

OVERVIEW – *FAIR WORK ACT 2009*



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Presented by the JobWatch Legal Practice Team

DISCLAIMER

The information provided in this presentation is not legal advice



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What is JobWatch?

- ⊙ An independent employment rights Community Legal Centre
- ⊙ Provides *free and confidential* telephone information to Victorian workers about their rights at work

Metro - Ph 9662 1933

Country - Ph 1800 331 617

- ⊙ Website: www.jobwatch.org.au



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The Fair Work Act – overview

This presentation covers:

- ⊙ Commencement and coverage
- ⊙ National Employment Standards (NES)
- ⊙ Unfair Dismissal
- ⊙ General Protections



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Commencement and Coverage

- ◎ **1 July 2009:** Australian workplace relations system changed with the introduction of the *Fair Work Act 2009 (FW Act)*
- ◎ The new collective bargaining and unfair dismissal frameworks commenced on **1 July 2009**
- ◎ Fair Work Australia and the Fair Work Ombudsman will manage the new system from **1 July 2009**



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Commencement and Coverage

- ② The National Employment Standards will commence on **1 January 2010**
- ② FW Act applies to all private and public sector employers and their employees in Victoria (subject to certain exceptions in the public sector, eg law enforcement officers)



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National Employment Standards

- ◎ The National Employment Standards are **10 legislated minimum conditions** to which all employees are entitled from **1 January 2010**

- ◎ Maximum Weekly Hours
- ◎ Requests for flexible working arrangements
- ◎ Parental leave
- ◎ Annual leave
- ◎ Personal/carer's and compassionate leave
- ◎ Community service leave
- ◎ Long Service Leave
- ◎ Public Holidays
- ◎ Notice of Termination and Redundancy Pay
- ◎ Fair Work Information Sheet



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Unfair Dismissal

- ◎ A dismissal is where an employer **terminates the employment** of his/her employee
- ◎ Dismissal can also be at the employee's initiative, known as **constructive dismissal**. This occurs where an employee has been forced to resign because of conduct engaged in by the employer, such as harassment



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Unfair Dismissal

- ③ An employee has been **unfairly dismissed** when Fair Work Australia is satisfied that the dismissal was:
 - ③ Harsh, unjust or unreasonable;
 - ③ Not a case of genuine redundancy; and
 - ③ Not consistent with the Small Business Fair Dismissal Code for small business employer



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Unfair Dismissal

- ◎ Fair Work Australia will look at the following **factors** to decide if a dismissal was **harsh, unjust or unreasonable**:
 - ◎ was there a **valid reason** for dismissal relating to person's capacity or conduct
 - ◎ was the person **notified** of the reason or given any opportunity to respond
 - ◎ any unreasonable refusal by employer to allow the person to have a **support person** to assist at any discussions about unsatisfactory performance



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Unfair Dismissal

- ◉ was the person **warned** about any unsatisfactory performance
- ◉ is the **size** of employer's enterprise likely to impact on procedures followed in dismissal process
- ◉ is a lack of **human resource management specialists/expertise** in employer's enterprise likely to impact on procedures followed in dismissal
- ◉ **any other matters** that it considers relevant



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Unfair Dismissal

- ◎ **Genuine redundancy** is where an employee's job is no longer required to be performed by anyone because of changes in the operational requirements of the business



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Unfair Dismissal

- ◎ A person can make an unfair dismissal claim if they have:
 - ◎ Completed the **minimum employment period**; and
 - ◎ Are covered by a **modern award** (or award-based transitional instrument) or an **enterprise agreement** (or agreement-based transitional instrument) applies to the person
 - ◎ Otherwise the sum of their annual earnings and other amounts worked must be **less than the high income threshold** - \$108,300 from 1 July 2009



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Unfair Dismissal

- ③ Employees must have served a **minimum employment period** before they can make an unfair dismissal claim. These are:
 - ③ **1 year** for employees of a small business (from 1 July 2009 to 31 Dec 2010, this constitutes a business with less than 15 EFT employees. From 1 Jan 2011, it will be less than 15 employees based on a head count)
 - ③ **6 months** if the employer is not a small business



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Unfair Dismissal

- ⊙ A person who believes they have been unfairly dismissed can make an application to Fair Work Australia
- ⊙ An application must be made within 14 days of a dismissal taking effect
- ⊙ However Fair Work Australia has discretion to extend the timeframe if there are exceptional circumstances
- ⊙ Applicants must pay fees prescribed by the Regulations (\$59.50)



