

UNFAIR DISMISSAL

An Employee is unfairly dismissed when the grounds were not justifiable or in some cases in a way which was procedurally unfair.

An employee's dismissal from employment is unlawful if it is for an invalid reason or it is harsh, unjust or unreasonable. Some examples of invalid reasons are:

- Temporary absence due to illness or injury
- Discrimination
- Membership of a union
- Non-Membership of a union

Some of the issues considered for an unfair dismissal which involve harsh, unjust or unreasonable circumstances are:

- Whether an Employee was notified of the reason of the dismissal
- Whether the dismissal related to the operational requirements of the Employer's business.
- Whether the Employee had being warned or had the opportunity to respond to allegations if the dismissal was related to the Employee's conduct, capacity or performance.

Some Employees are excluded from the dismissal provisions of the Queensland Legislation such as apprentices, probationary employee's and some casual employees.

UNFAIR DISMISSAL CLAIMS

Time limits apply in matters of unfair dismissal and can be as short as 21 days from the date of dismissal.

A person with a problem relating to employment should seek expert legal advice. A claim for unfair dismissal must be heard by the Queensland Industrial Relations Commission. The Industrial Relations Commission, upon receiving a claim, will attempt to resolve the dispute by way of conciliation. The conciliation process usually involves the exchange of evidence and the holding of a conciliation conference by the Commissioner. This involves the Commissioner hearing the parties' arguments, in some cases having private conversations with each of the parties similar to mediation, and advising the parties of the likely outcome should it proceed to hearing.

WORKPLACE AGREEMENTS

All Employees' enter a contract of employment when they agree to work for an Employer. Contracts may be written or oral however it is a good idea to get a written agreement setting out the terms of your Employment. The conditions of employment are governed by:

- Awards for a particular industry which sets out the minimum conditions of Employment

- Legislation which can affect some worker's entitlements such as superannuation or public holidays
- Formal Workplace Agreements, such as Enterprise Agreements, Workplace Agreements and Australian Workplace Agreements.

It is important to obtain expert legal advice with respect to any workplace agreement to ensure that your rights and interests are protected.

SEXUAL HARASSMENT

Sexual Harassment is any form of sexual attention that is unwelcome. It can include unwelcome touching or other physical contact, remarks with sexual connotations, requests for sexual favours, leering, or the display of offensive material. Sexual Harassment is unlawful and applies to both men and women.

A person who considers they have been sexually harassed should contact either:

- The Queensland Anti-Discrimination Commission, or
- The Human Rights and Equal Opportunities Commission

Either of the above Commissions will be able to advise whether it is a matter, which comes within their power.

The process for resolving sexual harassment complaints emphasises conciliation. However if the matter is not resolved it can proceed to a formal hearing. A claim for sexual harassment must be made within 12 months from the incident of discrimination. An award of compensation may be made if a claim is successful.

EMPLOYMENT LAW ISSUE?

If you have any queries with respect to employment law, you should contact us. It is essential to ensure that your rights and interests are adequately protected. At Ferguson Cannon Lawyers we have extensive experience acting for both the employers and employees.