

Australian Business Lawyers & Advisors

Tips for employers — dismissals best practice

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Employers need to follow best practice to minimise the potential for problems to arise in relation to dismissals of employees, says Australian Business Lawyers.

Australian Business Lawyers specialises in workplace law, as well offering corporate and commercial law services.

Recently released statistics show that Australia's principal industrial relations tribunal was kept busy during 2010 dealing with unfair dismissal claims. Quarterly figures for the second half of 2010 reveal that Fair Work Australia received more than 6000 unfair dismissal claims in the period 1 July to 31 December. The majority of these claims were settled or withdrawn before formal hearing, with fewer than 200 claims requiring formal arbitration.

In the same period, Fair Work Australia also dealt with nearly 900 claims under the general protections provisions of the *Fair Work Act 2009*. The general protections represent statutory prohibitions against adverse actions against an employee because the employee has exercised a workplace right.

The quarterly statistics underscore the potential challenge faced by many employers in response to the termination of employment.

Tips for best practice

Good practice dictates that employers should ensure the following:

- There is a valid reason for the termination related to the employee's capacity or conduct. The reason should be sound and defensible.
- The employee is notified of the reason.
- If the termination relates to conduct or performance, the employee should be given an opportunity to respond to any reason or allegations.
- If the proposed termination relates to unsatisfactory performance, consider whether the employee has been warned previously about the unsatisfactory performance.
- There is no unreasonable refusal to an employee's request for a support person to be present during any discussion relating to proposed termination.
- Correct notice procedures are adopted — check sources of notice obligations such as contracts, engagement letters, enterprise agreements, awards.
- If it is proposed to dismiss without notice (or without pay in lieu), the employer must be prepared to show that the wilful or deliberate behaviour of the employee was inconsistent with the continuation of the contract of employment.

If in doubt, seek out professional advice.