About the F3 Employer Response Form

Unfair Dismissal

About unfair dismissal

To make an unfair dismissal remedy application to the Fair Work Commission (the Commission), an employee must be covered by the national unfair dismissal laws and must be eligible to make an application. Information about unfair dismissals can be found in the Commission’s Guide—Unfair Dismissal.

To be eligible to apply, an employee must have worked for the minimum employment period and, in some cases, earn less than the high income threshold. The Commission’s Unfair Dismissals Benchbook has information on each of the eligibility criteria.

The Commission will consider the following when assessing an unfair dismissal application:

- has the employee been dismissed and
- was the dismissal harsh, unjust or unreasonable and
- any objection the employer may raise.

You can object to an application for an unfair dismissal remedy on a number of jurisdictional grounds. A jurisdictional objection is not simply that you think the dismissal was fair. For example, you may object because you don’t think the employee is eligible to make the application. For more information about objecting to an application please see the Commission’s unfair dismissal guides.

If your business is a small business (employing fewer than 15 people) you may be required to show that you have followed the Small Business Fair Dismissal Code.

Who can use this form

Use this form if you are an employer and the Commission has served you with an application for an unfair dismissal remedy (Form F2).

If you have been served with two or more Form F2 applications for an unfair dismissal remedy concerning the same circumstances (such as where the employment of a number of employees is terminated at the same time), you can lodge one response for all of the applications if your response is the same for each application. If necessary, you can attach details of each individual applicant to whom your response relates (including name, date of commencement and entitlements) in a separate sheet.

Lodgment and service of your completed form

1. **Lodge this response form and any supporting documents** with the Commission within 7 calendar days after you were served with the Form F2 application. You can lodge by post, by fax or by email or in person at the Commission’s office in your State or Territory. You can also lodge online using the Commission’s eFiling service at www.fwc.gov.au.

2. **Serve a copy of your response and any supporting documents** on the Applicant within 7 calendar days after you were served with the Form F2 application. You can send this response and supporting documents to the Applicant in a number of ways, including by email or by express or registered post. Make sure you send the documents to the email or postal address specified in the Form F2 application.
Where to get help

Commission staff & resources
Commission staff cannot provide legal advice. However, staff can give you information on:

• processes in the Commission
• how to make a response to the Commission
• how to fill out forms
• where to find useful documents such as legislation and decisions
• other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form

⚠️ This icon appears throughout the form. It indicates information to help you answer the question following.

Legal or other representation

Representation is where another person (such as a lawyer, union official or family member) speaks or acts on your behalf in relation to your matter. There is no requirement for you to be represented when you appear at the Commission. You will need the permission of the Commission member dealing with your case if you wish to be represented by a lawyer or paid agent unless that person is:

• employed by a union or employer organisation, a peak union or peak employer body, or
• one of your employees or officers (if you are an employer).

If you decide to represent yourself in proceedings you will need to make sure you are well prepared.

Glossary of common terms

Applicant—This is the person or organisation that is making an application.

Jurisdictional objection—This is a type of objection a Respondent can raise to an application. A Respondent can make this kind of objection if they think that the Commission, for a technical or legal reason, cannot hear the matter.

Party—A party is a person or organisation involved in a matter or case that is brought to the Commission.

Respondent—The person or business responding to an application made by an Applicant.

Service—Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the Fair Work Commission Rules 2013 deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and may disclose this information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the Privacy Notice for this form, or ask for a hard copy to be provided to you.

⚠️ Remove the cover sheet and keep it for future reference—it contains useful information.
Form F3—Employer Response to Unfair Dismissal Application

This is a response to an unfair dismissal remedy application lodged at the Fair Work Commission in accordance with Part 3-2 of the *Fair Work Act 2009*.

**The Applicant**

These are the details of the person who is making the application. You can find this information on the application Form F2.

| First name(s) | Jane |
| Surname       | Smith |
| Commission matter number | U2014/12345 |

**The Respondent**

These are the details of the business or organisation responding to the application.

<table>
<thead>
<tr>
<th>Legal name of business</th>
<th>Jones Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trading name of business</td>
<td>The Working Place</td>
</tr>
<tr>
<td>ABN/ACN</td>
<td>12 345 678 910</td>
</tr>
<tr>
<td>Contact person</td>
<td>Jack Williams (National HR Manager)</td>
</tr>
<tr>
<td>Postal address</td>
<td>100 The Avenue</td>
</tr>
<tr>
<td>Suburb</td>
<td>Melbourne</td>
</tr>
<tr>
<td>State or territory</td>
<td>VIC</td>
</tr>
<tr>
<td>Postcode</td>
<td>3000</td>
</tr>
<tr>
<td>Phone number</td>
<td>(03) 0000 0000</td>
</tr>
<tr>
<td>Fax number</td>
<td>(03) 1111 1111</td>
</tr>
<tr>
<td>Mobile number</td>
<td>9876 543 210</td>
</tr>
<tr>
<td>Email address</td>
<td><a href="mailto:J.Williams@workingplace.com">J.Williams@workingplace.com</a></td>
</tr>
<tr>
<td>What industry is the Respondent in?</td>
<td>Retail</td>
</tr>
</tbody>
</table>

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

**Does the Respondent need an interpreter?**

If the Respondent requires 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

[ x ] No
Does the Respondent require any special assistance at the hearing or conference (e.g. a hearing loop)?

[ ] Yes—Please specify the assistance required
[ ] No

Does the Respondent have a representative?

A representative is a person or business who is representing the Respondent. This might be a lawyer, an employer association or a family member or friend who will speak on behalf of the Respondent. There is no requirement to have a representative.

