

Taking Unlawful Termination Claims to Court

Fact Sheet



This fact sheet covers:

- ✔ Do the unlawful termination laws apply to me?
- ✔ What is unlawful termination?
- ✔ When can I take my unlawful termination claim to court?
- ✔ Which court should I apply to?
- ✔ How do I apply?
- ✔ What happens next?
- ✔ What orders can the court make?

This fact sheet provides some information about making an unlawful termination claim in the Federal Court or Federal Circuit Court.

1. Do the unlawful termination laws apply to me?

The unlawful termination laws apply to all employees in Australia.

However, you cannot make an unlawful termination application if you are able to make a general protections court application (see our factsheet on **Taking General Protections Applications to Court**). Generally, this means that only employees who are **not** covered by the national workplace relations system can make an unlawful termination application.

You are **not** covered by the national workplace relations system (and you can therefore make an unlawful termination claim) if you:

- work in the state public sector or local government in New South Wales, Queensland or South Australia;
- work in the state public sector or for a non-constitutional corporation in either local government or private industry in Western Australia;
- work in the state public sector in Tasmania; or
- are a law enforcement officer or an executive in the public sector in Victoria, or a member of the Police Force in the Northern Territory

For more information, see the Fair Work Commission page on [national workplace relations system coverage](#).

2. What is unlawful termination?

The unlawful termination laws are set out in Part 6-4 Division 2 of the [Fair Work Act 2009 \(Cth\)](#) (the **FW Act**).

The FW Act says that an employer must not terminate an employee on any of the following prohibited grounds:

- a. temporary absence from work due to illness or injury;
- b. union membership or participating in union activities outside working hours, or with the employer's consent during working hours;
- c. non-membership of a union;
- d. acting or seeking to act as an employee representative;
- e. filing a complaint or participating in proceedings against an employer;
- f. race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- g. absence from work due to maternity leave or parental leave; or
- h. temporary absence due to involvement in a voluntary emergency management activity.

3. When can I take my unlawful termination claim to court?

If you want an order that another party do or stop doing something until your claim is finalised (known as an interim injunction) you can take your claim to court straight away.

In other cases, you need to start your claim at the Fair Work Commission (**FWC**).

3.1 Application to the Fair Work Commission

You must pay a FWC application fee of \$70.60 unless you can demonstrate serious financial hardship. See the [FWC's website](#) for guidance.

The FWC will try to resolve your dispute by mediation, conciliation, making a recommendation or giving an opinion. Any conference must be conducted in private and they are generally confidential. See the FWC website for further guidance on the [conference process](#).

If the FWC's attempts to resolve your dispute are unsuccessful, they will issue you a certificate. The FWC must let you know at this stage if you they think you do **not** have a reasonable prospect of success.

Once the FWC has issued a certificate:

! TIME LIMITS

You must lodge your application **within 21 calendar days** after the dismissal takes effect

- if both parties agree, you can notify the FWC that the parties agree to resolve the dispute by arbitration (see the FWC's website for further guidance on [consent arbitration](#)); or
- if you or the other party does not agree to resolve the dispute by arbitration, you can make an application to court.

! TIME LIMITS

You must notify consent arbitration or make an application to court **within 14 days** after FWC has issued you a certificate.

4. Which court should I apply to?

You can apply to either the Federal Court or the Federal Circuit Court. You should consider starting your case in the Federal Circuit Court because some fees are cheaper, and you may not have to wait as long before your matter is heard by a judge.

4.1 Filing fees for unlawful termination applications

Current fees in the Federal Court are available here: <http://www.fedcourt.gov.au/forms-and-fees/court-fees/fees>. Current fees in the Federal Circuit Court are available here: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/fees-and-costs/fees-gfl/>.

Federal Circuit Court	Federal Court
\$70.60	\$70.60

You may not have to pay the filing fee if you hold a government concession card or are suffering financial hardship. More information is available: <http://www.fedcourt.gov.au/forms-and-fees/court-fees/exemptions>.

5. How do I apply?

Step 1: Fill out forms

Federal Circuit Court	Federal Court
<p>You need to fill out 2 forms:</p> <ol style="list-style-type: none"> 1. Application form 2. Claim form: If you were dismissed <i>prior to</i> 1 July 2009, use Form 1. If you were dismissed <i>on or after</i> 1 July 2009, use Form 3. <p>You can find copies of these forms on the Federal Circuit Court website.</p> <p>Make sure you attach your FWC certificate to your claim.</p>	<p>You need to fill out 3 forms:</p> <ol style="list-style-type: none"> 1. Application form: If you were dismissed <i>on or after</i> 1 July 2009, use Form 80. <p>Make sure you attach your FWC certificate to your application.</p> <ol style="list-style-type: none"> 2. Statement of claim – Form 17 3. Notice of address for service – Form 10 <p>You can find copies of these forms on the Federal Court website.</p>

Step 2: File the forms

- You need to file (lodge) your forms with the court registry.
- You need to pay the filing fee when you file your documents.

You can file your forms:

- if filing at the Federal Circuit Court, in person at a Federal Circuit Court registry (you can find addresses and hours of business hours here: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/contact-us/locations>);
- if filing with the Federal Court, in person at a Federal Court registry (you can find addresses and hours of business hours here: <http://www.fedcourt.gov.au/contact>);
- by post, including a cover letter with your contact details and instructions for the court to file your forms; or
- by fax or using the e-lodgement facility (find more information here: <http://www.fedcourt.gov.au/forms-and-fees/filing>).

Step 3: Serve the forms on your employer

Once you have stamped copies of your forms, you need to give a copy to your employer (or other person you are claiming against) so they can respond to your claims.

If your employer is a person, you need to:

- give the forms to them in person; or
- if they won't accept the forms, put them down in their presence and explain what they are.

If your employer is a company, you need to:

- post the forms to the company's registered office (address it to the "Proper Officer");
- take the forms to the registered office and leave it with an employee; or
- hand the forms personally to a director of the company.

You can check the company's registered address by searching the [ASIC Register](#).

! TIME LIMITS

For the **Federal Circuit Court**, this must be done **at least 7 days** before the date of the first hearing.

For the **Federal Court**, this must be done **at least 5 business days** before the date of the first directions hearing.

Step 4 (Federal Circuit Court only): let the Court know you have served the forms on your employer

If you have started your case in the Federal Circuit Court, then once you have served your employer, you need to let the Federal Circuit Court know. Fill in the Affidavit of Service (Fair Work) form (available on the [Federal Circuit Court website](#) under Industrial Law) and take this form in to the court registry. The affidavit must be witnessed by a qualified person (for example, a justice of the peace or a lawyer).

WHAT HAPPENS NEXT?

See our factsheet: **Fair Work procedures in the Federal Court and Federal Circuit Court**.

6. What orders can the court make?

If the court decides that your employment has been unlawfully terminated, it can:

- issue a fine (a civil penalty);
- make an order for reinstatement (i.e. – that you get your job back);
- make an order awarding compensation for loss;
- grant an injunction or interim injunction; and/or
- award costs (who has to pay the legal fees) – in very limited circumstances.

USEFUL INFORMATION

- Fair Work Commission – [General Protections Benchbook](#)
- Fair Work Ombudsman – [Fact Sheets](#)
- NSW Law Access – [Employment rights](#)
- The Law Handbook (NSW) – [Chapter 22 Employment](#)
- Federal Circuit Court – [Industrial Law](#)
- [Federal Court Rules 2011](#)
- [Federal Circuit Court Rules 2001](#)

