



Factsheet No.[4]

Unfair Dismissal: lodgement dates, the application process and help available

Termination of employment is a sad reality for some. It is important that employees are aware of the legal remedies available to them, and the time limit that may apply to accessing those remedies. Time limits may be affected by public holidays.

This fact sheet looks at the availability of an unfair dismissal application, which can be made through the Fair Work Commission (FWC). It addresses:

- *When an application for unfair dismissal must be lodged with the FWC.*
- *What a person should do if they are unable to reach a lawyer before the lodgement date.*
- *How the unfair dismissal application process works.*
- *Sources of help available for people who may be unsure whether they should lodge an unfair dismissal application.*

If an employee wishes to lodge an unfair dismissal application, they must do so within 21 days of their dismissal.

When calculating the due date for an application, day 1 is the first day **after** the dismissal takes effect.

Weekends and public holidays may affect the lodgement period – but only where the weekend or public holiday (or substitute public holiday) falls on the 21st day. Weekends and public holidays that fall on the 1st to 20th days have no effect.

The FWC can extend this period in exceptional circumstances. The FWC is unlikely to accept not knowing about the limitation period, or not being able to access legal advice immediately, as exceptional circumstances that excuse lateness.

Example 1

John is dismissed with two weeks notice on Friday, 2 December 2016 (and he worked through the two week period). His dismissal takes effect on Friday, 16 December. Day 1 will be Saturday, 17 December and Day 21 will be Friday, 6 January 2017. Weekends and public holidays within the 21 days will not have any effect. Therefore, the final date for John to lodge an unfair dismissal claim would be Friday 6, January 2017.

Example 2

Andi is instantly dismissed on Saturday, 17 December 2016. Day 1 will be Sunday, 18 December and Day 21 will be Saturday, 7 January 2017. As this date and Sunday, 8 January are both weekend days, the lodgement period would be extended to Monday, 9 January. Therefore, the final date for Andi to lodge an unfair dismissal claim would be Monday, 9 January 2017.

Example 3

Jenny is instantly dismissed on Sunday, 11 December 2016. Day 1 will be Monday, 12 December and Day 21 will be Sunday, 1 January 2017 (New Year's Day). As Day 21 is a public holiday, the time to lodge would be extended to the next business day. As New Year's Day falls on a Sunday this year, an additional public holiday is allocated on Monday, 2 January (this only happens when a public holiday falls on a Saturday or Sunday, and an extra public holiday is prescribed by legislation). This means Jenny's final date to lodge her unfair dismissal claim would be Tuesday, 3 January 2017.

If you are still unsure about the final date to lodge your application, contact the FWC on 1300 799 675.

Unable to find a lawyer in time?

The application process is designed to be quick, flexible and informal. Applicants can use the [Online Lodgement Service](#) on the FWC website or download 'Form F2 – Unfair Dismissal Application' from the [unfair dismissal section](#) of the FWC website. They must fill this in and sign it. They can file the form with the FWC via email, post, fax or in person.

There is a \$69.60 filing fee (subject to change) but you can submit an application to have this waived (cancelled) if paying the fee may cause serious financial hardship.

Unsure about the application process?

The FWC can provide guidance about the unfair dismissal application process; including how to make an application, how to fill out forms, where to find useful documents, and how to prepare for conciliation.

The FWC cannot provide legal advice, and will not tell you whether you should or should not lodge an application.

Unsure whether an unfair dismissal application is appropriate?

Find out more about what makes a dismissal 'unfair' and whether an application is appropriate by consulting the [unfair dismissal section](#) of the FWC website (where you can download a number of helpful guides and example forms) and the [Unfair Dismissal Benchbook](#).

[Law Access NSW](#) can provide general information regarding unfair dismissal, as well as unfair contracts and recovery of unpaid entitlements. They can be contacted on 1300 888 529.

The FWC oversees a 'Workplace advice clinic pilot program' in Melbourne and Sydney. In Sydney, you can make an appointment to see a qualified lawyer from Legal Aid NSW and Marrickville Legal Centre. The lawyer can help a client make an application and advise on legal and employment rights generally. More information about this free service can be found [here](#).

Redfern Legal Centre will reopen after the holiday period on Monday, 9 January 2017. Appointments for employment and discrimination advice will resume on Tuesday, 17 January 2017. To discuss making an appointment, you can call 02 9698 7277.

The Community Legal Centres NSW [website](#) can direct you to your nearest community legal centre based on your post code.

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This factsheet is not a substitute for legal advice. If you have a problem please seek legal advice from your local community legal centre.

