

GENERAL PROTECTIONS:



Please note that this is general information & may not be relevant to your particular matter. This should not be taken as legal advice.

The general protections laws protect rights at work.

The laws protect against adverse action, coercion, misrepresentations and undue influence or pressure where they impact rights at work.

WHO IS PROTECTED?

The general protections provisions in the Fair Work Act protect:

- Employees, including prospective employees
- Employers
- Independent contractors
- A person (the principal) who has entered into a contract for services with an independent contractor, including a principal who proposes to enter into a contract
- An industrial association, including an officer or member of an industrial association

State government or local government employees and employers are not protected under these provision. However, there are State laws that provide similar protections.

WHAT AM I PROTECTED FROM?

YA person cannot take adverse action against another person for a reason that is against the law.

Adverse action

Adverse action occurs when a person takes action against another person, because that other person has:

- a workplace right
- exercised, not exercised or proposes to exercise, their workplace rights
- participated in, or not participated in industrial activity;
- does or does not belong to a trade union, or has
- attributes that are covered by anti-discrimination laws

Adverse action could include:

- being dismissed
- being demoted
- being overlooked for a promotion

What rights are protected under general protections? What is a workplace right?

A person has a workplace right if the person:

- is entitled to the benefit of a workplace law, workplace instrument or an order made by an industrial body
- has a role or responsibility under a workplace law, workplace instrument or order made by an industrial body
- is able to initiate or participate in a process or proceedings under a workplace law or instrument
- is able to make a complaint or inquiry to a person or body with capacity to seek compliance with a workplace law or instrument, or
- is able to make a complaint or inquiry in relation to their employment.

Coercion

A person cannot take, threaten or organise any action against another person with the intent to force the other person, or a third party, to use or not use a workplace right, or to use it in a particular way, or to take or not take part in industrial activity.

Undue Influence or pressure

Undue influence or pressure is when an employer puts significant or inappropriate pressure on an employee to modify or alter their conditions of employment, by:

- making, not making or terminating an agreement or arrangement under the National Employment Standards, a modern award or enterprise agreement, including individual flexibility arrangements;
- accepting a guarantee of annual earnings; or
- agreeing or not, to a deduction from an employee's pay.

The undue influence or pressure and coercive behaviour can be unlawful even if it does not succeed in making the person take or not take the action.

Misrepresentations

A person must not knowingly or recklessly make a false or misleading representation about:

- the workplace rights of another person, including how it can be used and its effect;
- another person's obligation to take part or not to take part in industrial activity, or to disclose if they or someone else are union members or taking part in industrial activity.

Other adverse action protections

Industrial Activities

All employees, employers and independent contractors are free to be, or not be, members of an industrial association, which includes trade unions and employer associations.

In addition, they are entitled to participate or not participate in 'industrial activities'.

Discrimination

A person must not take adverse action against another person because of their race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

An employer or prospective employer is only allowed to discriminate against a person in limited circumstances:

- Because of the inherent requirements of the particular position (for example, those with an impairment (disability), where the impairment prevents them from performing the inherent requirements of the job); or
- In accordance with doctrines, tenets, beliefs or teachings of a particular religion on creed and taken in good faith to avoid injury to the religious susceptibilities of that religion or creed; or
- When the action is not unlawful under the anti-discrimination laws in force in the place the action is taken.

Temporary absence due to illness or injury

An employer must not dismiss an employee because they have been temporarily absent from work because of illness or injury.

For example, an employer can not dismiss an employee because they are away from work for 4 days on sick leave.

Note: An employee will not be protected if their absence extends for more than 3 months, or if the employee has been absent for more than 3 months of the last 12 months.



Sham arrangements

An employer must not tell an employee that they are being hired as an independent contractor if they are really an employee. For more information:

<https://www.fairwork.gov.au/find-help-for/independent-contractors>

An employer must not dismiss or threaten to dismiss an employee in order to then re-hire them as an independent contractor doing the same or substantially the same work.

MAKING A GENERAL PROTECTIONS APPLICATION

There are many options available to challenge adverse action that is taken for a reason that is against the law.

The Fair Work Commission can deal with matters related to the General Protections provisions. There are different processes depending on whether the action involves dismissal or not.

The Fair Work Ombudsman can also investigate adverse action complaints, including where it results in termination of employment. Fair Work Inspectors may investigate matters and may bring a matter before the Federal Magistrates Court or Federal Court to seek compensation and/or penalty.

It is also important to note that it may be appropriate to seek a remedy under State or territory equal opportunity and anti-discrimination laws. These laws are not excluded by the Fair Work Act 2009.

General Protections – Dismissal Dispute

Important: If you have been dismissed and you think the dismissal was adverse action, you have 21 days from the date the dismissal took effect to make an application to the Fair Work Commission (FWC).

This time limit can only be extended in exceptional circumstances.

Making the Application

You will need to complete a Form F8 – General protections involving dismissal.

