

Sacked? Take Action Fast

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In the current economic climate we're seeing more applications for unfair dismissal where employees argue their dismissal meets the "harsh, unjust or unreasonable" test under the Fair Work Act ('FWA').

Under the FWA, unfair dismissal applications are filed with the Fair Work Commission subject to applicants satisfying two very important requirements:

1. The minimum employment period of six months, or 12 months in the case of small business employers; and
2. The annual rate of earnings is less than the prescribed high income threshold (currently \$136,700, reviewed every June), **or** the applicant was covered by an award or enterprise agreement.

The minimum employment period protects employers during the probation period, allowing employers to test out the employee and determine if they are the right fit for the business.

The high income threshold has caught a few people, particularly those who have been dismissed from what has previously been a very lucrative job in the mining industry.

Just because the high income threshold is exceeded, doesn't mean there is a lesser burden on the employee when they lose their job; often it's the opposite.

And just because the unfair dismissal remedy is not available, it does not mean there is no other option, for example, a national system employee who earns more than the high income threshold may choose to commence a common law action for wrongful dismissal in the Federal Court.

Regardless of the wage earned or period of employment, and the relevant jurisdiction that you fall within, employees must act promptly. A delay may result in the loss of a right of action. For example, applications pursuant to the FWA must be made within 21 days from the date of dismissal.

It is important for employers and employees alike to know that even when an employee is dismissed and they do not fall within the jurisdiction of the FWA, all is not lost. Seek legal advice **quickly**.

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Elspeth's articles can be accessed on the Daily Mercury website at <http://www.dailymercury.com.au/topic/elspeth-ledwy/> or you can find Elspeth's column "Mind Your Own Business" in the Daily Mercury newspaper each Wednesday.



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