

FACT SHEET: TERMINATION OF EMPLOYMENT

What is unlawful termination?

Only workers covered by WorkChoices (federal system) can make an unlawful termination claim.

An unlawful termination concerning alleged discrimination must be based on one of the following.

- Temporary Absence due to illness or injury.
- Trade union membership or participation in trade union activities outside of working hours or, with the employers consent during working hours.
- Non-membership of a trade union.
- Seeking office or acting as an employee representative.
- Absence due to maternity or parental leave.
- Discrimination on the grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, political opinion, family responsibilities etc.
- Refusing to negotiate, make, sign, extend, vary or terminate an Australian Workplace Agreement
- Temporary absence from work to carry out voluntary emergency service activities.

A worker can also make a claim for unlawful termination if they were not given a reasonable period of notice on termination, or not paid compensation in lieu of notice. The minimum notice is:

Employee Continuous Service	Minimum Notice
Less than 1 year	1 week
More than 1 year but, less than 3 years	2 weeks
More than 3 years but, less than 5 years	3 weeks
More than 5 years	4 weeks

What is unfair dismissal?

Unfair dismissal occurs when an employer doesn't give a worker a 'fair go all round' when dismissing them.

Unfair dismissal claims can be lodged with the Australian Industrial Relations Commission (AIRC) if WorkChoices or a federal award covers the matter.

If a worker is not covered by WorkChoices they may be able to make an unfair dismissal claim to the NSW Industrial Relations Commission (IRC).

Who cannot lodge an unfair dismissal claim?

Workers cannot make a claim if they are covered by WorkChoices and if:

- Their employer had less than 100 employees.

- They were engaged on a seasonal basis.
- They were serving a six-month qualifying period of employment or a shorter or longer period agreed to in writing before employment started.
- They were engaged under a traineeship agreement or approved traineeship for a specified period.
- They were engaged as a casual employee for a short period unless employed by an employer on a regular and systematic basis over a period of at least 12 months and the employee had a reasonable expectation of continuing employment.

Who cannot lodge a claim for unfair dismissal in the NSW IRC?

If you are in the NSW system and not covered by WorkChoices you are unable to make a claim for unfair dismissal if:

- You are engaged under a contract of employment for a specified time of six months or less.
- You are engaged under a contract of employment for a specific task.
- You are serving a probation or qualifying period which has been determined in advance and is three months or less.
- You are engaged on a casual basis, unless you are engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of six months, and would have a reasonable expectation of continuing employment.
- You are an apprentice or trainee.

How do I Make a claim?

Workers covered by WorkChoices can make an unlawful termination claim or an unfair dismissal on the same form at the AIRC. **The application must be lodged within 21 days** from the date of the written notice or date of termination. Eligible workers not covered by WorkChoices may make a claim for unfair dismissal at the NSW IRC within **21 days** of the dismissal.

What happens next?

A conciliation conference will be held between the worker and employer in order to help the parties agree on terms of a settlement. The conciliation conference is a confidential informal meeting chaired by a member of the AIRC. It is important that both parties attend because if an employee fails to attend the application may be dismissed.

What happens if Conciliation fails?

Unsettled claims for **unfair dismissal** can be heard at a formal AIRC arbitration hearing.

Unsettled claims for **unlawful termination** can be heard before the Federal Magistrates Court.

Unsettled claims for **unfair dismissal** can be settled through conciliation at the NSW IRC.

The **exclusion for working for an employer with 100 or fewer employees** under WorkChoices **does not apply** in the NSW IRC.

Contacts

NSW Industrial Relations Commission	Ph 02 9228 7766
Australian Industrial Relations Commission	Ph 1300 799 675

Disclaimer: This fact sheet provides general information and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to a court.

