



## About the F3 Employer response form

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### Employer response to unfair dismissal application

#### About unfair dismissal

To make an unfair dismissal application to the Fair Work Commission (Commission), an employee must be covered by the national unfair dismissal laws and [must be eligible to make an application](#).

To be eligible to make an application, an employee must have worked for the minimum employment period and, in some cases, earned less than the [high income threshold](#).

The Commission will consider the following when assessing an unfair dismissal application:

- was the employee covered by the national unfair dismissal laws and
- was the employee eligible to make an application and
- has the employee been dismissed and
- was the dismissal harsh, unjust or unreasonable and
- any objection the employer may raise.

The employer can object to an unfair dismissal application on a number of jurisdictional grounds. A jurisdictional objection is not simply that the employer thinks the dismissal was fair. For example, the employer may object because the employer does not think the employee is eligible to make the application.

If the employer is a small business (employing fewer than 15 people), the employer may be required to show that it followed the [Small Business Fair Dismissal Code](#).

For more information about unfair dismissals and objecting to an application see the Commission's [unfair dismissal guides](#) and [Unfair Dismissal Benchbook](#).

#### Who can use this form

Use this form if you are an employer or are responding for an employer and the Commission has served the employer with an unfair dismissal application (Form F2).

## If the employer has received multiple applications

If an employer receives 2 or more Form F2 unfair dismissal applications and:

- the applications allege the same or substantially similar conduct, and
- the employer's response is substantially the same for each application,

the employer (Respondent) can lodge **1 response** with the Commission dealing with all applications. This could occur, for example, where the employment of a number of employees is terminated at the same time. If necessary, attach details of each individual applicant to whom your response relates (including name, date of commencement and entitlements) in a separate sheet.

## Lodging and serving your completed form

1. **Lodge this response form and any supporting documents** with the Commission within **7 days** after the employer was served with the Form F2 application. You must include at question 2 in this form any objection to the application under s.396 of the [Fair Work Act 2009](#) and any jurisdictional objection. You can lodge:
  - by email to [lodge@fwc.gov.au](mailto:lodge@fwc.gov.au), or
  - by post or in person at the [Commission's office](#) in your state or territory.
2. **Serve a copy of all documents you lodged with the Commission** on the Applicant. An easy way to do this is to copy the Applicant into the email you send to the Commission.

Otherwise, you must send all the documents to the Applicant **within 7 days** after the employer was served with the Form F2 application. You can serve documents several ways, including by email, express post or registered post. Make sure you send the documents to the email or postal address specified in the Form F2 application.

## Where to get help

### Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- Commission processes
- how to make a response to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website [www.fwc.gov.au](http://www.fwc.gov.au) also contains a range of information that may assist.

## Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

### Legal or other representation

Representation is where another person speaks or acts on your behalf, or assists you in certain other ways in relation to a case. A representative could be a lawyer, paid agent, officer or employee of an employer organisation, association of employers or a peak council, or a not-for-profit association or body that provides support, advice or advocacy in relation to employment matters.

You do not have to be represented in a case at the Commission.

There are some rules about when a lawyer or paid agent can represent you.

Unless the Commission decides otherwise in a particular case, a lawyer or paid agent can represent you without permission to:

- prepare and lodge this response,
- prepare and lodge submissions about your case, or
- write to the Commission and other people involved in the case on your behalf.

You do not need to give notice or seek permission for a lawyer or paid agent to represent you in a conference conducted by staff of the Fair Work Commission about an unfair dismissal case.

Generally, you must give notice to the Commission and seek permission from the Commission Member dealing with your case if you wish to have a **lawyer or paid agent** represent you in a **conference or hearing with a Commission Member**. You do not, however, need to give notice or ask permission if the lawyer or paid agent is:

- an employee or officer of your business, or
- an employee or officer of an employer organisation, an association of employers, or a peak council that is representing you.

You can notify the Commission that you have a lawyer or paid agent using this form – provide their details at ‘Does the employer have a representative?’.

If you need to notify the Commission that you have a lawyer or paid agent after you have lodged this form, or if you need to ask for permission for your lawyer or paid agent to take part in a **conference or hearing**, use [Form F53](#).

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12, 13 and 14 of the [Fair Work Commission Rules 2024](#), information about [representatives and the rules they must follow](#), and the Commission’s [practice note on representation by lawyers and paid agents](#).

## Glossary of common terms

**Applicant** – This is the person or organisation that is making an application.

**Jurisdictional objection** – This is a type of objection a Respondent can raise to an application.

A Respondent can make this kind of objection if they think that the Commission, for a technical or legal reason, cannot hear the matter.

