

Termination of Employment –What Does the Future Hold?

There were significant changes to unfair dismissal laws under WorkChoices and employers who employ more than 100 employees have been exempted from the unfair dismissal laws since March 2006. These laws are likely to change under the new Labor Government. The precise details are yet to be released but prior to the Federal Election late last year the Labor party stated that the rules were likely to be different if Labor won Government.

Whilst we are still waiting for changes to be introduced it is timely for members to take care if you are considering the termination of an employee's employment.

Under the current Federal laws unfair dismissal and unlawful dismissal are treated separately. Unlawful dismissal occurs when an employee is dismissed for a discriminatory reason such as religion, race, gender, sexual preference, pregnancy or illness. Unfair dismissal also occurs where termination of employment is seen as harsh, unjust or unreasonable.

Currently, unfair dismissal laws only apply to businesses in the federal system that employ 100 or more people. Businesses employing less than 100 people are currently exempt from unfair dismissal. This could change in the near future and the threshold is likely to be 15 or more employees.

Employers whose businesses are exempt from unfair dismissal laws should be aware that although employees cannot, at present, pursue a claim for unfair dismissal in the Industrial Relations Commission, they could still pursue a common law action for damages. This could arise if an employee decided to take an action in a civil court for breach of contract.

If an employee is not adequately performing their duties to the employer's satisfaction it is best to embark on a course of formal counselling. Any counselling session should be conducted with two representatives of the business. The employee should be strongly encouraged to bring somebody along to the session as well. By both the employee and the store having a witness present protects the employer, ensuring that everything that occurs during the session can be verified. At the end of the session, the employee and employer should sign a document setting out how they intend to resolve any problems that may have been discussed during the session. MGA can assist in the preparation of a document of this type.

By following a formal process it is possible to highlight to employees where their behaviour needs improvement. By providing an employee with the opportunity to improve, employers can maintain a positive relationship with the employee and protect the business.

MGA will keep members informed of any changes to dismissal laws under the new Labor Government.

MGA's employment law team is always available to help members with any employment law and dispute resolution issues.



Transmission of Business –

What award or agreement covers transferring employees?

When a store changes ownership, some of the employees may wish to remain with the store and work with the new owners. It is important that incoming store owners follow the transmission of business rules in regard to these employees because penalties can be imposed on business who fail to do so.

If the transferring employees were previously employed under an award or agreement, that award or agreement continues to cover those staff for 12 months after the business has been transmitted, even if the agreement expires before the 12 months are over.

An employee and employer may choose to negotiate an AWA or new certified agreement. This would override the transmitted award or agreement.

If an employee's employment is terminated up to one month before transmission and they are re-employed up to two months after transmission, that employee is still considered to be a transferring employee and will be covered by their previous award or agreement when they begin work with the new employer.

For further assistance please contact MGA's employment law team.



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