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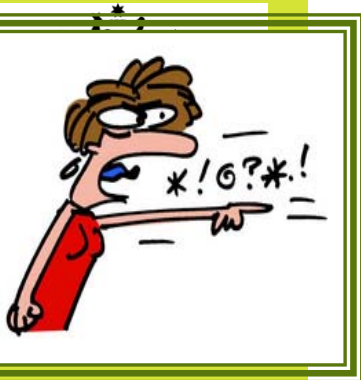
CASE STUDY

Tina has worked for 12 hours a week as a receptionist in a large company for the last 18 months. She has never had any issues with her performance or conduct at work, but last week her boss told her she was no longer required. She was given a cheque for 1 week's pay. Apparently, her boss' niece is being given the job.



CASE STUDY

Gordana has a part-time job in customer service. Her supervisor, an older woman, picks on Gordana constantly and often screams at her and tells her off in front of the other staff. Occasionally the supervisor organises informal lunches with everyone else in the team but she excludes Gordana. Gordana is very upset. She cries a lot and is finding it hard to sleep at night. She feels sick in the mornings when she's getting ready for work. She feels she is being forced to resign due to her supervisor's conduct.



General Protections

- ◎ It is unlawful for a person to take **adverse action** because another person has, or exercises, a **workplace right**
- ◎ An employee must make an application to Fair Work Australia to deal with a General Protections dispute within **60 days** if dismissed or within **6 years**
- ◎ **Adverse action** – includes dismissal, discrimination, refusing to employ a person, prejudicially altering their position, coercion, misrepresentation, undue influence, pressure



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General Protections

- ◎ **Workplace rights:**
 - ◎ Entitlements, roles and responsibilities under an award, agreement or workplace law;
 - ◎ Participation in processes or proceedings under workplace laws or instruments; and
 - ◎ The making of complaints or inquiries
- ◎ **Example** – it is unlawful to discriminate against an employee because they have taken parental leave according to the NES



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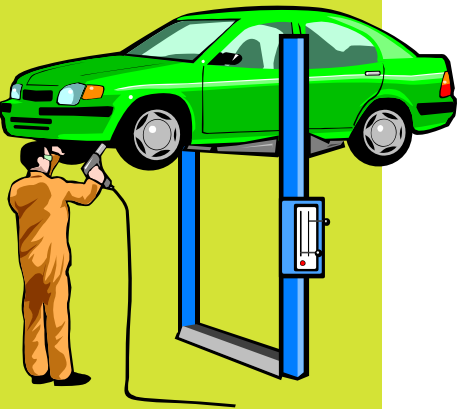
General Protections

- ⦿ An employer must not:
 - ⦿ Take **adverse action** against a person in connection with their **industrial activities**, e.g they are/are not a member/officer of an industrial association or participation/non-participation in certain industrial activities
 - ⦿ **Discriminate** against an employee or prospective employee on the following grounds: **Race, colour, sex, sexual preference, age, disability, marital status, pregnancy, family or carer's responsibilities, religion, political opinion, national extraction or social origin**
 - ⦿ Dismiss a person for being **temporarily absent** from work due to **illness or injury**



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CASE STUDY



Van has worked as a mechanic for the last 10 months. The business has about 10 employees. Yesterday, Van was sick and called his boss to say he could not go to work. He later got a text message telling him that he had been sacked.



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CASE STUDY



Samira is doing her 2nd year of a traineeship in administration. She was recently in a car accident and will have to use a wheelchair for a few weeks. She thinks she can still do all her duties. However her employer seems uncomfortable about the wheelchair in the office and he calls her in to a meeting where he terminates her employment.



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Want to know more?

- ◎ Please let us know if you would like to know more about any of the topics covered here today or any of the following:
 - ◎ Modern awards
 - ◎ Industrial action
 - ◎ Right of entry
 - ◎ Transfer of business
 - ◎ Collective bargaining



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Where to go for help

- ③ Fair Work Ombudsman (to find out if you are covered by an award or collective agreement, pay rates etc): 13 13 94
- ③ Fair Work Helpline (if you want to lodge an unfair dismissal claim or general protections dispute): 1300 799 675
- ③ Job Watch Inc (for free and confidential information about your employment rights): 9662 1933 or 1800 331 617



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