



Employment Issues

Some of the most commonly asked questions about Employment Issues are discussed on this page.

1. What if my employer asks me to resign in lieu of being terminated?

If your employer threatens termination of employment but provides you with an alternative to resign then it is important that you seek immediate legal advice. You should not sign any documents without first obtaining legal advice and do not make any admissions to your employer in relation to your conduct or performance.

2. What should I do if I am requested to attend a disciplinary meeting by my employer?

Disciplinary meetings can be an extremely stressful situation to be faced with. If you are required to attend such a meeting then you must make sure that proper minutes of the meeting are taken by a friend or colleague. The roll of the friend or colleague is not to participate in the meeting but to simply take accurate notes of what is said. You should not agree to the meeting being either taped or videoed. You should not allow yourself to be pressured into a resignation or accepting a demotion or change of your duties. If your employer is pressuring you into accepting these sorts of outcomes then you should seek an adjournment prior to making any decision so that you can obtain urgent legal advice. Prior to the commencement of any meeting you should request your employer provide you with a written outline of the agenda and full details of any allegations that they are making. If they refuse to provide this to you, then you should submit to your employer in writing at the commencement of the meeting a letter noting that your request has been refused. At the end of the meeting you should request your employer provide you with confirmation of the outcome of the meeting.

3. How long do I have to bring an unfair dismissal claim?

If you believe you have been unfairly dismissed from your employment then:

- (a) if you were covered by a State Award, an unfair dismissal application needs to be made to the Industrial Relations Commission of New South Wales within 21 days of the date of termination of your employment.
- (b) If you are covered by a Federal Award, then an application needs to be made to the Australian Industrial Relations Commission also within a 21 day period from the date of termination.

4. Do I have to sign an employment contract?

If you are currently employed under a verbal or written employment agreement then you are bound by the terms and conditions of that agreement. Neither you or your employer is entitled to unilaterally change the terms and conditions. Your employer can not force you to sign a new contract of employment with different terms and conditions unless you agree to do so. If you are commencing employment with an employer who offers you an



employment contract then it is important for you to obtain urgent legal advice in relation to the terms and conditions of the agreement.

5. What happens if I am made redundant?

Redundancy occurs when the employer no longer wishes the duties that the employer has been performing to be undertaken by anyone else. Most Federal and State Awards provide for a regime for calculating redundancy payments. If you are offered a redundancy package it is important that you seek immediate legal advice.

6. Am I bound by a restraint of trade clause in my employment contract?

Nowadays, many employment contracts will impose a restraint on an employee which prevents the employee from being employed by a competitor for a period after the employment relationship has ceased. Whilst the law has in the past frowned upon these restraints that prevent a person from earning a living, if the circumstances justify the restraints the Courts will now uphold it. To be enforceable the restraint must protect the legitimate interests of the employer and the extent of the restriction must be no wider than what is reasonably necessary to protect it. The test of “reasonableness” will be assessed in the terms of the extent of the activities the employee is being restrained from, the geographical area of restraint and the length of time of restraint.

If you would like further information, or require assistance, please contact us on (02) 4731 5899 or send us an email by clicking on the ‘Contact Us’ page on our website.