

I've been sacked. What are my rights?

Fair Employment Western Australia

Was your dismissal unlawful or unfair?

You may be able to make a claim for wrongful dismissal.

UNLAWFUL

A dismissal is unlawful if:

- it involves discrimination
- you are dismissed because of injury
- you are dismissed while absent from work on prescribed leave
- you are dismissed for being a member of a union, or for not joining a union
- you are dismissed for filing a complaint against your employer about violating laws
- you refuse to sign an AWA; and
- you are dismissed without notice (or pay in lieu of notice) *conditions apply.*

UNFAIR

Your dismissal may be considered unfair if:

- no reason is given
- no opportunity is provided to respond to allegations against you
- no notice of termination given; and
- there are harsh, unjust or unreasonable circumstances surrounding your termination.

NOTE:

A dismissal can be unfair and still be lawful.

My dismissal is unlawful or unfair. Now what?

If your dismissal was unlawful you may lodge a claim in the [Australian Industrial Relations Commission](#). If the dismissal is related to discrimination, the [Equal Employment Commission](#) can also help.

Unfair Dismissal

There are different unfair dismissal procedures depending on whether you were employed under the State or Federal industrial relations system.

If you were employed under the State system you can lodge a claim with the [Western Australia Industrial Relations Commission](#) (WAIRC)

You can lodge a claim regardless of:

- whether you were employed on a casual or fixed-term basis
- your length of employment; or
- how many employees your employer employed.

If you were employed under the Federal system, you are EXCLUDED from making an unfair dismissal claim if:

- the employer has 100 or fewer employees (excluding short term casuals); OR you were
- employed for less than 6 months
- dismissed for "operational grounds"
- award-free and over salary cap
- employed for fixed term/task
- a trainee/apprentice
- a short term casual
- a probationary employee
- a seasonal employee

If the above conditions for the federal system don't apply, you may be able to make a claim of unfair dismissal to the Australian Industrial Relations Commission.

A report about Unfair Dismissal prepared by the Fair Employment Advocate is available [here](#).

How do I know if I was employed in the State or Federal system?

If you were employed by a constitutional corporation, you were employed under the FEDERAL system.

A constitutional corporation is a foreign, trading or financial corporation (for example Pty Ltd or Inc).

If your employer was not a constitutional corporation, it is likely you were employed under the State system.

Still not sure? Contact the Fair Employment Hotline on 1300 790 636, via email to fairemployment@docep.wa.gov.au or visit the [Fair Employment website](#).

Get a clearer picture about fairness in the workplace

Fair Employment Advocate 1300 790 636 www.fairemployment.wa.gov.au



Were you sacked because of discrimination?

Discrimination - it is still against the law.

Regardless of the size of your employer, the legal status of your employer, or how long you have been employed, you can still exercise your rights under the Western Australian *Equal Opportunity Act 1984* if you are dismissed as a result of unlawful discrimination or victimisation.

You should not be dismissed, or otherwise treated unfairly or disadvantaged in your employment because of your:

- Age
- Disability or impairment
- Gender history
- Race
- Family responsibilities
- Family status
- Marital status
- Political conviction
- Pregnancy
- Religious conviction
- Sex
- Sexual orientation
- Spent conviction
- Racial harassment
- Sexual harassment

Some exceptions apply.

Or because you have made a complaint about being treated unfairly because of one of these characteristics, directly or indirectly.

If this applies to you, you can make a complaint to the [Equal Opportunity Commission](#).

Making a complaint to the Equal Opportunity Commission

The [Equal Opportunity Commission](#) attempts to conciliate a resolution to a complaint of discrimination, with remedies ranging from reinstatement, payment of compensation and apologies through to equal opportunity training.

If necessary application can be made to the [State Administrative Tribunal](#) for an interim stay order to prevent an employer from taking action until a complaint has been resolved.

This is a free service.

If the complaint cannot be conciliated, it may be referred to the [State Administrative Tribunal](#) for determination, where damages of up to \$40,000 can be awarded. Costs may also be awarded.

For more information about making a complaint of discrimination contact the Equal Opportunity Commission by:

Phone 08 9216 3900, Country callers 1800 198 149 or TTY 08 9216 3936, via email to eoc@eoc.wa.gov.au or visit the Commission's website at www.eoc.wa.gov.au.

Disclaimer: The material in this brochure is not intended to be legal advice. The Equal Opportunity Commissioner and the Fair Employment Advocate expressly disclaim any liability to anything done or not done to any person in reliance upon any of the contents of this publication.

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