

## Unfair dismissal

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

The Fair Work Commission (the Commission) [☞](https://www.fwc.gov.au/termination-of-employment/unfair-dismissal) (https://www.fwc.gov.au/termination-of-employment/unfair-dismissal) decides on cases of unfair dismissal.

### Applying for unfair dismissal

Employees have to apply to the Commission within 21 days of the dismissal taking effect. The 21 day period starts the day after the dismissal.

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](https://www.fwc.gov.au/termination-of-employment/unfair-dismissal) [☞](https://www.fwc.gov.au/termination-of-employment/unfair-dismissal) (https://www.fwc.gov.au/termination-of-employment/unfair-dismissal)
- [find out how to lodge the application form](https://www.fwc.gov.au/termination-employment/unfair-dismissal/what-the-process-unfair-dismissal-claims#field-content-1-heading) [☞](https://www.fwc.gov.au/termination-employment/unfair-dismissal/what-the-process-unfair-dismissal-claims#field-content-1-heading) (https://www.fwc.gov.au/termination-employment/unfair-dismissal/what-the-process-unfair-dismissal-claims#field-content-1-heading)
- [access free legal advice about unfair dismissal](https://www.fwc.gov.au/resources/where-get-legal-advice/workplace-advice-service) [☞](https://www.fwc.gov.au/resources/where-get-legal-advice/workplace-advice-service) (https://www.fwc.gov.au/resources/where-get-legal-advice/workplace-advice-service) , if you're eligible.

#### Minimum employment period

Employees have to be employed for at least 6 months before they can apply for unfair dismissal.

Employees working for a small business have to be employed for at least 12 months before they can apply.

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.

You can use the Commission's eligibility quiz [☞](https://www.fwc.gov.au/termination-of-employment/unfair-dismissal/eligibility) (https://www.fwc.gov.au/termination-of-employment/unfair-dismissal/eligibility) to see if you can apply for unfair dismissal.

#### Small business employers

Small businesses have different rules for dismissal.

The Small Business Fair Dismissal Code (DOCX 25.5KB) [☞](https://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.docx.aspx) (https://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.docx.aspx) (PDF 220.4KB) [☞](https://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.pdf.aspx) (https://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.pdf.aspx) provides protection against unfair dismissal claims, where an employer follows the Code. The Commission will deem a dismissal to be fair if the employer follows the Code and can provide evidence of this.

A small business is defined as any business with fewer than 15 employees.

To figure out whether a business is a small business, count all employees employed at the time of the dismissal including:

- the employee and any other employees being dismissed at that time
- regular and systematic casual employees employed by the business at the time of the dismissal (not all casual employees)
- employees of associated entities ([www.fairwork.gov.au/Dictionary.aspx?TermID=2116](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2116)) , including those based overseas.

The size of the business is counted the earliest of:

- when the employee is told their employment has been terminated, or
- when the employee is given their notice of termination ([www.fairwork.gov.au/ending-employment/notice-and-final-pay/dismissal-how-much-notice](http://www.fairwork.gov.au/ending-employment/notice-and-final-pay/dismissal-how-much-notice)) .

Source reference: Fair Work Act 2009 s.23, 121 and 123 [☞](http://www.comlaw.gov.au/Series/C2009A00028) (http://www.comlaw.gov.au/Series/C2009A00028 )

#### Other dismissals

Employees can also apply to the Commission if they've been dismissed on the basis of:

- a breach of general protections or

- unlawful termination.

See the [Protections at work \(www.fairwork.gov.au/employee-entitlements/protections-at-work/default\)](http://www.fairwork.gov.au/employee-entitlements/protections-at-work/default) page for more information.

Source reference: [Fair Work Act 2009 s.383 - 384 and 394](http://www.comlaw.gov.au/Series/C2009A00028) (http://www.comlaw.gov.au/Series/C2009A00028 )

## What to do next

- Visit the [Commission website](https://www.fwc.gov.au/termination-of-employment/unfair-dismissal) (https://www.fwc.gov.au/termination-of-employment/unfair-dismissal) to learn more about unfair dismissal
- Visit the [Commission website](https://www.fwc.gov.au/termination-employment/general-protections-dismissal) (https://www.fwc.gov.au/termination-employment/general-protections-dismissal) to learn about general protections and unlawful termination
- Read the Commission's [Unfair Dismissal Benchbook](https://www.fwc.gov.au/unfair-dismissals-benchbook) (https://www.fwc.gov.au/unfair-dismissals-benchbook)
- Download the [Small Business Fair Dismissal Code checklist \(DOCX 25.5KB\)](http://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.docx.aspx) for small business employers
- Get free legal advice (if eligible) about unfair dismissal from the Commission's [Workplace Advice Service](https://www.fwc.gov.au/resources/where-get-legal-advice/workplace-advice-service) (https://www.fwc.gov.au/resources/where-get-legal-advice/workplace-advice-service) .

## Help for small business

- Use the [Small Business Fair Dismissal Code and checklist \(DOCX 25.5KB\)](https://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.docx.aspx) (https://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.docx.aspx) (PDF 220.4KB) (https://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.pdf.aspx) to make sure that a dismissal is fair
- Find tools, resources and information you might need on our [Small business page](http://www.fairwork.gov.au/Find-help-for/Small-business/default) (www.fairwork.gov.au/Find-help-for/Small-business/default) .

## You might also be interested in

- [Notice and final pay \(www.fairwork.gov.au/Ending-employment/notice-and-final-pay/default\)](http://www.fairwork.gov.au/Ending-employment/notice-and-final-pay/default)
- [Employee entitlements on a transfer of business \(www.fairwork.gov.au/Employee-entitlements/When-businesses-change-owners/employee-entitlements-on-a-transfer-of-business\)](http://www.fairwork.gov.au/Employee-entitlements/When-businesses-change-owners/employee-entitlements-on-a-transfer-of-business)
- [Non-compliance with unfair dismissal orders fact sheet \(www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/non-compliance-with-unfair-dismissal-orders\)](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/non-compliance-with-unfair-dismissal-orders)

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### Contact us

Fair Work Online: [www.fairwork.gov.au](http://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

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