

## **OUR 10 TOP TIPS**

**FREE DOWNLOAD** 



In our over 15 years in business, HR Culture has been supporting small and medium business owners to align their team members with operational tasks that support the growth and strategic goals of their businesses. We work with our clients to build their workplace culture to be one that supports their purpose and ensures buy-in and productivity to make time and behaviour count.

But as you will know and have experience as a business owner or manager, it's not always easy. Sometimes we do employ a team member who either doesn't fit our workplace culture, doesn't deliver the outcomes we need, or may be rude and obnoxious to others at work. This may be for all sorts of reasons, but fundamentally that conduct or performance falls outside of our Code of Conduct, or obligations in your employment contracts, or

even conduct that is outside of your published company policies.

Termination of employment can be a minefield for small and medium business owners or managers to navigate and ensure you are making decisions and taking action that is compliant with a variety of industrial relations legislation, including but not limited to the Fair Work Act, state-based Anti-Discrimination Acts, and the Work Health and Safety Act relevant in your state.

Before you risk an unfair dismissal claim by your newly terminated ex-employee, slow down (and sometimes calm down), and reach out to an HR expert to truly consider your options and risks. It's essential to approach your unique situation with care and consideration.

HERE ARE SOME THINGS YOU SHOULD AVOID DOING BEFORE TERMINATING AN EMPLOYEE:





## LACK OF CLEAR **DOCUMENTATION**

## >>> NUMBER ONE

Don't terminate an employee without having clear and well-documented reasons for the decision. Ensure that you have evidence of performance issues, policy violations, or any other justifiable cause.

Our philosophy and advice to minimise risk is 'If it's not written down it didn't happen!'. Evidence is key.

## **IGNORING YOUR OWN COMPANY POLICIES**

## >>> NUMBER TWO

- · Avoid disregarding your company's policies and procedures for termination. Adhere to the established protocols to ensure a fair and consistent process.
- · Don't keep your company policies in a drawer or out of sight of your employees. You need evidence that employees have read and understood your policies so they know what is expected of them and you can prove it!

Take this opportunity to check your own company policies are in order and up to date. If it's been a few years since you reviewed your policies, there have been multiple amendments to legislation over the past few years so it's probably time for a thorough review.







## **NO COMMUNICATION** OR FEEDBACK

## >>> NUMBER THREE

- Don't terminate an employee without providing clear communication and feedback throughout their employment. Regular performance evaluations and feedback sessions can help employees understand expectations and areas for improvement.
- · If something has gone wrong or your employee has stepped outside of your behaviour and conduct standards, you MUST be transparent and tell them.

In our experience, many employers or managers are uncomfortable advising their employees of poor conduct or performance for fear of repercussions or emotional outbursts, or in small family businesses it could be because you are all 'friends'. There is a fine line between being an employer and being a friend, often making it difficult to provide feedback.

## **EXPERT ADVICE**

76% of Unfair Dismissal cases involve monetary compensation paid by the employer The great majority of cases are settled by conciliation and mediation

## **IGNORING LEGAL OBLIGATIONS**

## >>> NUMBER FOUR

In Australia, small and medium businesses are typically under the legal framework provided by the Fair Work Act 2009. An entitlement of any terminated staff member is to allege unfair dismissal within 21 days of their termination.

If you terminate a staff member and avoid procedural fairness you are exponentially heightening your risks of a claim. Make sure that the termination process complies with employment laws, anti-discrimination laws, and any contractual agreements in place, and ensure your company policies and procedures reflect these as well.





## **ISOLATION FROM DECISION-MAKING**

## >>> NUMBER FIVE

• Avoid making the termination decision in isolation. Consult with relevant stakeholders, such as HR or your management team, your Business mentor or coach, and your trusted circle, to ensure that the decision is fair, justified, and aligned with company values.

## Our advice - call us before you terminate!

**SKIPPING DUE PROCESS** 

## **NUMBER SIX**

- · Don't skip due process. Your company should have a progressive discipline policy, and follow the appropriate steps to give the employee an opportunity to improve before considering termination.
- If you are an employer with less than 15 employees you are considered a small business by Fair Work Australia and are recommended to follow the Small Business Fair Dismissal Code.





## During 2021-2022 the Fair Work Commission (FWC) received:

- 34122 claims applications across all categories
- Unfair dismissal claims were over 38% of these at 13096

## >>> NUMBER SEVEN

- Don't underestimate the emotional impact of termination. Be emotionally prepared to handle the employee's reactions and approach the situation with empathy and sensitivity.
- It is always our advice to be firm, fair and clear in your communications, needs and expectations. Plan your discussion, have the appropriate evidence, and know what your desired outcome from any meeting is.
- When emotions are high, we can make poor or rash decisions that increase our risks of saying or doing things we are not planning to.

# LACK OF EMOTIONAL PREPARATION

Unfair Dismissal is when an employee is dismissed from their job in a harsh, unjust or unreasonable manner and/or it was not consistent with the Small Business Fair Dismissal Code (in the case of employees of a 'small business') or it was not a case of genuine redundancy.





## **DISCUSSING YOUR DECISION PREMATURELY**

## >>> NUMBER EIGHT

One way to drive dysfunction in your team and break trust is by talking to others in your team about your termination decision before informing the affected person. These discussions and decisions are impacting individuals in a very intimate way, you have a responsibility to maintain confidentiality and handle the matter discreetly. This also minimises risks to your business reputation.

The median payout for unfair dismissal cases is 5-7 weeks pay The maximum amount FWC can order is the lower of the 2 amounts:

- half of the employee's annual wage (26 weeks) or
- the compensation cap which is \$83750 for the 2023-24 financial year (this amount changes on 1 July ech year)

## >>> NUMBER NINE

Don't neglect to have a transition plan in place. Consider the logistics of the employee's departure, including the return of company property and keys, final payroll details and when the employee can expect termination payment, any separation certificates or statements of service you are willing to provide, and any necessary handover and how that can be achieved.

**DON'T BE RASH** HAVE A TRANSITIO OR OUTBOARDIN

## THE MOST FREQUENT REMEDY IN UNFAIR DISMISSAL **HFARINGS**

- EMPLOYEES REINSTATEMENT (GIVING THEIR JOB BACK)
  - EMPLOYEE COMPENSATION



## **NOT CONSIDERING ALTERNATIVES**

## >>> NUMBER TEN

Avoid terminating an employee without considering alternative solutions. Have you communicated clearly and transparently and provided the best possible opportunities for them to improve? Have you explored options such as additional training, a change in responsibilities, or a transfer to a different job role before resorting to termination?

Remember, the termination process should be conducted professionally, ethically, and with the well-being of the employee and your organisation in mind. Taking the time to handle the situation carefully and thoughtfully (and not when your emotions are high) can help maintain a positive work environment and minimise potential legal risks.

At HR Culture Pty Ltd we support our clients by having their bests interests in HR matters always at the front of our minds. We are conscious of the risks client decisions may have when it comes to termination, and are always honest and transparent about our concerns.



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Do not use Redundancy as a solution for underperforming employees! We might all be tempted from time to time to remove employees from our business by making their positions redundant and paying them out. This decision may not protect you from an unfair dismissal case if the redundancy is deemed to not be a genuine redundancy.

Consider - is the person's job no longer required to be performed by anyone in the business due to a change in operational requirements or for financial or economic reasons?