



Unfair dismissal under the Fair Work regime

Date : June 1, 2009

Commencement

The Small Business Fair Dismissal Code comes into operation on 1 July 2009.

Summary Dismissal

It is fair for an employer to dismiss an employee, under employment law, without notice or warning when the employer believes on reasonable grounds that the employee's conduct is *sufficiently* serious to justify immediate dismissal.

Serious misconduct includes theft, fraud, violence and serious breaches of occupational health and safety procedures. For a dismissal to be deemed fair it is sufficient, though not essential, that an allegation of theft, fraud or violence be reported to the police. Of course, the employer must have reasonable grounds for making the report.

Other Dismissal

In other cases, the small business employer must give the employee a reason why he or she is at risk of being dismissed. The reason must be a valid reason based on the employee's conduct or capacity to do the job.

The employee must be warned verbally or preferably *in writing*, that he or she risks being dismissed if there is no improvement.

The small business employer must provide the employee with an opportunity to respond to the warning and give the employee a reasonable chance to rectify the problem, having regard to the employee's response. Rectifying the problem might involve the employer providing additional training and ensuring the employee knows the employer's job expectations.

Procedural Matters

In discussions with an employee in circumstances where dismissal is possible, the employee can have another person present to assist. However, the other person cannot be a lawyer acting in a professional capacity.

A small business employer will be required, under workplace law, to provide evidence of compliance with the Code if the employee makes a claim for unfair dismissal to Fair Work Australia (now the Fair Work Commission), including evidence that a warning has been given



(except in cases of summary dismissal). Evidence may include a completed checklist, copies of written warning(s), a statement of termination or signed witness statements.

More Information

If you are unsure whether the dismissal of one of your employees is lawfully warranted under workplace law, or if you need employment law advice about how to dismiss an employee or on how to retrench an employee, consult a workplace law expert or HR lawyer.

Please call the leading employment lawyers in Sydney, the **Matthews Folbigg Workplace Solutions** team on **9635-7966** to speak with one of our employment lawyers about your employment law issues.