

Fact Sheet – Unlawful termination for state system employees

1. Background

1.1 What is unlawful termination?

An unlawful termination occurs if a state system employee is dismissed:

- for a prohibited reason; or
- because of certain workplace rights held by the employee, the exercise or non-exercise of those rights, or to prevent the exercise of those rights.

For information on whether you are a state system employee, see ELC Fact Sheet “National system employee or state system employee - which one are you?”

1.2 Prohibited reasons

An employer must not terminate an employee's employment for the following reasons:

- temporary absence from work due to illness or injury;
- trade union membership or participation in trade union activities outside working hours or with the employer's consent during working hours;
- non-membership of a trade union;
- seeking office, acting or having acted in the capacity of a representative of employees;
- the filing of a complaint against the employer or participation in proceedings (e.g. whistle blowers);
- absence during parental leave;
- temporary absence from work because of carrying out a voluntary emergency management activity, where the absence is reasonable having regard to all the circumstances; or
- discrimination on grounds of race, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

2. Procedure

2.1 Eligibility

All state system employees are eligible to make an unlawful termination claim, except where they have made another claim in relation to the termination – for instance, unfair dismissal – and refuse to discontinue that other claim.

2.2 Who to apply to?

If you are eligible to lodge a claim, you need to make a claim to the Fair Work Commission (**FWC**). For more information on how to apply see ELC Information Kit “Making an unlawful termination claim - for state system employees”.

2.3 Time limits

You must make your application to the FWC within 21 days of the date your dismissal took effect.

If you miss the deadline to lodge a claim, you may be able to make a late application. For further information, see ELC Fact Sheet – “Missed the deadline for making a claim: what can you do?”.

2.4 Forms and fees

The correct application form is [Form F9](#) – *Application for the Commission to Deal with an Unlawful Termination Dispute*. The fee for lodging an unlawful termination application with the FWC is \$74.50. However, in some circumstances, you can apply to have the fee waived. To apply to have the fee waived, you must lodge [Form F80](#) – *Waiver of application fee*.

3. Conciliation conference

After the application has been lodged, the employer will be asked to respond and the FWC will attempt to conciliate the claim. A conciliation conference is an informal and private process where an independent person (usually a member of the FWC) tries to assist the parties to agree on how to resolve their dispute.

4. Proceedings

If agreement is not reached at conciliation, the FWC may issue a certificate stating that all reasonable attempts to resolve the dispute have failed. The employee then has 14 days to agree with his or her employer for the FWC to arbitrate the matter, or to elect to have the matter heard by the Federal Circuit Court or Federal Court.

Once an employee has alleged that his or her termination was unlawful, the onus lies on the employer to prove the termination was not unlawful. In other words, the onus of proof is reversed during these proceedings.

5. Interpreters

If you indicate on your application form that an interpreter is required, the FWC will arrange for one to be present. There is no charge for an interpreter.

You can also use the Translating and Interpreting Service (**TIS**). This is a national service provided by the Department of Immigration and Multicultural Affairs, available 24 hours a day, 7 days a week. The phone number is 131 450 for the cost of a local call.

6. Remedies

There are various remedies available for a successful claim of unlawful termination. These include penalties, reinstatement, compensation in lieu of reinstatement or any other order that the Court deems appropriate.

7. Further information

The Employment Law Centre of WA (Inc)

Advice Line 1300 130 956 or 08 9227 0111
Web www.elcwa.org.au

Wageline

Tel 1300 655 266
Web www.dmirns.wa.gov.au/wageline

Fair Work Commission

Address Level 16
111 St George's Terrace, Perth 6000
Tel 1300 799 675
Web www.fwc.gov.au
Email perth@fwc.gov.au

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