

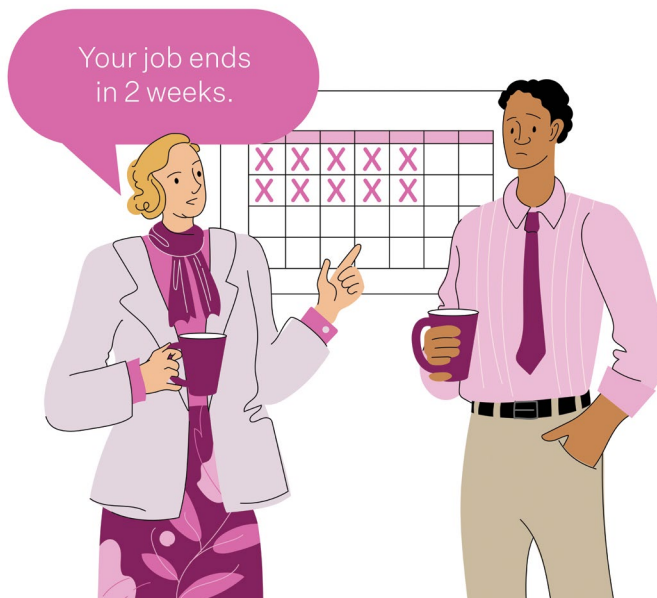
Termination

Your rights and options when
your job ends



Your rights when your job ends

If your employer ends your job, you generally have the right to:



Be given warning (**notice**) that your job is going to end, or be paid money instead of working your notice period (unless you are a casual employee).



See Underpayments infographic for information on what to do if your employer doesn't pay you the correct amount of money when your job ends.



Be paid out money (**entitlements**) for things like annual leave (unless you are a casual employee).



Be told why your job is ending.

Not to have your job ended for an unfair or discriminatory reason.

Is it unfair dismissal, adverse action or discrimination?

You may be able to make a claim to say your dismissal was **unfair** if:

- A** There was no good reason that you were fired.
- B** Your employer didn't give you a chance to respond before firing you.

You may also be able to make a claim to say your dismissal was against the law if:

- A** You were fired because of your race, sex, sexual orientation, age, religion, etc. (**discrimination**).
- B** You were fired because you exercised a workplace right (for example, you asked to be paid your legal pay rate) (**adverse action**).
- C** You were fired while you were away from work because of illness or injury.

What if my employer ended my job unfairly?

If your employer ends your job and you think it was unfair, there are a number of different things you can do.

It is important to take action quickly, because you only have 21 days from the date your job ends to make some legal claims.

After that time, you might lose your rights.



You choose what happens

It is up to you whether you want to make a claim or a complaint. There are many options to resolve the issue without having to go to court.



1



Talk to your employer

Be polite and try to speak calmly.

Explain what has happened and why it is not fair.

Ask if you can have your job back, or a reasonable amount of money to address any unfairness (**compensation**).



Tips for talking to your employer

You can bring a support person (such as a friend, family member or union representative).

Take written notes about what was said during the conversation and send them to your employer after the meeting (by text or email).

If you reach an agreement, write down what you each agreed to.

2

Make a complaint to the relevant government agency or tribunal.

It may cost you money to make a claim to a tribunal.

Complaints can be made to:

- Fair Work Commission
- Victorian Equal Opportunity and Human Rights Commission
- Australian Human Rights Commission
- Victorian Civil and Administrative Tribunal.

2a



You and your employer will be invited to attend a conciliation

An independent person (**conciliator**) will help you and your employer to talk to try and agree to a solution.

The conciliator does not decide your case — it is up to you and your employer to work it out.

2b



If you and your employer can't agree, the case may go to trial

A decision-maker (a **judge** or **tribunal member**) will listen to you and your employer and look at the evidence.

They will decide if your boss has to pay you, and how much, or if you should get your job back.

What are the possible outcomes?

Possible outcomes from a conciliation or hearing are:



You get your job back
(reinstatement)

You get your job back.

OR

Your boss helps you to get another job by:

- A** Providing a letter which states how long you worked for and your duties (**reference** or **statement of service**).
- B** Treating the dismissal as a resignation (**retrospective resignation**).



You receive money
(compensation)

Money (**financial compensation**) for lost wages, and sometimes also for medical expenses and for the hurt and suffering caused.



You receive an apology from
your employer

An apology from your employer for ending your job unfairly.



Anti-discrimination training
for your boss

Your boss is required or agrees to attend anti-discrimination training.

Are there any time limits?

If you don't start your legal claim within the relevant time limit, you might lose your right to bring that claim.

If you are fired

You have 21 days from the date your job ended to bring a claim at the Fair Work Commission.

Discrimination claims

You have 6 months (Federal law) or 12 months (State law) from the date of the discrimination to bring a claim in the Tribunal or Court.

Questions?

WEstjustice

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Disclaimer

This document contains general information only and is NOT legal advice. If you require advice about your specific circumstances please consult a lawyer or your union. This information is current at 16 February 2021.

