

Ending employment

What is termination of employment?

Termination of employment is when an employee's employment with an employer ends. Employment can end for many different reasons. An employee may resign or can be dismissed (fired).

However it ends, it's important to follow the rules about dismissal, notice and final pay. There are also different rights and obligations when a job is made redundant or when a business is bankrupt.

Commonwealth workplace laws have rules about terminating employment. These rules establish whether the termination of the employment was unlawful or unfair, what entitlements an employee is owed at the end of their employment, and what must be done when an employee is dismissed because of redundancy.

The Fair Work Ombudsman and the Fair Work Commission regulate Commonwealth workplace laws about terminating employment.

The Fair Work Ombudsman is responsible for:

- educating employers and employees about their rights and obligations
- ensuring compliance with workplace laws, and
- can prosecute employers that contravene workplace laws.

The Fair Work Commission is deals with:

- unfair dismissal
- general protections dismissals
- unlawful termination applications.

If you have lost your job, contact the Fair Work Commission first if you think you were sacked because of:

- a reason that was harsh, unjust or unreasonable
- discrimination
- another protected right.

What is unfair dismissal?

Unfair dismissal is when an employee is dismissed from their job in a harsh, unjust or unreasonable manner.

The Fair Work Commission may consider an employee has been unfairly dismissed if:

- the person was dismissed
- the dismissal was harsh, unjust or unreasonable
- the dismissal was not a case of genuine redundancy

- the employee worked for a small business and the dismissal was not done according to the [Small Business Fair Dismissal Code](#)

What is harsh, unjust or unreasonable?

The Fair Work Commission will decide if a dismissal is harsh, unjust or unreasonable, and they consider all of the following circumstances:

- was there a valid reason for the dismissal related to the employee's capacity or conduct
- was the employee notified of that reason and given an opportunity to respond
- if the employer didn't allow the employee to have a support person present at any discussions about the dismissal, was that unreasonable
- whether the employee had been previously warned that their performance was unsatisfactory
- if the size of the business, or lack of dedicated human resource management specialists or expertise impacted on the procedures that the employer followed when they dismissed the employee, and
- any other matters that the FWC considers relevant.

Who can apply?

Employees covered by the national workplace relations system can apply to the Fair Work Commission for unfair dismissal if they have been terminated by their employer, or forced to resign because of something the employer did, and they have worked the minimum employment period.

Minimum Employment period:

- Employed in a small business for at least 12 months. (A small business is defined as any business with fewer than 15 employees. This is calculated on a simple headcount of all employees who are employed on a regular and systematic basis).
- Employed in a larger business for at least 6 months.

(If there was a change of business ownership, service with the first employer may count as service with the second employer when calculating the minimum employment period).

To be eligible employees must also be:

- covered by an award, or
- covered by a registered agreement, or
- have an annual earnings rate which is less than the high income threshold (from 1 July 2020 this is \$153,600). This threshold is indexed each financial year starting on 1 July.

For more information and to check if you are eligible to lodge an unfair dismissal application, take the Fair Work Commission's [unfair dismissal eligibility quiz](#).

Employees have to **apply to the Commission within 21 calendar days of the dismissal taking effect**.

If you think you have been unfairly dismissed you need to contact the Commission as soon as possible. Visit the Commission website [to learn more about unfair dismissal](#) and find out [how to lodge the application form](#).

The Fair Work Ombudsman does not investigate unfair dismissal complaints.

What is the Small Business Fair Dismissal Code?

Small businesses have different rules for dismissal which are set out in the Small Business Fair Dismissal Code (the Code). A small business is any business with fewer than 15 employees calculated on a simple headcount of all employees who are employed on a regular and systematic basis.

The Small Business Fair Dismissal Code provides protection for small business employers against unfair dismissal claims, where an employer follows the Code.

The Fair Work Commission will deem a dismissal to be fair if the employer follows the Code and can provide evidence of this.

To find the Small Business Fair Dismissal Code, and Checklist, go to: www.fairwork.gov.au/ending-employment/unfair-dismissal#small-business-employers

What is an unlawful termination?

Unlawful termination is when an employee is dismissed by their employer for one or more of the following reasons:

- a person's race, colour, sex, sexual orientation, age, mental or physical disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin (some exceptions apply, such as where it's based on the inherent requirements of the job)
- temporary absence from work because of illness or injury
- trade union membership or non-membership or participation in industrial activities
- being absent from work during maternity leave or other parental leave
- temporary absence from work to engage in a voluntary emergency management activity
- exercising or planning to exercise a workplace right by making a complaint or inquiry in relation to your employment, or participating in proceedings against an employer.

Generally, employees are protected from unlawful termination

under the General Protections provisions of the Fair Work Act 2009. However, all employees are protected from unlawful termination. The Fair Work Ombudsman can investigate unlawful termination complaints. For more information on general protections, including who they apply to, please see the *Fair Work Ombudsman Fact Sheet – General workplace protections*.

If you think you have been unlawfully dismissed you need to contact the Fair Work Commission as soon as possible. Employees have to **apply to the Commission within 21 calendar days of the dismissal taking effect**.

To check if you are eligible to lodge a general protections dismissal application, take the Fair Work Commission's general [protections eligibility quiz](#).

To check if you are eligible to lodge an unlawful termination application, and for more information about unlawful termination go to [the Fair Work Commission website](#).

Should an employee be given notice of termination?

Generally, an employer must not terminate an employee's employment unless they have given the employee written notice of the last day of employment. An employer can either let the employee work through their notice period, or pay it out to them (also known as pay in lieu of notice).

