

Unfair Dismissal vs General Protections

Understanding the difference between an **Unfair Dismissal** claim and a **General Protections** claim is critical before making employment decisions. These are the most common claim types lodged in the Fair Work Commission on behalf of employees.

Every unfair dismissal is about fairness. Every general protection claim is about motivation.

● **High-Level Overview**

Factor	Unfair Dismissal	General Protections
Purpose	To determine if the dismissal harsh, unjust or unreasonable	To determine if the adverse action taken because the employee exercised a workplace right or other protected reason
Focus	Fairness of the dismissal process and reason	Employer’s reason or motivation for the decision
Common Examples	Performance, misconduct, redundancy	Complaint, leave, discrimination, workplace rights, union activity
Minimum employment period applies?	Yes (6 months, unless Small Business then 12 months)	No (generally)
High income threshold applies?	Usually	No
Remedy	Reinstatement and/or compensation up to 26 weeks’ pay	Compensation, penalties, reinstatement and other orders - no maximum monetary cap

● Unfair Dismissal Claims

An unfair dismissal claim asks one key question: **Was the dismissal harsh, unjust or unreasonable?**

The Fair Work Commission considers factors such as:

- Was there a valid reason?
- Was the employee notified of that reason?
- Were they given an opportunity to respond?
- Was procedural fairness followed?
- Was the outcome proportionate?

An employer may have a valid reason for dismissal and follow a fair process.

Who can make an Unfair Dismissal claim?

Generally, an employee must satisfy eligibility requirements, including:

- Completing the minimum employment period (usually 6 months, or 12 months for employees of a Small Business employer).
- Earning below the Fair Work Act's high-income threshold, unless they are covered by a Modern Award or Enterprise Agreement.
- Being dismissed.

● General Protections Claims

What is a General Protections claim?

A General Protections claim asks: **Did the employer take adverse action because the employee exercised a workplace right or for another prohibited reason?**

These claims are designed to protect workplace rights and freedom from unlawful treatment. The focus is **why** the employer made the decision.

What is "adverse action"?

Adverse action may include:

- Dismissing an employee.
- Demoting an employee.
- Reducing hours or pay.
- Changing duties to the employee's disadvantage.
- Disciplinary action.
- Refusing employment.
- Threatening any of the above.

Examples of workplace rights

Employees may be protected if they:

- Make a complaint or inquiry about their employment.
- Request flexible working arrangements.
- Take personal leave.
- Access parental leave.
- Exercise rights under workplace laws.
- Participate in Fair Work proceedings.
- Raise safety concerns.
- Enquire about pay or entitlements.

Making a complaint does not prevent an employer from managing performance or misconduct. Employers must be able to demonstrate that any action taken was for legitimate business reasons and not because the employee exercised a workplace right.

Why the distinction is critical

Unfair Dismissal	General Protections
Was the dismissal unfair?	Why did the employer make this decision?

Before making any significant employment decision, ask yourself:

- What is the genuine reason for our decision?
- Can we prove it?
- Have we documented it?
- Has the employee recently exercised a workplace right?
- Do we have the appropriate documentation to support our decisions?
- Would the processes we have undertaken that led to termination be in our favour if we were challenged by Fair Work?

Disclaimer

This fact sheet provides general information only and is not legal advice. Every workplace situation is different. Employers should seek professional advice before making decisions relating to disciplinary action or termination.



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