COUTTS
LAWYERS & CONVEYANCERS

# COUTTS GUIDE TO Construction Employment Law

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# Your Employment Experts

**In the realm of Building and Construction Law, our team is your expert guide through every legal challenge.**

With a deep understanding of construction-related litigations and disputes, our Building and Construction Lawyers provide solutions, ensuring your projects are not just compliant, but also positioned for success.

A specialist Building and Construction Lawyer can provide invaluable guidance and representation to ensure that your rights and obligations are clearly understood and upheld throughout any dispute.

Trust Coutts to construct a legal framework that supports and protects your endeavours in the construction industry.

**Melissa Care**
Partner and
Head of the Litigation & Disputes Team

Liability limited by a scheme approved under Professional Standards Legislation.

# UNFAIR DISMISSAL Claims

## WHAT CONSTITUTES AN UNFAIR DISMISSAL?

An unfair dismissal occurs when an employee is terminated without a valid reason, or when the termination process is procedurally unfair. This can include lack of notice, inadequate warnings, or not providing the employee with an opportunity to respond to allegations against them.

### COMMON MISTAKE

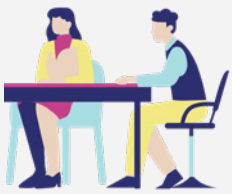
Failing to document the reasons for dismissal and the process followed.

### MISCONCEPTION

Employers can dismiss employees without providing a valid reason.

### CONSEQUENCE

Lack of evidence can make it difficult to defend against unfair dismissal claims, potentially leading to costly legal disputes and compensation payouts.



### REALITY

Employers must have a valid reason for dismissal and follow a fair process to minimise the risk of unfair dismissal claim.

## PREVENTING UNFAIR DISMISSAL CLAIMS

1. Develop clear policies and procedures for employee conduct, performance management, and termination processes.
2. Train managers and supervisors to handle employee issues and dismissals fairly and consistently.
3. Communicate expectations and performance standards to employees, including potential consequences for not meeting these standards.
4. Regularly review and update workplace policies to align with current laws and best practices.

### HOW COUTTS CAN HELP

- ✓ Assessing the merits of the claim
- ✓ Advising on appropriate response strategies
- ✓ Representing your business in mediation and court proceedings

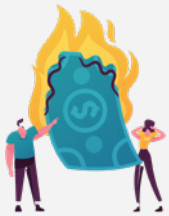
# GENERAL PROTECTION CLAIMS /Adverse Action Claims

## WHAT IS A GENERAL PROTECTION CLAIM?

A general protection claim arises when an employee alleges they have been subjected to adverse action. (e.g., dismissal, demotion, or discrimination) due to exercising a workplace right, such as taking leave, making a complaint, or participating in industrial activities.

### COMMON MISTAKE

Ignoring or not taking general protection claims seriously.



### CONSEQUENCE

Failure to address claims properly can result in legal action, financial penalties, and reputational damage.

### MISCONCEPTION

General protection claims only apply to dismissals.

### REALITY

General protection claims can involve various adverse actions:

- ✓ Demotion
- ✓ Discrimination
- ✓ Retaliation for exercising workplace rights.

## PREVENTING GENERAL PROTECTION/ADVERSE ACTION CLAIMS

1. Develop clear policies outlining employee rights and responsibilities, as well as the company's commitment to upholding these rights.
2. Train managers and supervisors on the importance of respecting workplace rights and avoiding adverse actions.
3. Encourage open communication between employees and management to address concerns and prevent misunderstandings.
4. Regularly review company practices to ensure they are in compliance with the Fair Work Act and other relevant legislation.

### HOW COUTTS CAN HELP

- ✓ Evaluating the validity of the claim
- ✓ Developing a strategy to address the claim
- ✓ Representing your business in negotiations and legal proceedings

# DISCIPLINARY Processes

## WHAT IS THE IMPORTANCE OF HAVING A CLEAR DISCIPLINARY POLICY?

A clear disciplinary policy ensures that employees understand the consequences of misconduct and poor performance, and helps employers maintain a fair and consistent approach to addressing such issues. It also reduces the risk of legal disputes arising from perceived unfair

### COMMON MISTAKE

Inconsistently applying disciplinary policies and procedures.

### CONSEQUENCE

Inconsistent treatment of employees can lead to claims of unfair treatment, discrimination, and potential legal disputes.

### MISCONCEPTION

Employers can take immediate disciplinary action without investigation

### REALITY

Employers must follow a fair and transparent process, including investigating allegations, providing the employee with an opportunity to respond, and considering all relevant factors before taking

## PREVENTING ISSUES IN DISCIPLINARY PROCESSES

1. Establish and clearly communicate disciplinary policies and procedures to all employees.
2. Ensure disciplinary actions are consistently applied, well-documented, and based on objective criteria.
3. Train managers and supervisors on how to conduct fair and thorough investigations, as well as how to handle disciplinary actions.
4. Provide employees with the opportunity to respond to allegations and present their side of the

### HOW COUTTS CAN HELP

- ✓ Reviewing and updating your existing disciplinary policies
- ✓ Providing guidance on conducting investigations and disciplinary meetings
- ✓ Advising on the legal implications of disciplinary actions

# EMPLOYMENT Contracts

## WHAT SHOULD BE INCLUDED IN AN EMPLOYMENT CONTRACT?

An employment contract should include key terms and conditions of employment, such as job title, duties, hours of work, remuneration, leave entitlements, termination provisions, and any applicable award or enterprise agreement provisions.

### COMMON MISTAKE

Using generic, one-size-fits-all employment contracts without tailoring them to individual employees and

### CONSEQUENCE

Poorly drafted or noncompliant contracts can expose the business to legal disputes, financial penalties, and difficulties enforcing

### MISCONCEPTION

Oral agreements are not enforceable employment contracts.

### REALITY

Oral agreements can be legally binding, but written contracts are recommended to avoid misunderstandings and ensure compliance with Australian laws.

## PREVENTING ISSUES WITH EMPLOYMENT CONTRACTS

1. Use legally compliant and up-to-date employment contracts tailored to each employee's role and responsibilities.
2. Clearly define the terms and conditions of employment, including wages, hours, leave entitlements, and termination provisions.
3. Obtain legal advice when drafting or updating employment contracts to ensure compliance with current laws and regulations.
4. Communicate and explain the terms of employment contracts to new hires, and provide them with a copy for their records.

### HOW COUTTS CAN HELP

- ✓ Reviewing and updating your existing disciplinary policies
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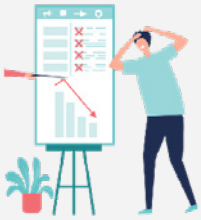
# WORKPLACE BULLYING & Discrimination Claims

## WHAT IS THE DIFFERENCE BETWEEN BULLYING & DISCRIMINATION?

Workplace bullying involves repeated, unreasonable behaviour directed towards an employee that creates a risk to their health and safety. Discrimination occurs when an employee is treated less favourably based on a protected attribute, such as age, gender, race, or disability.

### COMMON MISTAKE

Not having clear policies and procedures in place to prevent and address bullying and discrimination.



### CONSEQUENCE

The absence of policies and procedures can result in a toxic work environment, increased claims, low employee morale, high staff turnover, and potential legal action.

### MISCONCEPTION

Employers are only responsible for addressing bullying and discrimination when a formal complaint is

### REALITY

Employers have a duty to proactively maintain a safe and inclusive work environment, which includes addressing any incidents or allegations of bullying or discrimination, regardless of whether

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Adriana Care
Managing Partner

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