



What's causing the surge of unfair dismissal claims?

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Date: Thursday May 28, 2020

Updated 30 September 2020

On 7 May 2020, Fair Work Commission President, Justice Iain Ross AO speaking in a webinar convened by the Australian Labour Law Association's Queensland chapter, revealed that unfair dismissal claims have increased by 60% in April 2020 as compared to April 2019.

In this article, we identify three potential factors contributing to the increased unfair dismissal claims.

Increase in unemployment

In March 2020, the Australian Bureau of Statistics reported an increase in unemployment from 3,500 to 713,300 persons with an unemployment rate of 5.2%. Additionally, there has been a decrease in the number of jobs by 6.0% between the period of 14 March and 4 April 2020.

Since those March 2020 figures, there has been a further increase in the unemployment rate. In August 2020, the Australian Bureau of Statistics reported 921,800 people unemployed and an unemployment rate of 6.8%, with a decrease in the number of jobs by 4.5% between the period of 14 March and 5 September 2020.

You can stay up to date with the [ABS "estimates of employment, unemployment, underemployment, participation and hours worked" via this link.](#)

You can stay up to date with the [ABS “weekly estimates on the impact of coronavirus \(COVID-19\) on payroll jobs and wages” via this link.](#)

The continuing increase in unemployment indicates an increase of workers being terminated or made redundant from their current employment. Further, a decrease in jobs available will mean workers suffer increased income loss from the dismissal, which may see more workers seeking potential compensation through an unfair dismissal claim.

It should be noted, however, that being terminated or made redundant is not necessarily going to lead to a successful unfair dismissal claim. For more information about this, you should read [“What is unfair dismissal and what are my options?”](#) and seek further advice from an employment lawyer.

Uncertainty caused by the coronavirus pandemic

There must be a valid reason for termination of employment and the reason for termination must not be harsh, unjust or unreasonable. As a result of the current pandemic caused by COVID-19, it can be said that there is an increase in uncertainty as to whether termination of an employee because of COVID-19 constitutes a valid reason.

For further information regarding valid reasons for termination, refer to our previous article, [‘What is unfair dismissal and what are my options?’](#).

Non-compliance to employment laws by employers

Employers may take advantage of COVID-19 as an opportunity to terminate its employees without following the proper termination procedures.

If an employee has been terminated, it is important to consider whether the employer has taken actions including:

- whether the employee was notified of the reason and been provided an opportunity to respond;
- whether the employee received prior warnings of the conduct if the reason was in relation to unsatisfactory conduct; and
- [whether the employee was provided the opportunity to request a support person be present during discussions](#) relating to their dismissal.

If there was a belief and/or assumption that the procedures have not been strictly followed, it is reasonable that the employee will be eligible to make an unfair dismissal claim, challenging the potential lack of procedural fairness.

Get help from an employment lawyer

If you feel you've been unfairly dismissed or you have any other employment related concerns (whether related to COVID-19 or not), you should [seek advice from a lawyer experienced in employment law](#). You can [contact our employment law team for further advice or assistance](#).

Legal advice and assistance continues during COVID-19

Most of our teams have now returned to their respective offices with others remaining fully equipped to work remotely, where necessary.

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

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