

9 OLDER PEOPLE IN THE WORKFORCE

9.1 Introduction

There are an increasing number of workers who continue to stay in the workforce as they get older or older workers looking for part time or casual employment. This chapter is intended to give a brief overview of the way the current industrial relations system currently works and possible issues to consider from your continuing or terminating employment.

At the time of writing, the Federal Government outlined some further (and dramatic) changes to the way employment issues are regulated. These changes will affect all employees working in a corporation or under a federal award. While the changes are beyond the scope of this text, an understanding of the basic principles discussed below will assist you in navigating the new system as implemented in 2006.



9.2 Minimum conditions of employment in NSW

In Australia, there are many laws which tell workers and their employers what they can and cannot do at work. Some are state laws, which only cover people in **NSW**, and others are federal laws which are nationwide. These laws set up a system to make agreements about the conditions of work and they sometimes overlap.

When you agree to work for someone, there should always be a document that contains your conditions and how much you will be paid. If your new employer does not tell you what this document is, you should ask. It might be:

- (a) a contract of employment; or
- (b) an Award; or
- (c) a certified agreement; or
- (d) an enterprise bargaining agreement; or
- (e) an Australian Workplace Agreement.

It might also be a combination of some of these documents. If you are unsure, ask your employer, lawyer or union.

Awards usually cover the following conditions of employment:

- (a) minimum rates of pay and allowances;
- (b) overtime and other penalty rates;
- (c) hours of work; and
- (d) leave provisions; eg sick/personal leave, recreation leave.

They may also include other specific issues such as superannuation or long service leave.

Agreements normally cover similar areas but are agreed in the workplace. Both Awards and Agreements should also state what workers can do if their employer does not put these conditions in place.

Your employer might draw up policies about certain issues such as equal opportunity, sexual harassment, employee behaviour and redundancy. It is important that you read these and follow them, because your employer might be able to punish you if you do not follow them.

After you have signed the contract or letter of employment, your employer must follow the conditions set out in the agreement. You must also follow the agreement. If you are hired under an Award or other agreement, your employer must pay you the amounts agreed in the Award. If they pay you less, speak to your employer and point out what the Award or agreement says. If this does not work then speak to a lawyer or union official.

9.3 **Leave**

If you are a full time or part time worker, the *Annual Holidays Act 1944* gives workers four weeks paid holiday after one year of work (pro rata if you are a part time worker). Sometimes you can take the holiday before you have worked for a full year, but this must be agreed to by your employer.

The *Long Service Leave Act 1955* gives workers two months paid holiday after ten years of work at the same place. If you are a casual worker your rate of pay may include an amount which takes into account the leave benefit you do not receive owing to the nature of your job.

The *Industrial Relations Act 1996* gives you leave entitlements if you adopt a child or become the primary carer for a child.

9.4 **Harassment and bullying**

You may not always get along with your fellow workers, but you do not have to put up with behaviour such as bullying, harassment or discrimination. It is not okay for someone that you work with to yell at you, make sexual comments or threaten to hurt you. If this happens you can complain to your employer, your supervisor or union representative and ask for the behaviour to stop. If your employer or supervisor is the person you want to complain about, speak to another person in a similar role if you can. They should take your complaint seriously and check what you say has happened. It is against the law to discriminate in the workplace.

9.5 **Ending your employment**

Your contract, Award or agreement should say what will happen if you or your employer decide that you will no longer continue your job. If your employer decides to fire you, they must give you reasons. If the reason is that you have not been doing a good job, you should be given a chance to perform better. Your employer needs to be fair to you. However, your employer may be able to fire you on the spot if you deliberately do something wrong. To find out more about this, you should read your contract or agreement to see if there are any parts that talk about "summary dismissal" or "termination without notice".