**Lawyer** – This is a person who is admitted to the legal profession by a Supreme Court of a state or territory.

**Paid agent** – in relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

**Party** – A party is an Applicant, a Respondent or another person or organisation involved in a matter or case that is brought to the Commission.

**Respondent** – The person or organisation responding to an application made by an Applicant.

**Service** – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, express or registered post, or in person. Part 5 of Chapter 1, rule 72 and Schedule 1 of the [Fair Work Commission Rules 2024](#) deal with service.

## Privacy

The Commission collects the information (including personal information) provided to it in this form in order to deal with the unfair dismissal application. The information will be included on the case file and the Commission may disclose the information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference – it contains useful information.

## Form F3 – Employer response to unfair dismissal application

[Fair Work Commission Rules 2024](#), rules 66, 70, 72 and Schedule 1

This is a response to an application to the Fair Work Commission (the Commission) for an unfair dismissal remedy under Part 3-2 of the [Fair Work Act 2009](#).

### The Applicant



These are the details of the person who made the application. You can find this information on the unfair dismissal application Form F2.

<b>First name(s)</b>	Umberto
<b>Surname</b>	D'Avanzo
<b>Commission matter number</b>	U1234

### The Respondent (the employer)



These are the details of the employer responding to the application.

<b>Legal name of employer</b>	Left Right Out Industries Pty Ltd		
<b>Employer's ACN (if a company)</b>	123 456 789		
<b>Trading name or registered business name</b>	Left Right Out Industries Pty Ltd		
<b>ABN</b>	12 345 678 901		
<b>Contact person</b>	Wayne Manager, Human Resources Manager		
<b>Postal address</b>	100 Example Road		
<b>Suburb</b>	Sydney		
<b>State or territory</b>	NSW	<b>Postcode</b>	2000
<b>Phone number</b>			
<b>Mobile number</b>	04XX XXX XXX		
<b>Email address</b>	w.manager@leftrighout.com.au		
<b>What industry is the employer in?</b>	Technology		

Note: If you provide a mobile number the Commission may send reminders to you via SMS.

**Has the Applicant given the correct legal name of the employer in their unfair dismissal application (Form F2)?**

☐ Yes

☒ No

**Do you need an interpreter?**



If you have trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](#) on our website.

☐ Yes – Specify language

☒ No

**Does the employer require any special assistance at the hearing or conference (eg a hearing loop)?**

☐ Yes – Please specify the assistance required

☒ No

**Does the employer have a representative?**



A representative is a person or organisation who is representing the employer. This might be a lawyer or paid agent or an employer association. There is no requirement to have a representative.

☐ Yes – Provide representative's details below

☒ No – Go to question 1

**Employer's representative**



These are the details of the person or organisation who is representing the employer (if any).

<b>Name of person</b>			
<b>Firm, employer organisation or company</b>			
<b>Postal address</b>			
<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	

Phone number	
Email address	

**Is the employer's representative a lawyer or paid agent?**

<input type="checkbox"/> Yes – please select:	<input type="checkbox"/> Lawyer <input type="checkbox"/> Paid agent
<input type="checkbox"/> No	

**1. The Applicant's employment**

**1.1 Did an award or an enterprise agreement apply to the Applicant?**



The Fair Work Ombudsman can help you find out which, if any, award or enterprise agreement applies.

☒ Yes

☐ No

If you have answered Yes – Provide the title of the award or enterprise agreement.

Business Equipment Award 2010

**1.2 What date did the Applicant begin working for the employer?**

13 August 20XX

**1.3 What date did the employer notify the Applicant of their dismissal?**

7 January 20XX

**1.4 What date did the dismissal take effect?**

13 January 20XX

**1.5 What was the Applicant's weekly wage/salary at the time of the dismissal?**

\$950 per week

**1.6 In addition to their salary or wages, was the Applicant entitled to any other monetary amount(s) or any non-monetary benefit(s) at the time of the dismissal?**

☐ Yes

☒ No

If you answered Yes – Please provide details (for example provision of a vehicle, mobile phone etc.)

**1.7 How many employees did the employer have at the time the Applicant was dismissed?**



Count the number of employees either at the time the employer gave the Applicant their notice or the time immediately before their dismissal, whichever was earlier. Count all full-time and part-time employees plus any casuals who are engaged on a regular and systematic basis.

Twenty five.



