



## UNFAIR DISMISSAL FACT SHEET

<b>What is an unfair dismissal?</b>	When an employee is dismissed from their job in a harsh, unjust or unreasonable manner.
<b>Who can bring an unfair dismissal claim?</b>	National system employees* who: <ul style="list-style-type: none"><li>- have served the “minimum employment period”; and</li><li>- earn less than the “high-income threshold”; <u>or</u></li><li>- employees who have served the “minimum employment period” and earn more than the high-income threshold but are covered by an Award or Enterprise Agreement.</li></ul> <p>*Casual employees may bring a claim if they worked on a regular and systematic basis and had a good reason to believe this would continue.</p>
<b>“Minimum employment period”</b>	The “minimum employment period” is 6 months for businesses with 15 or more employees and 12 months for employees of a small business* (less than 15 employees).
<b>“High-income threshold”</b>	As at 1 July 2022 it is \$162,000. It is adjusted annually.
<b>The Small Business Dismissal Code</b>	This provides protection against unfair dismissal claims, where a small business employer follows the Code.
<b>Time limit</b>	An employee needs to apply to the FWC within 21 days of the dismissal taking effect.

**What is the criteria for considering “harshness” (s387 Fair Work Act).**

In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the FWC must take into account:

- (a) whether there was a valid reason for the dismissal related to the person's capacity or conduct (including its effect on the safety and welfare of other employees); and
- (b) whether the person was notified of that reason; and
- (c) whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person; and
- (d) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal; and
- (e) if the dismissal related to unsatisfactory performance by the person--whether the person had been warned about that unsatisfactory performance before the dismissal; and
- (f) the degree to which the size of the employer's enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (g) the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (h) any other matters that the FWC considers relevant.

Note: For the purposes of paragraph (a), the following conduct can amount to a valid reason for the dismissal:

- (a) the person sexually harasses another person; and
- (b) the person does so in connection with the person's employment.