[ ] Yes—Provide representative’s details below
[ ] No—Go to question 1

Respondent’s representative

These are the details of the person or business who is representing the Respondent.

<table>
<thead>
<tr>
<th>Name of person</th>
<th>Not represented</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firm, employer organisation or company</td>
<td></td>
</tr>
<tr>
<td>Postal address</td>
<td></td>
</tr>
<tr>
<td>Suburb</td>
<td></td>
</tr>
<tr>
<td>State or territory</td>
<td>Postcode</td>
</tr>
<tr>
<td>Phone number</td>
<td>Fax number</td>
</tr>
<tr>
<td>Email address</td>
<td></td>
</tr>
</tbody>
</table>

1. The Applicant’s employment

1.1 Was the Applicant covered by an award or an enterprise agreement?

[ ] Yes
[ ] No

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

If you have answered yes to question 1.1—Please provide the title of the award or enterprise agreement.

General Retail Industry Award 2010

1.2 What date did the Applicant begin working for you?

12 January 2014
1.3 What date did you notify the Applicant of their dismissal?

27 June 2014

1.4 What date did the dismissal take effect?

27 June 2014

1.5 What was the Applicant’s wage or salary at the time of the dismissal?

$41,000

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 alleged dismissal?

[ ] Yes

[ x ] No

If you answered yes to question 1.6—Please provide details (for example provision of a vehicle, mobile phone etc.)

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

Count the number of employees either at the time you 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 Do you have any jurisdictional or other objection(s) to the application?

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

[ ] Yes
[ ] No

2.2 On what basis do you object? If you object on multiple grounds you can select more than one from the list below:

[ ] The application is out of time (i.e. 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 $129,300 per annum)
[ ] The business is a small business, and the dismissal was consistent with the Small Business Fair Dismissal Code
[ ] Other

Explain why you object on these grounds

1. The applicant was not employed for a period of 6 months, being employed for 5 months and 15 days.
2. The applicant lodged their application outside of 21 calendar days.
3. The Applicant abandoned her employment by not attending for 5 days and refusing to answer her phone, the only contact in this time was with her partner who could not tell us why she was not attending work. The applicant did not provide doctor’s certificates or other evidence of sick leave. We dispute that the applicant, as she stated at paragraph 2, called the respondent each day to say she was sick.
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 employee. Note that the Commission may send copies of any documents you provide to the Applicant. Attach extra pages if necessary.

1. The Applicant was dismissed because they were caught stealing from the cash register. An amount of $5,000 went missing over a period of 2 months.

2. The Applicant was also midway through a counselling process relating to their inability to attend work on time, numerous “smokos” and extended lunch breaks.

3.2 What is your response to the Applicant’s contentions?

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

1. Valid Reason: Theft of such a significant amount is impossible to ignore and was the main reason we dismissed the employee. The money was removed from the till on the shifts that the Applicant worked. The final counts on those dates were either out or not undertaken at all. This is a substantial breach of procedure.

2. The Applicant was also counselled on their inability to attend work on time, frequently arriving a few minutes past nine, taking two or three toilet breaks or “smokos” before lunch, having an hour for lunch two or three times a week and then beginning the close the shop procedure so that she would be out the door right on 5 o’clock.

3. The counselling involved me holding a meeting with the applicant, where I explained that the situation was a concern and presented her with a letter (attached) stating
that I would like her to try to be more punctual at work.

4. The applicant was told that I wanted to have a formal meeting with her, on the 22nd of June to discuss a serious matter (I wanted to discuss the allegations of theft) and she left the office and did not return to work the next 5 days.

5. At paragraph 4, the applicant states that she was dismissed so that John Jones’ wife could be employed. Mrs Jones was hired into the vacant position however we deny that this is the reason why the Applicant was dismissed.

6. Told of reason: The Applicant left work early and despite numerous requests as to why she was off work, her partner gave a vague indication that she was “off sick” but when asked about doctor’s certificates or when she would call, said they didn’t know.

7. We could not contact the Applicant to arrange a meeting to discuss the termination and she was not answering her phone. Mr Jones attempted to call her on two occasions. Finally we sent the applicant a letter by registered mail and two days later Mr Jones sent a text to confirm the termination as we still had not heard from the Applicant.

8. Chance to respond: In cases of serious misconduct the applicant can be instantly dismissed. We dismissed the Applicant for serious misconduct - theft.

9. Support person: The Applicant did not have a support person in the meetings.

10. Warnings: The Applicant was counselled in relation to the lateness and breaks. She was given a written letter that told her “We would like to see your punctuality improve.”

11. Size of the Employer and HR: We believe that the respondent complied with all procedures relevant to a termination for serious misconduct.

12. Other: The Applicant mentions at paragraph 10 that the respondent has not paid her correctly, this is incorrect. Notice is not required for matters of serious misconduct.
Disclosure of information

[    ] I consent to my contact details being provided to an external provider for the purposes of participating in research. The Fair Work Commission undertakes research with participants in unfair dismissal matters to ensure a high quality process. Some research may be undertaken by external providers on behalf of the Fair Work Commission.

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.

<table>
<thead>
<tr>
<th>Signature</th>
<th>J. Williams</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Jack Williams</td>
</tr>
<tr>
<td>Capacity/Position</td>
<td>HR Manager</td>
</tr>
<tr>
<td>Date</td>
<td>1 August 2014</td>
</tr>
</tbody>
</table>

Where this form is not being completed and signed by the Respondent, include the name of the person who is completing the form on their behalf in the Capacity/Position section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS