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LawTalk Blog



Employment Law – what does general protections mean?

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All employees should feel safe and protected while at work. Unfortunately, often during employment an employee may feel scared or worried in their job; such as prior to following up their rights with their employer, or due to discrimination in the workplace because of family or caring responsibilities or that they might be terminated for joining a Union.

This is where the "General Protections" provisions of the *Fair Work Act 2009* can provide protection to employees.

The General Protections protects employees in three main areas:

Adverse Action

An employee must not suffer any "adverse action" for pursuing any rights or entitlements available under workplace law. This may include things like lodging a worker's compensation claim or simply asking your employer if you have been paid the correct rate of pay.

"Adverse Action" is defined as any action taken by the employer to alter the employee's position to his or her detriment and includes dismissal, discriminating between employees and injuring the employee in his or her employment.

Employees must feel comfortable to raise concerns, pursue entitlements and make complaints. You may have a question for your employer in relation to your work contract or enterprise bargaining agreement. You may wish to make a request for flexible working arrangements due to caring responsibilities or you may need to inform your employer about some unacceptable behaviour

occurring in the workplace.

Your employer cannot take any adverse action against you for raising a reasonable and legitimate concern in your workplace or pursuing your entitlements under a workplace law.

Discrimination

An employee must not be discriminated against on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion political opinion, natural extraction or social origin. An employer cannot take adverse action against a person on the basis of these characteristics of an employee.

Unlawful Termination

An employer must not terminate an employee for any of the following reasons:

- a temporary absence due to illness or injury;
- carrying out voluntary emergency management activity;
- participation in Union activities or non-membership of a Union;
- acting as a representative of employees;
- filing a complaint; or
- on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status family responsibilities, pregnancy, religion, political opinion, national extraction or social origin or an employees absence from work during maternity or other parental leave.

Once an employee has made a claim under General Protections law, the responsibility is on the employer to establish that the adverse action, discrimination or unlawful termination did not occur for the reason claimed by the employee. There is a 21 day time limit on all claims under the General Protections provisions which was recently changed to be consistent with the unfair dismissal time limit.

If you feel your employer has taken adverse action against you for a prohibited reason, please do not hesitate to contact our Industrial Relations Team at Andersons.

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