

Checklist: Making an unfair dismissal application

You can use this checklist to help you to decide whether to make an unfair dismissal application to the Fair Work Commission.

If you think you have been unfairly dismissed you should get legal advice. There are time limits that apply. You have 21 days to make an unfair dismissal to the Fair Work Commission.

Tick on each box as you go.

Making an unfair dismissal application

Are you covered by national unfair dismissal laws?

- Most employees in Australia are covered by national unfair dismissal laws.

You may not be covered by these laws if you:

- are employed by a State government in New South Wales, Queensland, Western Australia, South Australia or Tasmania
- are employed by a partnership (or other non company entity) in Western Australia
- are employed by a local government in New South Wales, Queensland or South Australia
- are employed by an independent State owned corporation.

Was it a dismissal?

- You may have been dismissed if:
- your employer told you that your employment had finished
 - your employer stopped rostering you for shifts
 - you were demoted (and your pay or condition were significantly reduced)
 - you felt you had no choice but to resign.

Was it unfair?

- A dismissal will be unfair if it is harsh, unjust or unreasonable.

Was it a redundancy that was not genuine (if you were told your position was being made redundant)?

- If your employer no longer needs anyone to do your job, your position may be redundant.
If you were told your position was being made redundant but your employer hired someone else to do your exact job, there may not have been a real (genuine) redundancy. You may have been unfairly dismissed.
If your employer has not followed any obligations in your award or enterprise agreement to consult with you, there may not be a genuine redundancy.
If there was another position you could have been (but were not) given, you may have been unfairly dismissed

Did the employer fail to follow the Small Business Fair Dismissal Code (if they are a small business)?

- Employers who employ less than 15 employees (at the time of the dismissal or when notice of the dismissal was given, whichever happened first) must follow the Small Business Fair Dismissal Code (the Code) when they dismiss an employee.
If your employer did not follow the Code when you were dismissed, your dismissal may be unfair.

Are you in time to make an application?

- You have 21 days to make an unfair dismissal application to the Commission.
The Commission can accept late applications, but only in exceptional circumstances.