



Non-compliance with unfair dismissal orders

What is a Fair Work Commission order?

An order is a direction given by a Member of the Fair Work Commission (the Commission) in accordance with a decision. In relation to unfair dismissal applications, an order may:

- dismiss an unfair dismissal application
- require compensation to be paid
- require reinstatement, or
- require compensation to be paid and reinstatement.

An order made by the Commission is legally binding. However the Commission does not have the power to enforce an order. The enforcement of orders is further explained in this fact sheet.

Is an order the same as a Terms of Settlement document?

An order is different from a Terms of Settlement document. A Terms of Settlement is a document signed by two parties agreeing to a settlement, and is usually obtained during the conciliation process of an unfair dismissal application with the Commission or through mediation at the Fair Work Ombudsman. This fact sheet does not cover Terms of Settlement documents. For information on enforcing a Terms of Settlement document legal advice may need to be sought. Please see the Further information section below.

What options are available when non-compliance of an order occurs?

If an employee does not receive compensation ordered by the Commission, there are several options to seek enforcement through the commencement of civil proceedings in:

- the Federal Circuit Court of Australia or a State Magistrates Court by commencing a small claim proceeding (available for the enforcement of a Commission order for the payment of money up to \$20,000 where there is no application for a pecuniary penalty order)

- the Fair Work Division of the Federal Circuit Court of Australia, or
- an eligible State or Territory Court such as a District or County Court or state industrial relations commission.

Normally an order for compensation from the Commission will provide a timeframe within which compensation is to be paid. It is advisable to wait until the timeframe has lapsed before seeking a non-compliance option.

What is a small claim proceeding?

A small claim proceeding in the Federal Circuit Court of Australia or a State Magistrates Court is a way by which a person can seek to recover unpaid monies. The proceedings are generally more informal than other court proceedings and each party can only be represented by a lawyer if permission is given by the court.

The maximum amount you can recover through the small claim procedure is \$20,000. A pecuniary penalty order cannot be sought through this procedure. If an unfair dismissal order for compensation is more than this, you can still make a claim for enforcement of the order using other court procedures.

Further information regarding small claims procedures can be found at [section 548](#) of the *Fair Work Act 2009*.

Further information on filing a small claim in the Fair Work Division of the Federal Circuit Court of Australia can be accessed on their website: www.federalcircuitcourt.gov.au/forms/html/workplace.html. If a person wishes to file a claim through a State Magistrates Court they can contact that court directly.

Penalties

If an employer has not complied with an unfair dismissal order made by the Commission, it is possible for courts, such as the Federal Court of Australia, Federal Circuit Court of Australia, or an eligible State or Territory court to order the payment of an additional penalty. This kind of penalty is known as a pecuniary penalty and is in addition to any order made by the Commission.

Fair Work Ombudsman

The Fair Work Ombudsman is an independent statutory agency, separate from the Fair Work Commission. The Fair Work Ombudsman is the agency responsible for providing education, assistance and advice about the Commonwealth workplace relations system. The Fair Work Ombudsman is also responsible for impartially enforcing compliance with the *Fair Work Act 2009* and fair work instruments.

If an unfair dismissal order made by the Commission is not complied with, you can contact the Fair Work Ombudsman for information on possible assistance with enforcing the order.

You can contact the Fair Work Ombudsman online at: www.fairwork.gov.au or through the Fair Work Infoline: 13 13 94.

Further information

You should note that legal advice is not available from the Fair Work Commission or the Fair Work Ombudsman.

There are Community Legal Centres in each State and Territory. You can use the National Association of Community Legal Centres Inc (NACLC) legal help page: www.nacclc.org.au/need_legal_help.php to find your nearest Community Legal Centre. Please note NACLC does not provide legal advice.

About this fact sheet

This fact sheet was produced by the Fair Work Commission in consultation with the Office of the Fair Work Ombudsman.

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