

## Long periods of sick leave

An employee can take as much paid sick leave as they've accumulated if they aren't fit for work because they're sick or injured.

### Protection from dismissal while on sick leave

Employees who are away from work temporarily because they're sick or injured may be protected from being dismissed.

To be protected from dismissal during a temporary absence from work:

- the total time away due to illness or injury must be less than 3 consecutive months, or a total of less than 3 months over a 12 month period
- employees can be taking paid, unpaid or a combination of paid and unpaid sick leave during their absence
- employees need to provide evidence of their illness or injury.

### When an employee is away for longer than 3 months

An employee is no longer protected from being dismissed (even if they provide evidence) if:

- the total length of their absence due to illness or injury is more than 3 consecutive months, or a total of more than 3 months over a 12 month period
- over that period they've only taken unpaid leave, or they've taken a combination of paid and unpaid leave.

Employees who take a period of sick leave that is paid the whole time are protected from dismissal regardless of how long they're on leave.

Employers must still follow the appropriate rules for carrying out a dismissal and employees may challenge the termination of their employment by:

- making an unfair dismissal application if the reason for the dismissal is harsh, unjust or unreasonable
  - making a general protections claim if the reason for the dismissal is another protected reason, or
  - making a claim under a state or federal anti-discrimination law.
- Source reference:
  - Fair Work Act 2009 s.351, 352 and 385 [☞](http://www.comlaw.gov.au/Series/C2009A00028) (<http://www.comlaw.gov.au/Series/C2009A00028>)
  - Fair Work Regulations 2009 r.3.01 [☞](http://www.comlaw.gov.au/Series/F2009L02356) (<http://www.comlaw.gov.au/Series/F2009L02356>)

## Need help resolving general protections issues?

### For employees:

If you've lost your job, contact the Fair Work Commission (the Commission) first if you think you were sacked because of:

- [www.fairwork.gov.au/Employee-entitlements/Protections-at-work/protections-from-discrimination-at-work](http://www.fairwork.gov.au/Employee-entitlements/Protections-at-work/protections-from-discrimination-at-work) discrimination ([www.fairwork.gov.au/Employee-entitlements/Protections-at-work/protections-from-discrimination-at-work](http://www.fairwork.gov.au/Employee-entitlements/Protections-at-work/protections-from-discrimination-at-work))
- a reason that is harsh, unjust or unreasonable
- another protected right.

You have 21 days starting from the day after you were dismissed to lodge an application with the Commission. Check the information at the [Commission website](https://www.fwc.gov.au/) [☞](https://www.fwc.gov.au/) (<https://www.fwc.gov.au/>) to find out if you can apply for:

- [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>) (not available if you lost your job because of a genuine [Redundancy](http://www.fairwork.gov.au/Ending-employment/Redundancy/default) ([www.fairwork.gov.au/Ending-employment/Redundancy/default](http://www.fairwork.gov.au/Ending-employment/Redundancy/default)))
- a general protections dismissal
- unlawful termination.

For other general protections issues:

- consider whether the action taken against you was unlawful after reading the information on this page
- see our [Help resolving workplace issues](http://www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default) ([www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default](http://www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default)) section for practical advice on:
  - talking to your employer about fixing the problem

- getting help from us if you still can't resolve it.

### For employers:

Take general protections issues seriously. Speak with your employee to address the problem after reading the information on this page.

We have resources to help you:

- Take our [Difficult conversations in the workplace - manager course \(www.fairwork.gov.au/how-we-will-help/online-training/online-learning-centre/difficult-conversations-in-the-workplace-manager-course\)](http://www.fairwork.gov.au/how-we-will-help/online-training/online-learning-centre/difficult-conversations-in-the-workplace-manager-course) to learn how to handle the conversation well and deal with the problem.
- Download our [Managing underperformance best practice guide \(www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/managing-underperformance\)](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/managing-underperformance) for information about how to take reasonable management action to make sure employees are doing their job properly. Disciplinary action should be carried out by a manager in a reasonable, lawful way.

### What to do next

- Contact the relevant state or territory anti-discrimination body with the list of contacts on our [Related sites page \(www.fairwork.gov.au/website-information/related-sites\)](http://www.fairwork.gov.au/website-information/related-sites) .
- Complete our Online course on having [difficult conversations in the workplace \(www.fairwork.gov.au/how-we-will-help/online-training/online-learning-centre/difficult-conversations-in-the-workplace-manager-course\)](http://www.fairwork.gov.au/how-we-will-help/online-training/online-learning-centre/difficult-conversations-in-the-workplace-manager-course)

### Help for small business

- Find tools, resources and information you might need on our [Small business page \(www.fairwork.gov.au/Find-help-for/Small-business/default\)](http://www.fairwork.gov.au/Find-help-for/Small-business/default) .

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### You might also be interested in

- Find out more about [Protections at work \(www.fairwork.gov.au/employee-entitlements/protections-at-work/default\)](http://www.fairwork.gov.au/employee-entitlements/protections-at-work/default)
- [Unfair dismissal \(www.fairwork.gov.au/ending-employment/unfair-dismissal\)](http://www.fairwork.gov.au/ending-employment/unfair-dismissal)
- [Workers compensation \(www.fairwork.gov.au/leave/workers-compensation/default\)](http://www.fairwork.gov.au/leave/workers-compensation/default)

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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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The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.