



# NEWSLETTER

March 2018

## 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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Vol. 25 Issue 3

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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

- Young accomplished Sales Manager with major franchise experience ready for a new role in Brisbane (#18553)
- Sales Manager looking to move to Brisbane from ACT with large dealership experience (#18757)
- Business Manager looking to make a move to an automotive dealership in Brisbane (#20392)
- Aftermarket Consultant wants to move into finance. Will consider all Brisbane locations (#19046)
- General Sales Manager looking for a new challenge. will consider all locations (#2955)
- Assistant Sales Manager looking at taking the next step in his career (#20393)
- Highly experienced Business Manager looking for a busy dealership in Brisbane (#19218)

### PARTS

- Computer savvy Parts Interpreter proficient with multiple DMS programs is open to relocation (#13596)
- Parts Manager with prestige experience ready for a new role in Brisbane (#701)
- Parts specialist has done Mitsubishi, Subaru, Honda, Kia, Great Wall, Nissan, Holden, Mazda (#4557)
- Parts Interpreter with a mixed background of brand and volume experience is looking in Brisbane (#1309)
- Highly experienced Ford Parts Manager looking for a role in QLD. Will consider all locations (#19231)
- Auto Parts Manager is keen to source a role after a contract overseas, OEM experience also (#1947)

### SERVICE

- Service Manager with a wealth of experience is looking for a role to make their own on the Gold Coast (#4553)
- Looking to move to a coastal area, this Fixed Ops Manager has stability and volume experience (#20358)
- Warranty and Operations specialist based in Brisbane would like to look at local options (#20357)
- Service Manager with more than 10 years' at one dealership is ready for a new challenge (#11713)
- Group Service Manager looking to get back into a dealership role with customer contact (#16529)
- Service Manager with prestige brand experience is willing to relocate if required (#16207)
- Hyundai Technician has been with the brand for 4 years and would like to relocate coastal (#20391)
- Lots of Technicians recently added to our files who are looking for FIFO or DIDO style employment

### ADMINISTRATION & MANAGEMENT

- Outstanding Financial Controller (CPA) has excellent grounding in dealing with manufacturers (#18683)
- High volume CFO returning from overseas and looking at all options Australia wide (#20382)
- GSM / GM looking for a senior role around the SEQ area, lots of major-franchise expertise (#11724)
- Former Toyota GM with excellent tenure wants to consider their options in South East Queensland (#5983)
- General Manager currently working in Brisbane would like to consider other opportunities (#20102)
- Brisbane based administration all rounder has done everything in dealership admin and more (#13263)
- General Manager with excellent stability available for an immediate start in SEQ (#19543)

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

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