

Unfair Dismissal- Reducing Your Business Risk

As a business owner who employs staff, it is inevitable that one day you will need to let an employee go. And in some instances, parting ways with an employee may not be as amicable as we would like. In these instances, how can you ensure your business is protected?

Protecting your business requires you to manage the employee during their employment as well as managing the exit of the employee effectively. So how do you do this? Here are our 4 top tips to help you manage your risk and make sure you are compliant with the Act.

1. Know Your Rights and the Rights of Your Employees

It is important to remember that both the business owner and the employee have rights and obligations. Acknowledging and understanding these obligations will help you protect your business against unfair dismissal.

Unfair dismissal is governed by the Fair Work Act 2009 and the Fair Work Regulations 2009. It is recommended that all business owners familiarise themselves with this act. Going to the Fair Work Commission website is a great starting point in getting to know the rights and obligations of yourself and your employees. Additionally, you can also go to the Fair Work Ombudsman website, where there are specific links for small business and the Small Business Fair Dismissal Code Checklist.

Understanding the Act may be daunting, just remember it's about creating a fair workplace and doing the right thing. If you need support, contact your representative or connect with the team at Accounts Easy.

2. Have Detailed HR Policies and Procedures

This may sound basic, but it is something that a lot of small businesses fail to do, mainly because they are too focused on the other aspects of running their business. However, detailed HR policies and procedures are vital in minimising your risks.

Through HR policies and procedures, you can establish and document your business's expectations, standards and responsibilities and communicate these with your employees. You can only expect your employees to understand your expectations if you communicate them. In addition, having documented policies and procedures form evidence that your business has taken reasonable steps to comply with the Fair Work Act, minimising business risks and unlawful practice or behaviour.

3. Communicate with Your Employees

It is not enough to merely have policies and procedures in place. These must be communicated with your employees. The best time to do this is upon hire, however, if you are looking at implementing new policies and procedures, or updating existing policies, sit down with your employees, ask them for their input and go through the process together. This will help create an open-door policy, where staff can raise their concerns with you prior to them escalating.

Also, don't assume your employees will automatically know what you expect from them. Implement documented job descriptions that clearly define what their role, tasks and duties are. If someone is under-performing, you can then refer back to their job description when providing them feedback or conducting performance reviews. Remember, an employee won't know they are under-performing unless you communicate this with them.

4. Document, Document, Document

Why have we repeated ourselves 3 times? Because documentation is the key to ensuring that your expectations, and theirs are clearly understood. It will also provide supporting evidence should an unfair dismissal claim be brought against your business.

If you are not happy with an employee's performance, have a meeting with them and discuss the issues, providing them with the opportunity to give you feedback. Together, set up a performance management plan that provides the employee with the tools to help them improve their performance, ensuring a reasonable timeframe for such improvement. Ensure you discuss possible consequences, including dismissal, if their performance does not improve within the timeframe. Document the meeting, the plan and provide a written warning. Make sure that you both sign off on all documentation as a form of mutual acceptance. Having these documents will protect your business and will show that you have taken all reasonable steps to address any performance issues in a fair and just manner.

5. Three Warnings

If performance issues continue, readdress the issues through additional meetings. Again, document the process. This shows that you are providing the employee with the opportunity to fix any performance issues. Remember that although it is not a requirement for an employer to provide warnings in writing before ending someone's employment, it is best practice to do so. If an employer terminates an employee who then makes an unfair dismissal claim, the Fair Work Commission will usually take this into consideration.

When documenting a formal warning, ensure the following;

- You are clear about the reason for the warning
- You write down all the details
- You set clear expectations about what is required to address the issues
- That the warning is fair and reasonable in the circumstances.

Need Additional Help

If you have any concerns, now is the time to act. Don't wait until an issue arises, be proactive. The team at Accounts Easy can assist you in a review of your HR policies and procedures. We can help minimise the risks to your business and ensure you are protected by honouring your obligations as required by law.