



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 employee's 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

- General Sales Manager with Subaru and Mercedes-Benz background is seeking a new role (#1451)
- General Sales Manager seeking a new opportunity in South East Melbourne (#20269)
- Sales Manager with Toyota experience looking at making a move and will consider all locations (#20394)
- Toyota experienced Sales Consultant looking for an Assistant Manager role (#20326)
- Assistant Sales Manager looking at taking the next step in his career (#20393)
- Very stable Sales Manager located in Adelaide is looking for a new role in new or fleet (#17338)
- Senior Business Manager based in Melbourne looking for a dealership to progress (#20334)

PARTS

- Aftermarket and heavy vehicle Parts Interpreter would love to move into a dealership (#1317)
- Automotive experienced Parts and Service executive looking for an opportunity in management (#15180)
- Parts Interpreter would like to gain more exposure to advance career - good stability (#20173)
- Auto Parts Manager is keen to source a role after an overseas stint, OEM experience also (#1947)
- Mercedes-Benz Parts Manager is ready for something new and challenging (#13277)
- Senior Parts Interpreter ready for a step up in Adelaide (#17233)
- Adelaide based Ag Parts Manager looking for a change to light automotive (#18320)

SERVICE

- Factory customer service rep really wants to get her face in front of customers as an Advisor (#18173)
- Service Advisor, currently out of the industry would like to return (#19735)
- Service Advisor seeking a role based in the Shepparton area (#20076)
- Automotive Technician with vast Toyota experience is seeking a new challenge (#20345)
- Auto Technician with advising & auto inspection experience would like a change (#20332)
- Adelaide Service Manager would like to return to a dealership after time in retail (#122)
- Adelaide based Warranty Clerk ready to take their next career step (#16079)

ADMINISTRATION & MANAGEMENT

- Accountant with vast experience is seeking a role based in Metro or South East area of VIC (#20310)
- Accounts Assistant with dealership experience based in the CBD is seeking a new role (#20318)
- Financial Controller will move for the right position. Looking for a Group FC role or higher (#20380)
- Stock Controller with experience in pre-delivery is seeking a new adventure (#13587)
- Admin Officer with payroll experience looking for a new role in Adelaide (#20086)
- General Manager with vast experience looking to step into a Dealer Principal role (#771)
- Outstanding Financial Controller (CPA) has excellent grounding in dealing with manufacturers (#18683)

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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