciliation or FWA might make recommendations or give an opinion.

If your case doesn't settle at the private conference FWA will issue a certificate. You can then make an application to court. You must do so within **14 days** of the certificate being issued. If FWA believes that your application does not have a reasonable prospect of success it must tell both parties.

Where there is no dismissal involved, a private conference with FWA will only be convened if all parties agree. Otherwise, such matters can proceed straight to court.

Unfortunately, going to court can be more complicated, so if you have any difficulties, you should seek advice.

If you have more than one basis for your claim, you will need to check carefully before choosing where to take your claim. You usually cannot bring two types of claim.

### **Discrimination**

If the reasons you were dismissed were discriminatory you should consider making a complaint of discrimination, where you can claim compensation for hurt feelings, suffering, humiliation and distress. You can make that claim in Fair Work Australia or there are alternate tribunals such as the ACT Human Rights Commission and the Australian Human Rights Commission who can also handle such claims. If you are considering making a claim of this type you should seek further advice and also read our tip sheet on discrimination.

## Where can I get help and information?

<b>Women's Legal Centre (ACT &amp; Region)</b>	(02) 6257 4499 (local) 1800 634 669 (outside Canberra) <a href="http://www.womenslegalact.org">www.womenslegalact.org</a>
<b>UnionsACT</b>	(02) 6247 7844 <a href="http://www.unionsact.org.au">www.unionsact.org.au</a>
<b>ACT WorkSafe</b>	(02) 6205 0200 <a href="http://www.ors.act.gov.au/workcover/">http://www.ors.act.gov.au/workcover/</a>
<b>Fair Work Ombudsman</b>	<b>13 13 94</b> <a href="http://www.fwo.gov.au">www.fwo.gov.au</a>
<b>ACT Human Rights Office</b>	(02) 6207 0576 <a href="http://www.hro.act.gov.au">www.hro.act.gov.au</a>
<b>Australian Human Rights</b>	1300 656 419 <a href="http://www.humanrights.gov.au">www.humanrights.gov.au</a>
<b>Law Society ACT</b> (for referrals to a private solicitor)	(02) 6247 5700 <a href="http://www.actlawsociety.asn.au">www.actlawsociety.asn.au</a>

### **About the Women's Legal Centre**

The Women's Legal Centre (ACT & Region) Inc. is a community legal centre for women in Canberra and the surrounding area. The Centre is run by women and aims to improve women's access to justice. The Centre offers free, confidential telephone advice Monday to Friday from 9.30am to 12.00pm.

The numbers for legal advice are:

Local	6257 4499
Outside Canberra	1800 634 669

The Women's Legal Centre is funded by the Indigenous Justice and Legal Assistance Division, Commonwealth Attorney-General's Department.