



Fair Work Act 2009 – impact for small business

1 July 2009 saw the introduction of some of the new provisions of the Labor Government's re-vamped workplace relations legislation.

Importantly for business, the swing back to workers' rights has not struck so deep as to leave smaller employers vulnerable to claims of unfair dismissal.

Unfair dismissal is defined as termination of employment that is "harsh, unjust or unreasonable" (a genuine redundancy is not unfair dismissal).

Businesses with less than 15 full-time equivalent employees (changing to a head count of 15 in January 2011) remain exempt from claims for unfair dismissal.

The unfair dismissal protections are only available to workers that were:

- employed for a minimum qualifying period of 12 months in a small business (or six months in the case of a larger enterprise); and
- as a minimum, employed as a casual on a regular and systematic basis (ie. an employee cannot make a claim if they were casually employed on an irregular basis and had no reasonable expectation of ongoing employment).

If these thresholds are not met, the employee will not have a claim for unfair dismissal.

Small business operators are further protected by the Small Business Fair Dismissal Code which provides guidelines for employers to follow to ensure the termination of an employee cannot be classified as "harsh, unjust or unreasonable". This gives small business owners the much-needed flexibility to dismiss employees who are under-performing/having a negative impact on economic performance.

Employers that:

- provide a warning (preferably written) that an employee may be dismissed if his/her performance does not improve;
- provide the employee with an opportunity to respond to the warning or a reasonable chance to rectify the problem (which may include offers to re-train or develop further skills); and
- allow the employee to have a support person present at all discussions with the employer

in accordance with the Small Business Fair Dismissal Code will circumvent claims for unfair dismissal made by an employee.

Nevertheless, the termination of an employee should not be undertaken lightly. If you require assistance in this area, contact the team at Everingham Solomons where *Helping You is our Business*.



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