

THE NEW FAIR DISMISSAL CODE FOR SMALL BUSINESS – A CHECKLIST FOR SMALL BUSINESSES

At the moment, businesses with less than 100 employees are exempt from the unfair dismissal laws.

However late last year, the Federal Government introduced their long awaited Fair Work Bill, into Parliament. One aspect of the Bill concerns a new process for unfair dismissals.

Under the proposed new laws, which are expected to operate from July, an employee of a small business (which is one with less than 15 employees) will be able to make a claim for unfair dismissal after they have been employed for at least 12 months.

The Fair Dismissal Code:

After 12 months, the employer will have to comply with the Fair Dismissal Code for Small Business.

The Code sets out the steps which a small business employer needs to take in order for a dismissal to be fair and includes a checklist, which should be carefully filled out. If a small business operator complies with the Code, a dismissal can not be found to be unfair.

A copy of the Code that is currently before Parliament can be obtained from HIA by contacting the Info Centre on 1300 650 620.

Some important points once the new Code becomes law:

- Warnings and “chances” - The employer will be required to give the employee a warning about their poor performance or conduct and give them a ‘reasonable chance’ to respond and improve. Under the Code, only one warning is required and the warning can be verbal.
- Hearings - Employee will have 7 days to make a claim with the newly created Fair Work Australia (FWA). With FWA there will be less reliance upon formal, public hearings. A conciliation conference will be a first step with matters only going to hearing if FWA consider it necessary. FWA’s focus will be on reinstating the employee as soon as possible, although in some circumstances this may not be practical and they will be entitled to compensation (capped at the lesser of 6 months pay or \$50,000.) In most circumstances, lawyers will not be allowed to appear.
- Redundancy - Employees will not be able to claim for unfair dismissal if there has been a “genuine redundancy”. However the employer will need to prove to FWA that it was not reasonable to redeploy that employee to other duties within the business and will need to comply with any consultation requirements that are in their award or collective agreement.
- Casual employees – Those casual employees who are employed on a regular and systematic basis, and have a reasonable expectation that this employment arrangement will continue, will now be eligible to claim for unfair dismissal.

Timing

At the time of writing, a Senate inquiry was considering submissions to the Bill, with a report due by the end of February. It is expected that the legislation will be voted on in March. The changes to the rules for unfair dismissals will commence at the start of July 2009.

HIA will provide further updates to you on all the changes in the coming months.