



# **NEWSLETTER**

## **March 2018**

**Filling roles in NSW for more than 20 years!**

### **Ending Employment and Unfair Dismissal**

There are many ways an employment relationship may come to an end. When it is the Employer ending the employment, care must be taken to make sure that the dismissal is not unfair, or unlawful. This month's newsletter will focus on the aspects of unfair dismissals, which are covered in the Fair Work Act 2009 (Cth).

A dismissal may be considered as being unfair if the person was dismissed, or was forced to resign, in a manner that was harsh, unjust or unreasonable. It may also be triggered by a redundancy, which was not a "genuine" redundancy.

If an employee feels that they have a case for an unfair dismissal claim, they must make an application to the Fair Work Commission within 21 days of their dismissal. The 21-day deadline generally begins the day they physically cease employment. Employees who have not completed 6 months of employment, or 1 year in the case of a small business (under 15 staff), are not able to make a claim. If the employee is not engaged under an award or enterprise agreement, and their income is above the high income threshold (\$142,000), they also cannot bring a claim.

Whether a dismissal is harsh, unjust or unreasonable will depend on all the circumstances and it is up to the employee to prove that their termination fits in to one of those three "categories". In considering whether a dismissal falls in to one of these areas, the Commission must take in to account the following:

- whether there was a valid reason for the dismissal, based on the employees capacity or conduct
- whether the employee was notified of that reason
- whether the employee was given the opportunity to respond
- whether the employer unreasonably refused to allow a support person to be present
- whether unsatisfactory performance was previously brought to the attention of the employee and warnings given
- the size of the employer's operation and its impact on its ability to follow and effect the dismissal
- the absence of suitable staff such as HR within the organisation and the likely impact this will have on the dismissal, and
- ANY OTHER MATTERS THE COMMISSION CONSIDERS RELEVANT.

Each of the above items has numerous case law examples, making each point a matter for contention. Commentary on all these particular elements is beyond the scope of this article but suffice to say most unfair dismissal claims likely to be encountered will centre around the performance, capacity or conduct of the employee. At the end of the day, your reason for terminating the employee must be defensible or justifiable on an objective analysis of the facts. Capacity includes both physical and legal capacity, such as holding a certain category of licence as a condition of employment. When it comes to performance, there is no requirement for 3 warnings to have been given, but employers should afford themselves the protection of having raised and documented the performance issues in question with the employee. If the reason for termination relates to conduct, it is up to the Commission to be satisfied that the conduct did occur and that the response to that conduct is amongst other things, consistent. Performance, capacity and conduct will be addressed more fully in subsequent newsletters.

The material contained in this newsletter is general comment only and is not intended as advice on any particular matter. Professional advice should be sought before any action is taken based upon the matters described.

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## SELECTED QUALITY CANDIDATES FROM OUR DATABASE

The following is just a snapshot of the many new candidates registering for our exclusive automotive personnel database each month. Contact us if you would like to know more about any of our exceptional and experienced candidates.

### NEW & USED SALES

- Sales Manager would like to progress to the next level and will relocate (#11648)
- Dynamic Sales Manager seeking a forward thinking dealer where they can make a difference (#14178)
- General Sales Manager seeking a new adventure based in Sydney (#20336)
- Business Manager with sales experience seeking a new role and will relocate for the right position (#998)
- Sales Manager with a wealth of Nissan experience looking for a change - excellent stability (#20054)
- Sales Manager wants to work in a busy dealership, Central Coast to Newcastle (#20248)
- New Car Sales Consultant based in Sydney would like the opportunity to move to a 2IC (#20236)
- Parts experienced candidate would eventually like to obtain a position within Aftermarket (#16424)

### PARTS

- European Parts Interpreter looking for career advancement with a forward thinking dealership (#11363)
- Parts Interpreter seeking a new role in a dealership environment to broaden his experience (#1932)
- Newcastle area based Parts Manager looking for a fair and forward thinking dealership (#1751)
- Parts Manager with a wealth of knowledge seeking a new challenge based in NSW (#2524)
- Sydney based Parts Manager with prestige experience is seeking a new opportunity (#20338)
- Parts Manager looking for an opportunity with a multi-franchised dealership (#15499)

### SERVICE

- Experienced Service Advisor with a wealth of knowledge would consider Sydney based roles (#16431)
- Assistant Service Advisor looking for a Managers opportunity based on the Central Coast (#20258)
- This Holden Parts and Service Manager located in country NSW would consider a move (#1409)
- Experienced Service Manager wants to move from Sydney and will consider all locations (#20000)
- Sydney based Service Manager would like to make a move to a more main stream franchise (#20400)
- Technically trained Service Advisor looking for a role with direction based in Sydney (#17686)
- Senior Technician located in the Kempsey area of NSW would like a new opportunity (#19579)

### ADMINISTRATION & MANAGEMENT

- Based in the Griffith area, this Administration Manager is seeking a new role (#20161)
- Administration Clerk with automotive experience is looking for a more main stream dealership (#20407)
- Skilled General Manager is wanting to take the next step in his career and will relocate (#12298)
- Sydney based Financial Controller with excellent stability is looking for a change, knows Ford (#13707)
- General Manager looking for a move to a challenging and rewarding opportunity (#20247)
- General Manager based in Sydney is seeking an opportunity to gain exposure and step-up (#20260)
- Financial Controller based in the Wagga area would like a role as a General Manager (#20304)

*With nearly 7,500 automotive and heavy vehicle personnel on our confidential database, we'll find you the perfect candidate for your dealership.*

**www.autorecruit.com.au**

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