## 2. Jurisdictional objections

### 2.1 Does the employer have any jurisdictional or other objections to the application?



Jurisdictional objections relate to why an Applicant is not eligible to make an application to the Commission. An objection is not simply that you think that the Applicant's dismissal was fair. The Commission's [Unfair Dismissals Benchbook](#) has more information on jurisdictional objections.

☐ Yes

☒ No – Go to question 3

### 2.2 If you answered yes to question 2.1 – On what basis does the employer object? If the employer objects on multiple grounds you can select more than one from the list below:

- ☐ The application is out of time (ie lodged more than 21 days after the dismissal took effect)
- ☐ The Applicant was not an employee
- ☐ The Applicant was not dismissed
- ☐ The dismissal was a case of genuine redundancy
- ☐ The Applicant's employment does not meet the minimum employment period
- ☐ The Applicant was not covered by an award, no enterprise agreement applied to the Applicant, and the Applicant's earnings were equal to or more than the high income threshold (which is \$175,000 for dismissals from 1 July 2024)
- ☐ The employer is a small business employer and the employer complied with the Small Business Fair Dismissal Code
- ☐ Other

Explain why the employer objects on these grounds

SAMPLE

### 3. Dismissal

#### 3.1 What were the reasons for the dismissal?



Using numbered paragraphs, specify the reason(s) for dismissing the Applicant. Attach any letter of dismissal and/or separation certificate given to the Applicant. Note that the Commission may send copies of any documents you provide to the Applicant. Attach extra pages if necessary.

- 1) The Applicant was employed as a computer technician on 13 August 20XX.
- 2) From the first day the Applicant worked to the last, there were a number of problems with his performance. On a number of occasions, the Applicant would:
  - a. arrive at work substantially late
  - b. misplace equipment
  - c. forget to write down work done
  - d. fail to complete work tasks
  - e. take longer lunches than the agreed one hour.
- 3) The Applicant was repeatedly told that his work was not good enough and that he would need to improve if he wanted to remain with the Respondent.
- 4) The Applicant received extra training on a number of occasions to assist his performance at work. The Applicant received training in:
  - a. recording work done
  - b. use and storage of equipment
  - c. recording work time.
- 5) Unfortunately, the Applicant's performance did not improve sufficiently over time.
- 6) For the reasons above, after repeated warnings and attempts at training, the Applicant was dismissed.

#### 3.2 What is the employer's response to the Applicant's contentions?



Using numbered paragraphs, set out the employer's response to the Applicant's contentions as to why the dismissal was unfair.

- 1) The Applicant was told on a number of occasions that there were problems with his performance. In particular, in meetings between the Applicant and various senior staff, problems with the Applicant's performance were raised on:
  - a. 14 December 2021
  - b. 12 April 2022
  - c. 5 July 2022
  - d. 9 September 2022
  - e. 16 December 2022.
- 2) There is a system of performance review in place. Each employee is allocated to a manager who trains the employee and monitors their progress. Jo Small trained the Applicant and monitored his progress. The performance of every employee is reviewed on a quarterly basis by their direct superior. After each quarterly review, performance issues are raised with the relevant employee and a plan is put in place to remedy the problems, which may include counselling and/or training.
- 3) During the meetings of 5 July 2022 and 16 December 2022 with Jo Small, the Applicant was warned that his performance was not up to the standard expected and that he would need to improve, as he was in all of the meetings listed at paragraph 1 (a)-(e) above.
- 4) The applicant was given a chance to respond to any complaints made to him about his performance at the meetings listed at paragraph 1(a)-(e) above.
- 5) The Applicant has been consistently warned about his performance since he began working for the Respondent.

Attach additional pages if necessary.

### Disclosure of information

The Commission may provide a copy of this response and any attachments to the other parties to this matter. This includes:

- the Applicant
- any legal representatives.

### Consent to contact by researchers

The Commission undertakes research with participants in unfair dismissal matters to ensure a high quality process. Some research may be undertaken by external providers.

Do you consent to the contact details provided on page 1 of this form being provided to an external provider of research services for the sole purpose of inviting you to participate in this research?

☒ Yes

☐ No

## Authority to sign and signature



For 'Authority to sign':

- If you are the Respondent—insert 'Respondent'
- If you are an employee of a company or organisation that is the Respondent—insert your position title
- If you are the Respondent's representative and have provided your details in this form—insert 'Representative'.

Authority to sign	Respondent
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Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field.

Signature	<i>Wayne Manager</i>
Name	Wayne Manager
Date	20 January 20XX