The amount of notice depends on the age of the employee and how long they have been employed on a continuous basis by the employer.

For more information on notice of termination, including the minimum notice period which must be given to an employee, and any exceptions, please see the *Fair Work Ombudsman Fact Sheet – Notice of termination and redundancy pay and the National Employment Standards*.

What entitlements should be paid termination?

When an employment relationship ends, employees should receive the following entitlements in their final pay:

- any outstanding wages or other remuneration still owing
- any pay in lieu of notice of termination
- any accrued annual leave and long service leave entitlements
- the balance of any time off instead of overtime that the employee has accrued but not yet taken
- any redundancy pay or entitlements if the employees has been made redundant and is eligible.

If an employee has taken leave in advance and their employment ends before they've accrued it all back, the employer can deduct the amount still owing from the employee's final pay.

If an employee believes that they have not been paid for all of their entitlements when their employment ends, the Fair Work Ombudsman can investigate and take action to make sure that all entitlements are paid.

An employer can be liable to a penalty of up to \$66,600 per contravention if they have not complied with their obligations under relevant Commonwealth workplace laws.

Redundancy

What is redundancy?

Redundancy occurs when an employer either decides they no longer need an employee's job to be done by anyone, or the employer becomes insolvent or bankrupt, and terminates their employment.

The job itself, not the employee, becomes redundant.

Redundancy can happen when the business:

- introduces new technology (eg. the job it can be done by a machine)
- slows down due to lower sales or production
- closes down
- relocates interstate or overseas
- restructures or reorganises because a merger or takeover happens.

What redundancy pay might be payable?

An employee covered by the national workplace relations system, who has at least one year of continuous service and who works for an employer that employs 15 or more employees may be entitled to redundancy or severance payments (to a maximum of 16 weeks' pay) under the National Employment Standards (NES).

Who doesn't get redundancy pay?

Some employees don't get redundancy payments when their job is made redundant.

The following employees don't get redundancy pay:

- employees whose period of continuous service with the employer is less than 12 months
- an employee employed for:
 - a stated period of time
 - an identified task or project
 - a particular season.
- employees terminated because of serious misconduct
- most casual employees
- trainees engaged only for the length of the training agreement
- apprentices.

There are special arrangements for employees whose

employment transfers when the business they work for is sold. Find out more on our [When businesses change owners page](#).

Employees of small businesses

A small business is one that employs fewer than 15 employees. Some small businesses don't have to pay redundancy pay when making an employee redundant.

To work out if the business is a small business, count:

- all permanent employees employed at the time of the redundancy
- the employee and any other employees being terminated at that time
- only regular and systematic casual employees employed by the business at the time of the redundancy are counted
- employees of associated entities.

The size of the business is counted the earliest of:

- when the employee is told their employment will be terminated, or
- when the employee is given their notice of termination.

Awards can specify other situations in which redundancy pay does not apply to the termination of an employee's employment.

For more information on redundancy pay, please see the *Fair Work Ombudsman Fact Sheet – Notice of termination and redundancy pay and the National Employment Standards*.

Source reference: Fair Work Act 2009 (Cth) sections 121 and 123

What happens if my employer goes bankrupt or into liquidation?

Sometimes businesses shut down because they aren't profitable or run out of money. This can mean that employees lose their jobs, and in some cases, the employer may not be able to pay them the wages and entitlements they are owed.

When a business is bankrupt, also known as going into liquidation or insolvency, employees can get help through the Fair Entitlements Guarantee (FEG).

The FEG, previously known as the General Employee Entitlements and Redundancy Scheme or GEERS, is available to eligible employees to help them get their unpaid entitlements. This can include:

- wages – up to 13 weeks of unpaid wages (capped at the FEG maximum weekly wage)
- annual leave
- long service leave
- payment in lieu of notice of termination – maximum of 5 weeks
- redundancy pay – up to 4 weeks per full year of service.

It doesn't include:

- superannuation
- reimbursement payments
- one-off or irregular payments
- bonus payments
- non-ongoing or irregular commissions.

For more information visit www.employment.gov.au/fair-entitlements-guarantee-feg , call the FEG Hotline on 1300 135 040, or email FEG@employment.gov.au.

The Fair Work Ombudsman can assist, [learn how we will help](#) if entitlements haven't been paid during voluntary administration.

Redundancy and unfair dismissal

Genuine redundancy is not considered unfair dismissal.

A genuine redundancy is when:

- the person's job doesn't need to be done by anyone
- the employer followed any consultation requirements in the award or registered agreement
- there was no reasonable opportunity for the person to be redeployed within the employer's business or an associated business.

When an employee's dismissal is a genuine redundancy the employee isn't able to make an unfair dismissal claim.

A dismissal is not a genuine redundancy if the employer:

- still needs the employee's job to be done by someone (eg. hires someone else to do the job)
- has not followed relevant requirements to consult with the employees about the redundancy under an award or registered agreement, or
- could have reasonably, in the circumstances, given the employee another job within the employer's business or an associated entity.

Further information

The Fair Work Ombudsman has a Best Practice Guide on

managing underperformance, and template letters for terminating employment. You can find these resources at www.fairwork.gov.au/resources

For further information, visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94.

Redundancy and termination are provided for by sections 117–123 of the Fair Work Act 2009.

Unfair dismissal is provided for by sections 379–405 of the Fair Work Act 2009.

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Need language help?

Contact the Translating and Interpreting Service (TIS) on **13 14 50**

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: **13 36 77**. Ask for the Fair Work Infoline **13 13 94**

Speak & Listen: **1300 555 727**. Ask for the Fair Work Infoline **13 13 94**