WorkLegal | Legal advice wherever you work

Guide to Workplace Protections

1. What are the "general protections"?

Under the Fair Work Act, an employer cannot take adverse action against an employee on the basis of:

- their workplace rights;
- participating in a union or any other form of industrial activity; and
- their 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.

Adverse action is taken when an employer dismisses, injures, detrimentally alters the position of, or discriminates against an employee. Also a prospective employer who discriminates against a person or refuses to employ them for discriminatory reasons) may have also taken adverse action.

Anti-discrimination legislation also protects employees and prospective employees from being discriminated against because of attributes including those listed above, and also for their criminal history.

2. What is a workplace right?

A "workplace right" that is protected from adverse action includes:

- a right to complain or enquire about the employment;
- an entitlement to a benefit, role or responsibility established under a workplace law or instrument; and
- a right to initiate or participate in a process established under a workplace law or instrument.

There have been various case decisions about what is a "workplace right" and you should take advice about your specific situation.

3. Who is eligible to apply?

National system employees or prospective employees (ie job applicants) are eligible to apply to the Fair Work Commission.

Most employees in Australia are national system employees. Many state and local governments are not national system employees.

4. Important time limits

If you have been dismissed an adverse action claim under the FW Act must be lodged within 21 days of the last day of employment.

Other time limits apply under anti-discrimination legislation and you should take advice about your specific situation.

Even though late applications can be accepted in special circumstances, it is always recommended to make an application within time.

5. Fees and process

A fee is charged by the FWC when an adverse application is lodged. The fee can be waived in serious financial hardship situations.

The employer is given an opportunity to lodge a written Response.

The application is then usually listed for an conciliation meeting held by telephone conference.

If the application remains unresolved, it may proceed to a hearing in the Fair Work Commission with the consent of both parties, otherwise the applicant will need to commence proceedings in the Federal court system within the prescribed time.

Specific fees and process rules apply to applications under anti-discrimination legislation and you should take advice about your specific situation.

6. Can I be represented by a lawyer?

A lawyer can assist you to prepare and lodge an adverse action application. The FWC's permission is required for lawyer representation in subsequent steps in an application.

7. State system employees

Queensland and some other states have similar laws that apply for employees who are not "national system" employees under the Fair Work Act.

8. Further information

You should consider contacting WorkLegal without delay for advice about an adverse action or discrimination situation.