This can be found on the FWC website. At this link:

<https://www.fwc.gov.au/job-loss-or-dismissal/dismissal-under-general-protections/apply-general-protections-dismissal-form>

You can also complete the form using the online lodgement service using this link:

<https://services.fwc.gov.au/ols-fwc/#!/ols-login>

The Form F8 sets out the relevant information required to make an application and includes various methods for lodging an application.

Once you have completed the Form F8 you can email the application to the FWC at brisbane@fwc.gov.au.

You should receive a confirmation email from the FWC saying they have received your Application.

The next step is for you to receive a notice of listing from the FWC, advising of a time and date for your conciliation conference.

Typically, a conciliation conference occurs 4–6 weeks after the application has been processed (depending on the capacity of the FWC).

Conciliation conference

The Fair Work Commission (FWC) will hold a conciliation conference – usually by phone – between you and the employer with the aim of helping you to come to an agreement about the settlement of your unfair dismissal complaint.

Prior to the conciliation conference, you will be provided with a copy of the employer's response to your application (if they provide a response).

You can use the information below to help prepare for the conciliation conference. On the date of the conciliation conference, a conciliator will call you from the FWC. The conciliator will be an impartial third party. The employer will be on the phone as well.

Overview of the conciliation conference **process**:

- The conciliator will explain the process for how the conciliation will be run.
- You will then get a chance to make a statement. An opening statement is a summary of your general protections application. You may also choose to respond to the employer's response in your opening statement. The purpose of your opening statement is to put forward your case, in a concise way, at the start of the conciliation conference.

Tip: prepare your opening statement before the conciliation conference so you can read it out, rather than having to think of what to say on the spot.

- The employer will then be given an opportunity to make an opening statement. The conciliator may ask some questions of you and your employer.
- The conciliator will then break you into separate sessions. The conciliator will talk to you in a private session, this is an opportunity to disclose to the conciliator any further information that you may not have been comfortable saying in front of the employer and to put forward your first offer for settlement.

Tip: Prepare what your first offer will be before the conciliation. This can include compensation, statement of service, or resignation.

Tip: start higher than what you want to settle for, so you have room to negotiate.

- The conciliator will then take the offer back to the employer.
- It is likely to go back and forward between both parties until an agreement is reached.
- If an agreement is reached, the conciliator will help to draft Terms of Settlement for both parties to sign.
- If an agreement is not reached, then the matter may proceed to a hearing, in person, at the FWC.



- If the matter is **not** settled in the conciliation conference the matter will be referred to a Commissioner, who will either:
 - issue a certificate that the matter is unresolved; or
 - hold a further conciliation conference to reach a settlement and if unsuccessful will then issue the certificate.
- Once the certificate is issued you have 14 days to file either:
 - An application for consent arbitration so the FWC can determine the matter – but only if both you and the employer agree; or
 - A general protections court application – if both you and the Employer do not agree to FWC determining the matter.
- You can find some more information from the Fair Work Commission website about conciliation here: <https://www.fwc.gov.au/conciliation>

General protections – not involving dismissal

Even if the matter does not involve dismissal, you can also apply to the Fair Work Commission to deal with the dispute.

Important: a general protections application (not involving dismissal) must be lodged within 6 years from the date of the alleged contravention.

The process followed in a general protections application not involving dismissal is very similar to the process outlined above. However:

Note: The FWC can only hold a conciliation conference to help resolve the non-dismissal dispute if you and the employer **both agree**.

If neither party agrees, or the matter is not settled in the conciliation conference, a General Protections Court Application will need to be made in order to pursue the matter.



MAKING THE APPLICATION

You will need to complete a Form F8 – General protections application not involving dismissal.

This can be found on the FWC website. At this link:

<https://www.fwc.gov.au/issues-we-help/disputes-about-general-protections/apply-general-protections-no-dismissal-form-f8c>

WHERE CAN I GET HELP?

Working Women Queensland is a free, confidential and supportive service to help disadvantaged women seeking help with work matters.

Working Women Queensland:

Call us on 1800 621 458 or

visit our website <https://brq.org.au/working-women-qld/>

Other Support Services

Queensland Council of Unions

07 3010 2555

<https://www.qldunions.com/>

Fair Work Ombudsman

13 13 94

<https://www.fairwork.gov.au>

Fair Work Commission

1300 799 675

www.fwc.gov.au

Australian Human Rights Commission

1300 656 419

www.humanrights.gov.au

Queensland Human Rights Commission

1300 130 670

<https://www.qhrc.qld.gov.au/>

Workplace Health and Safety Queensland

1300 362 128

<https://www.worksafe.qld.gov.au/about/who-we-are/workplace-health-and-safety-queensland>

Workcover Queensland

1300 362 128

<https://www.worksafe.qld.gov.au/about/who-we-are/workcover-queensland>

Women's Legal Service Queensland

1800 957 957

<https://wlsq.org.au/>

Caxton Legal Centre

07 3214 6333

<https://caxton.org.au/>