LawTalk Blog

How does a high income affect unfair dismissal claims?

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From 1 July 2017 the high income threshold has increased to $142,000 per annum. The high income threshold affects how modern awards apply to employees. But importantly, it is relevant to whether or not an employee can access unfair dismissal protections.

Generally speaking, an employee whose employment has been terminated may be able to bring an application before the Fair Work Commission if they can show that the termination was harsh, unjust or unreasonable (by looking at all the facts surrounding the termination) and the termination was not a case of genuine redundancy.

There are some exceptions to this rule, for example, if the employer is a small business with less than 15 employees, they may be exempted from the unfair dismissal provisions of the Federal *Fair Work Act*.

The high income threshold is indexed annually; so on 1 July of each year, the threshold changes.

The high income threshold is important because it impacts on 3 main industrial relations entitlements:

1. If an employee earns more than the high income threshold and they aren't covered by a modern award or enterprise agreement, they are precluded from making an unfair dismissal claim;
2. If an employee is in fact covered by a modern award and has agreed to a written guarantee of annual earnings that is more than the high income threshold, they will not be eligible for entitlements under the applicable modern award. However, they can make an unfair dismissal claim;

3. The compensation available to an employee who has been unfairly dismissed is capped at half the value of the high income threshold or 6 months of the employee's wage, whichever is less. Therefore, the maximum compensation that an unfairly dismissed employee can obtain is now half of $142,000, or $71,000.

For completeness, modern awards and enterprise agreements are documents that set out the minimum pay and conditions that apply in industries, occupations or workplaces.

Determining whether someone falls above the high income threshold in itself can become a complex exercise. Technically, an employee is affected by this if their 'earnings' are more than the high income threshold. To calculate 'earnings', you need to include:

1. Wages;
2. Money paid on the employee's behalf, including salary sacrifice arrangements and/or superannuation top-ups (but excluding superannuation guarantee payments);
3. The agreed value of other benefits.

For example, if you earn wages of $141,000 per year, you would arguably fall under the high income threshold. However, if your work provides you with a laptop and mobile phone valued at $2,000 in addition to your wages, you will fall above the threshold.

To make matters more complicated, certain things do not count towards calculating an employee's earnings, including but not limited to:

- Compulsory superannuation contributions;
- Reimbursements (eg, meal allowances or living away from home allowances);
- Payments that cannot be set in advance (for example, bonuses, commission or overtime).

This is important because if you earn say $138,000 per year but then are eligible for a $5,000 bonus at Christmas time, or you make some commission during the year, this will not push you above the high income threshold.

Irrespective of your earnings, if you feel that you have been unfairly dismissed at work, you should seek experienced legal advice from a solicitor who practices in employment law.
