

Fair Work Act - 1 January 2014 changes

4 December 2013



There are several changes to the *Fair Work Act 2009* that start on 1 January 2014 as a result of the amendment laws passed in 2012 and 2013.

What are the changes to the Fair Work Act?

The changes to the Fair Work Act include:

- new anti-bullying measures
- changes to right of entry
- new consultation terms when changing regular rosters and working hours
- arbitration available for dismissal disputes at the Fair Work Commission (the Commission)
- new timeframes for unlawful termination applications
- updated superannuation terms.

Anti-bullying orders

A worker who has been bullied at work can apply to the Commission for an order to stop the bullying.

Under the Fair Work Amendment Act bullying happens when:

- an individual or group repeatedly behaves unreasonably towards a worker or group
- the behaviour creates a risk to health and safety.

Bullying doesn't include:

- one off instances of insensitivity or rudeness, or
- reasonable management activities carried out in a reasonable manner.

To apply to the Commission a worker must be working for a constitutionally covered business. A constitutionally covered business includes:

- constitutional corporations (eg. Pty Ltd and Ltd businesses)
- the Australian Government and its agencies
- sole traders, partnerships and trustees in ACT and NT
- incorporated volunteer associations that have at least 1 employee.

If a worker doesn't work for a constitutionally covered business, they can't apply to the Fair Work Commission to stop bullying. However they can get advice from the occupational health and safety body in their state or territory.

There are no time limits for making an anti-bullying application but the worker must still be working at the business.

Workers that have been dismissed can't apply for an order, however they may still be able to pursue an unfair or unlawful termination claim.

For more information on how the Commission will deal with bullying cases you can download their [case management model](http://www.fwc.gov.au/documents/resources/Anti-bullying-case-mgmt-model.pdf) [☞](http://www.fwc.gov.au/documents/resources/Anti-bullying-case-mgmt-model.pdf) (<http://www.fwc.gov.au/documents/resources/Anti-bullying-case-mgmt-model.pdf>) .

Changes to right of entry

The changes to right of entry affect the rights and powers of officials of organisations who have entry permits to enter businesses. The changes will mean that:

- interviews and discussions with employees must be held in an area that the business and permit holder agree to (lunch rooms can be used if no agreement can be reached)

- the Commission will be able to

 - deal with disputes about the frequency of visits

 - deal with disputes about accommodation and transport arrangements

 - ensure appropriate conduct by permit holders while they are receiving accommodation or being transported under the arrangements.

Employers must consult about changes to regular rosters or working hours

Modern awards and enterprise agreements must have a term that requires employers to consult with employees about changes to their regular roster or ordinary hours of work.

This means that when an employer wants to change an employee's regular roster they need to:

- give information to the employee about the change

- let the employee give their views about the change (eg. impact to family or caring responsibilities)

- consider the employee's views on the impact of the change.

The Commission will vary all modern awards to include these new terms. You can view the [proposed consultation clause](http://www.fwc.gov.au/decisionssigned/html/2013FWCFB8728.htm) (<http://www.fwc.gov.au/decisionssigned/html/2013FWCFB8728.htm>) [☞](http://www.fwc.gov.au/decisionssigned/html/2013FWCFB8728.htm) on the Commission's website.

Arbitration of general protections and unlawful termination dismissal disputes

A person who makes an application to the Commission to deal with a general protections or unlawful termination dismissal dispute can agree to have the matter arbitrated.

If both parties agree to arbitration, the Commission will make an order that the parties have to follow (eg. an order to reinstate the employee).

New timeframe for unlawful termination applications

Employees that aren't in the national workplace relations system will have 21 days (from the date of dismissal) to lodge an unlawful termination application with the Commission.

This means that all dismissal applications must be made within 21 days of the dismissal, including unfair dismissal, general protections and unlawful termination.

Changes to superannuation terms in modern awards

The *Fair Work Act 2009* has been changed in line with the [Superannuation Legislation Amendment \(Further MySuper and Transparency Measures\) Act 2012](http://www.comlaw.gov.au/Details/C2013C00393/Download) [☞](http://www.comlaw.gov.au/Details/C2013C00393/Download) (<http://www.comlaw.gov.au/Details/C2013C00393/Download>) . The changes include compulsory superannuation terms in modern awards and a review process for these terms.

For more information on [superannuation fund reviews](http://www.fwc.gov.au/index.cfm?pagename=superreview) [☞](http://www.fwc.gov.au/index.cfm?pagename=superreview) (<http://www.fwc.gov.au/index.cfm?pagename=superreview>) , visit the Commission's website.

The Fair Work Ombudsman is committed to providing advice that you can rely on.

The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional.

Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.

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