

### Making Sure that a Dismissal is Fair

Good employees are integral to an efficient and well functioning store. Good human resource processes ensure that your staff perform at their best and create a positive and cooperative environment where issues can be dealt with before the need for employment terminations arise. In the event that employers encounter an obstacle they cannot work to overcome with their employees, there are several issues that employers should keep in mind.

Unlawful dismissal occurs when an employee is fired for a discriminatory reason such as religion, race, gender, sexual preference, pregnancy or illness.

Unlawful dismissal is different to unfair dismissal. Unfair dismissal occurs where termination of employment is harsh, unjust or unreasonable. Members should be aware that the rule that was introduced by WorkChoices which afforded protection to businesses with less than 100 employees is about to change, most probably in July 2009.

In NSW, however, unfair dismissal laws continue to cover any employee under 18 years of age, even where the business employs less than 100 people.

Employers whose businesses are exempt from unfair dismissal laws should be aware that although employees

cannot pursue a claim of unfair dismissal in the Industrial Relations Commission, they can pursue a common law action for damages arising because their contract of employment was broken.

In the event that an employee is not adequately performing their duties, it is best to embark on a course of formal counselling. Any counselling session should be conducted by two representatives of the business. The employee should be strongly encouraged to bring somebody along to the session as well. Requiring that both the employee and the store representative have a witness present protects the employer, as 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 improve any problems discussed during the session. MGA can assist in the preparation a document of this type.

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

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



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