

## Form F3 – Employer response to unfair dismissal application

Fair Work Commission Rules 2013, rules 19, 20, 23, 46 and Schedule 1

This is a response to an application to the Fair Work Commission (the Commission) for an unfair dismissal remedy under Part 3-2 of the [Fair Work Act 2009](#).

### The Applicant



These are the details of the person who made the application. You can find this information on the unfair dismissal application Form F2.

<b>First name(s)</b>	Jane
<b>Surname</b>	Smith
<b>Commission matter number</b>	U2019/1234

### The Respondent (the employer)



These are the details of the employer responding to the application.

<b>Legal name of employer</b>	Working Company Pty Ltd		
<b>Employer's ACN (if a company)</b>	123 456 789		
<b>Trading name or registered business name</b>	The Working Place		
<b>ABN</b>			
<b>Contact person</b>	Paula Jones (Director)		
<b>Postal address</b>	100 The Avenue		
<b>Suburb</b>	Melbourne		
<b>State or territory</b>	Vic	<b>Postcode</b>	3000
<b>Phone number</b>	(03) 9876 5432	<b>Fax number</b>	(03) 9876 5431
<b>Mobile number</b>	0401 234 567		
<b>Email address</b>	p.jones@theworkingplace.com		
<b>What industry is the employer in?</b>	Retail		

Note: If you provide a mobile number the Commission may send reminders to you via SMS.

**Has the Applicant given the correct legal name of the employer in their unfair dismissal application (Form F2)?**

Yes

No

**Does the employer need an interpreter?**



If the employer needs an interpreter (other than a friend or family member) in order to participate in conciliation, conference or hearing, the Commission will provide an interpreter at no cost.

Yes – Specify language

No

**Does the employer require any special assistance at the hearing or conference (eg a hearing loop)?**

Yes – Please specify the assistance required

No

**Does the employer have a representative?**



A representative is a person or organisation who is representing the employer. This might be a lawyer or paid agent, an employer association or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative's details below

No – Go to question 1

**Employer's representative**



These are the details of the person

Fill in this section if you are being represented by an external lawyer or other paid agent.

You don't have to be represented in cases at the Commission. About half of employers choose not to have a representative for unfair dismissal cases.

<b>Name of person</b>			
<b>Firm, employer organisation or company</b>			
<b>Postal address</b>			
<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	
<b>Phone number</b>		<b>Fax number</b>	
<b>Email address</b>			

**Is the employer's representative a lawyer or paid agent?**

Yes

No

**1. The Applicant's employment**

**1.1 Did an award or an enterprise agreement apply to the Applicant?**



The Fair Work Ombudsman can help you find out which, if any, award or enterprise agreement applies.

You can use the [Find my award](#) tool on the Fair Work Ombudsman's website

Yes

No

If you have answered Yes – Provide the title of the award or enterprise agreement.

General Retail Industry Award

**1.2 What date did the Applicant begin working for the employer?**

12 May 2017

**1.3 What date did the employer notify the Applicant of their dismissal?**

16 September 2019

This is the date you first told the applicant you were dismissing them. This could have been by email, over the phone or in person. If they weren't dismissed, tell us this.

**1.4 What date did the dismissal take effect?**

She last came into work on 16 September 2019.

This is usually the last day they worked. It might be later if they were still getting paid after they stopped going to work, for example, if they were on paid leave.

**1.5 What was the Applicant's gross weekly wage at the time of the dismissal?**

\$49,800 per annum plus super

**1.6 In addition to their salary or wages, was the Applicant entitled to any other monetary amount(s) or any non-monetary benefit(s) at the time of the dismissal?**

Yes

No

If you answered Yes – Please provide details (for example provision of a vehicle, mobile phone etc.)

**1.7 How many employees did the employer have at the time the Applicant was dismissed?**



Count the number of employees either at the time the employer gave the Applicant their notice or the time immediately before their dismissal, whichever was earlier. Count all full-time and part-time employees plus any casuals who are engaged on a regular and systematic basis.

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**2. Jurisdictional objections**

**2.1 Does the employer have any jurisdictional or other objections to the application?**



Jurisdictional objections relate to why an Applicant is not eligible to make an application to the Commission. An objection is not simply that you think that the Applicant's dismissal was fair. The Commission's [Unfair Dismissals Benchbook](#) has more information on jurisdictional objections.

Yes

No—Go to question 3

**2.2 If you answered yes to question 2.1 – On what basis does the employer object? If the employer objects on multiple grounds you can select more than one from the list below:**

- The application is out of time (ie lodged more than 21 days after the dismissal took effect)
- The Applicant was not an employee
- The Applicant was not dismissed
- The dismissal was a case of genuine redundancy
- The Applicant's employment does not meet the minimum employment period
- The Applicant earned more than the high income threshold (currently \$148,700 per annum)
- The employer is a small business employer and the employer complied with the Small Business Fair Dismissal Code
- Other

Explain why the employer objects on these grounds

It says on your website that an unfair dismissal claim has to be made within 21 days.  
Jane didn't send her application in until 10 December.  
That's nearly two months after she last worked for us.

### 3. Dismissal

#### 3.1 What were the reasons for the dismissal?



Using numbered paragraphs, specify the reason(s) for dismissing the Applicant. Attach any letter of dismissal and/or separation certificate given to the Applicant. Note that the Commission may send copies of any documents you provide to the Applicant. Attach extra pages if necessary.

1. Jane was consistently late to work over the course of 3 weeks.
2. It was our busiest period, and she opened the shop, so those late mornings lost us valuable business.
3. We spoke to her about it and gave her the option of doing afternoon shifts instead so it would be easier for her to make it in time, but she didn't want to.
4. On 9 September we had a chat about her attitudes and behaviours at work. We agreed that she should probably find a job that suited her better.
5. On her last day, she acted as if we hadn't had that conversation on the 9th. We said we would accept her resignation and give her a good reference to help her find a new job. She refused, so we told her that we'd still have to let her go and she left.

#### 3.2 What is the employer's response to the Applicant's contentions?



Using numbered paragraphs, set out the employer's response to the Applicant's contentions as to why the dismissal was unfair.

1. She was late more than 5 times.
2. We told her that it was a concern and offered her some alternatives to try and fix it (as listed above).
3. We think we made it very clear that being at work on time was a requirement of the job.
4. We tried to be nice by having an informal chat about the problem, rather than giving her a formal warning. But the chat was clearly a warning. We also offered her 2 weeks before she finished up, which we didn't have to because she was a casual.
5. Other people have been late occasionally, but for good reasons and not as often.

Attach additional pages if necessary.

## Disclosure of information

The Commission may provide a copy of this response and any attachments to the other parties to this matter. This includes:

- the Applicant
- any legal representatives.

## Consent to contact by researchers

The Commission undertakes research with participants in unfair dismissal matters to ensure a high quality process. Some research may be undertaken by external providers.

Do you consent to the contact details provided on page 1 of this form being provided to an external provider of research services for the sole purpose of inviting you to participate in this research?

Yes

No

## Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

<b>Signature</b>	Paula Jones
<b>Name</b>	Paula Jones
<b>Capacity/Position</b>	
<b>Date</b>	18 December 2019

If you have completed and signed the form yourself, leave the Capacity/Position field blank.

If someone else has filled in the form for you, their signature and name goes in this section. Their **capacity** or **position** is the relationship they have to you. For example, a paid representative.



If you are not the employer and are completing and signing this form on the employer's behalf, include an explanation of your authority to do so in the Capacity/Position section above.

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**