If you think you were fired unfairly, you have 3 weeks to decide what to do. In NSW you can take legal action for unfair dismissal. Unfair dismissal happens when your employer is not fair in the way that they dismiss you. You can approach the NSW Industrial Relations Commission. If you are employed under a Federal Award, you can approach the Australian Industrial Relations Commission under the *Workplace Relations Act 1996*. You cannot claim unfair dismissal if you earn more than \$94,900 or if you are a casual employee.

Under federal legislation, there are two ways you can be fired unfairly:

(a) Unfair dismissal

Unfair dismissal happens when an employer has a valid reason for firing a worker but did it the wrong way, ie, the termination was harsh, unjust or unreasonable in the particular circumstances of the matter.

(b) Unlawful dismissal

Unlawful dismissal happens when an employer fires a worker for an unlawful reason. For example, where a worker is sacked because of his or her ethnic background, age or gender.

9.6 Unfair contracts

Another possibility if you are terminated without reasonable notice, redundancy payment (if applicable) or severance is an unfair contract claim. An 'unfair contract' is either written or carried out unfairly, for example, in certain cases, by not providing you with entitlements such as notice of termination or severance payments. If your contract is unfair, you have twelve months to start your claim from the date of the termination of the contract. You can only start a claim if you earn less than \$200,000.

It is important to talk to a lawyer, union official or industrial agent to find out what to do because they are more complicated and costly than an unfair dismissal claim. There may be other options available to you but it depends on your situation, but you should seek assistance as soon as you are fired.

Your contract or agreement will normally contain a notice period for when the employment comes to an end. Your employer can tell you that they want you to work during this notice period or they may ask you to stop work immediately but they must pay you until the end of the notice period.

When your job finishes, you must be paid for annual leave that you have earned but not used. If you have worked for more than five years with the same company, they have to pay you for long service leave you have earned but not used.

If you decide that you want to leave your job, then you will have to give your employer notice in advance. This will be in your contract or agreement. You will normally have to work for this period so that you can hand over your responsibilities to your replacement. But, you may be able to agree to take some or all of the notice period as annual leave.

9.7 Occupational health and safety

Employers in NSW have health and safety obligations to their employees. These obligations come from the *Occupational Health and Safety Act 2000*. This Act requires employers to make sure they have a safe workplace, safe methods of work in place, and they provide their workers with training about how to safely use any equipment in the workplace. There should also be general training on how to avoid workplace injuries.

Employers also need to talk to their workers about any safety problems in the workplace. This can be through talking to workers individually if the company is small, or through a committee for larger workplaces.

Under this Act, workers must also look after their own safety and health at work. Workers also have to consider how their actions will impact on other people in the workplace. Workers must co-operate with their employer to resolve any safety issues. This includes going to training, avoiding dangerous situations, and talking to employers about any safety problems in the workplace.

9.8 Workers compensation

If you are injured at work, your employer should pay for your medical treatment, and help you return to work as soon as possible. This is an obligation under the *Workplace Injury Management and Workers Compensation Act 1998*.

If you are injured at work, you should tell your supervisor straight away. If it is a serious injury, your employer must make sure you get the proper medical treatment and help you get back to work as soon as possible. You do not have to go back to your old job if your injuries make it too difficult to do. You can be given different work to do. However, you must be given the same standard of work as before your accident. For example, if you were a Level 4 Supervisor before your accident, your employer should not make you do Level 2 Data Entry.

If you are injured at work, the law makes you return to work if you are able to. However, if your injury is very bad, you may not have to go back to work. You must also co-operate with your employer about your medical treatment and your return to work. This means telling your employer who your doctor is. You and your employer need to work together to plan your return to work. If you do not, your employer will be able to stop paying you money. If this happens, your employer has to tell you before they stop paying you.

If your employer does not pay the weekly payments to you which they are meant to pay under the Act, then you may be able to start a court case against your employer to recover those payments. You can also start a case if your employer dies, if the company is wound up, if your employer moves and you cannot find them, or if you think that your employer will not send your claim to its insurance company for processing.