

Small Business Dismissal Guidelines

1.1 Aim of Fair Dismissal Code

Legislation: *The Fair Work Act 2009 (Cth)*

Code: *The Small Business Fair Dismissal Code (operating as of 1 July 2009) ("the Code")*

The purpose of the Small Business Fair Dismissal Code is to provide a framework for small business employers to follow when dismissing employees, ensuring that the dismissal process is fair and reasonable.

The code aims to balance the needs of small businesses with the rights of employees, making it easier for small businesses employers to navigate dismissals without facing unfair dismissal claims under the *Fair Work Act 2009 (Cth)*, provided they comply with the requirements of the Code.

1.2 Application of the Code

The Fair Dismissal Code is applicable to small businesses with fewer than 15 employees (including all casual employees who are employed on a systemic basis).

Small Business employees are unable to make any claim for unfair dismissals if they are within the first twelve (12) months of their employment.

If an employee is dismissed after this period, the employer's decision to dismiss the employee will be deemed fair if it can be determined that they followed the Code.

1.3 What constitutes an unfair dismissal?

When considering employee dismissals, small business employers must adhere to specific guidelines to ensure fairness and compliance with the law. The *Fair Work Act 2009 (Cth)* s385(B) outlines the criteria for unfair dismissal, which includes whether the dismissal was:

- harsh, unjust, or unreasonable; and/or
- was inconsistent with the Small Business Fair Dismissal Code.

1.4 How can an employer avoid an unfair dismissal claim?

The Small Business Fair Dismissal Code allows for summary dismissal without notice if the employer believes on reasonable grounds that the employee's conduct is sufficiently serious, such as theft, fraud, or violence.

For other dismissals, the employer must:

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- provide a valid reason related to the employee's conduct or capacity;
- warn the employee that they risk being dismissed if there is no improvement;
- give the employee an opportunity to respond and rectify the problem; and
- ensure that the dismissals are not based on discriminatory criteria.

Please note: see outlined below a comprehensive list of considerations that employers should have regard to when beginning a dismissal process.

