

Employment law for managers (see assignment criteria)

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Employment Law for Managers Fairness or unfair dismissal is based on reasons for such an action and whether one acts reasonably in a dismissal process. Those employees who have worked for at least a period of one year are eligible to complain although certain employment provisions put no minimum period and such dismissals are seen as unfair automatically (WRA, 1996). According to the new provisions, a person is eligible to complain if he or she is covered by a modern award; has an enterprise agreement relating to employment; and if the sum of annual rate of earnings are less than high income threshold (Elizabeth, 2009, pp. 1-4). For one to be eligible to the claim that employee must have completed the qualifying or probationary period if the employer is small business type or six months in case the employer is a large enterprise (FWA, 2009).

Claims are normally made to the Fair Work Australia and this should be within 14 days of being dismissed if the dismissal is unfair. This matter is then put to review by the conciliation conference where most of the issues that are involved in the case are normally resolved between the two feuding parties. If not solved at this level, then the applicant reserves the right to request for a proceeding of the case to a further full hearing (Elizabeth, 2009, pp. 1-4).

Unfair dismissal occurs if the FWA is convinced that the worker has actually been dismissed; it was harsh or unreasonable; was inconsistent with Small Business Fair Dismissal Code; and that it was not genuine redundancy case. Dismissal is simply the termination of one's employment at the will of the employer and this does not include demotion. It also does not include a reduction from the person's salary or duties in a significant manner and the

person still is employed by the employer that did effect the demotion.

Harsh, Unjust or Unreasonable Dismissal

In accordance with the current provisions various matters would be considered while addressing the issues of whether a given dismissal was harsh, unjust or unreasonable. These considerations do include taking into account the reason for dismissal and whether this was valid or not for that dismissal that is duly related to the capacity of a given person or his/her conduct; in case that person being dismissed was actually given notice of the reasons that pertain to his or her dismissal; whether such a dismissed person was given a reasonable chance or opportunity to lodge a response to any of the reasons put forward that are related to the conduct or capacity of the person; if there are any unreasonable refusal by the person's employer when it comes to giving him or her a chance to acquire a support person who should be present in order to help in any form of discussion as far as the dismissal is concerned; if such a dismissal that is associated with some form of poor performance by the dismissed employee and in case the person was or was not informed about his or her poor performance before such a dismissal was made; the given degree or level as to the given size of the enterprise the employer owns would be able to affect the process that is followed during the dismissal; and establishing the degree to which a given human resource management expert that is dedicated to the functioning of the enterprise has the capacity to affect the laid down procedures that are followed in the implementation of such a dismissal; and any of the matters that FWA would consider as being relevant to the case at hand (Elizabeth, 2009, pp. 1-4).

List of References

Elizabeth (2009), Fair Work Act 2009 - Fact Sheet 3: Unfair Dismissal, Devine Law at Work, pp. 1-4

FWA 2009, Fair Work Act

WRA 1996, Workplace Relations Act