



Can an employee who resigns claim unfair dismissal?

IRHR 15_02b

In some circumstances, an employee who has resigned might be able to make an unfair dismissal claim.

How is this dismissal? An employee is dismissed when the termination of employment is at the employer's initiative. In the above instance, termination of employment could also be considered dismissal if the employee was forced to resign because of conduct engaged in by the employer.

Examples of this could include:

- telling an employee that they can either resign or be dismissed
- failing to respond to issues and allowing them to continue i.e. bullying
- making a significant change to an employee's employment contract without their agreement
- requiring an employee to work excessive hours that are affecting their health

Therefore if an employee felt forced to resign as a result of your conduct, it will be considered dismissal under the Fair Work Act 2009. Fair Work will assess a forced resignation on the grounds that:

- the resignation was the probable result of your conduct
- your conduct was the principal contributing factor in the resignation
- your conduct resulted directly or consequentially in the termination of the employment

However, it will not be enough for an employee to assert that you created an environment in which they were forced to resign. They need to show that the business exerted pressure on them to resign and there was some sign from the employee showing they did not wish to resign, but did so against their will.

We know it happens – 'agreed resignations' and special deals. In situations like the above, it is important to be very careful about what you say or document or what evidence could be provided to the Fair Work Commission by the employee in the event of a claim. For further information or advice regarding dismissal or termination of employment please contact Lisa Dwyer on 3915 4213.

Source: Workplace Bulletin, by Loran McDougall, 15 October 2014