

**WORKPLACE AND  
EMPLOYMENT LAW  
ALERT**

SEPTEMBER 2006

**FOR FURTHER INFORMATION  
PLEASE CONTACT**

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## **UNLAWFUL TERMINATION ASSISTANCE SCHEME – UTAS: A GUIDE FOR EMPLOYEES**

The Federal Government's new workplace relations laws came into force on 27 March 2006. One of the changes is the introduction of the “**Unlawful Termination Assistance Scheme.**”

The Scheme allows a person who fulfils certain criteria to apply to the Department of Employment and Workplace Relations for a \$4000 grant to allow them to obtain independent legal advice about electing to bring an action for unlawful termination.

The following guide provides an overview of the eligibility criteria and process involved in applying for the grant.

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### **1. What is Unlawful Termination?**

No employee may be unlawfully terminated from their job.

Section 659(2) of the *Workplace Relations Act 1996* (Cth) states that an employer must not terminate an employee for any of the following unlawful reasons:-

- temporary absence from work because of illness or injury;
- trade union membership or participation in trade union activities;
- non-membership of a trade union;
- seeking office as, or acting or having acted in the capacity of, a representative of employees;
- the filing of a complaint, or the participation in proceedings, against an employer;
- race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- refusing to negotiate, make, sign, extend, vary or terminate an Australian Workplace Agreement (AWA);
- absence from work during maternity leave or other parental leave;
- temporary absence from work because of the carrying out of a voluntary emergency management activity.

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If you think you have lost your job for any of the above reasons, you may have been unlawfully terminated and are entitled to seek a remedy from the Australian Industrial Relations Commission (AIRC) or the Federal Court.

## 2. Overview of the Process

There are two separate applications you need to consider making. First, you must lodge an application with the AIRC for a remedy for unlawful termination. A detailed review of the AIRC process is found under paragraph 3 below.

Secondly, you can make a separate application with the Department of Workplace Relations for the legal assistance grant. This has to be done after the AIRC application and conciliation conference, which are detailed at paragraph 4 below.

## 3. Application to the AIRC

An application to the AIRC for a remedy for unlawful termination requires the lodgement of a **Form 27: Application for Relief in relation to Termination of Employment** with the AIRC. The Form can be found at the following address: [http://www.airc.gov.au/container.html?http%3A//www.airc.gov.au/procedures\\_and\\_legislation/forms.html](http://www.airc.gov.au/container.html?http%3A//www.airc.gov.au/procedures_and_legislation/forms.html).

The fee for lodging the form is \$51.40. You can lodge the form online at [www.airc.gov.au](http://www.airc.gov.au). You can contact the AIRC on 1300 799 675

Once your form has been lodged and accepted, the AIRC will refer your case to conciliation – this where you and the employer attempt to resolve your dispute.

If conciliation is unsuccessful and the AIRC considers your claim has merit (ie. could be successful) you will be issued with a certificate which allows you to take your claim to the Federal Court for an unlawful termination action.

## Time Limits

You need to lodge your Form 27 with the AIRC within **21 days** of your termination of employment taking effect. The Commissioner does have the discretion to hear your case even if you apply outside this time limit, but applying out of time is not recommended.

## 4. Applying for the Legal Assistance Grant

### Who is eligible for the grant?

You can make an application for the grant if the following apply to your situation:

- You were dismissed from your job AFTER 27 March 2006; and
- You have the AIRC certificate following a conciliation conference, and

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- Your income prior to termination was below \$915.70 gross per week or \$47,745 gross for the year.

**Note:** If your income was higher than the threshold amount, you may lodge a 'Special Consideration Form' detailing why your application should still be accepted. Please see below.

**Lodging your application for the legal grant**

Applications are made by lodging a UTAS form with the Department of Employment and Workplace Relations. The form can be downloaded from the following link: <https://www.workchoices.gov.au/ourplan/schemes/UnlawfulTerminationAssistanceSchemeUTAS.htm>

The Department's postal address is:

Department of Employment and Workplace Relations  
Unlawful Termination Assistance Scheme  
GPO Box 9879  
CANBERRA ACT

**Time Limits**

Once you receive the certificate from the AIRC, we recommend you lodge your certificate and grant application immediately. You need to lodge your grant application within **14 days** of the date on the AIRC certificate.

**Documents you need to give to the Department**

You need to attach the following to your UTAS form:

- A *copy* of the certificate from the AIRC stating your claim has legal merit and it could not be resolved by conciliation with the employer;
- *Copies* of payslips verifying your income is below the threshold amount;
- If you cannot provide payslips, you will need to provide a UTAS Statutory Declaration and other documentation verifying your income, i.e. *copies* of bank statements.

**Note:** Do NOT provide original documents to the Department as they will not be returned.

**UTAS Special Consideration Form**

If your income is above the threshold amount, you can still apply for the \$4000 grant but you need to attach the UTAS Special Consideration Form with your UTAS application. This form asks why your circumstances are such that you should be given the grant. The form also asks for you and your partner's details of income, expenditure, assets and liabilities.

The UTAS Special Consideration Form can be downloaded from the following link:

<https://www.workchoices.gov.au/ourplan/schemes/UnlawfulTerminationAssistanceSchemeUTAS.htm>

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**5. The Department makes their decision**

After receiving your application, the Department makes a decision as to whether to accept your application for the \$4000 grant. Most applicants are notified in writing of their success or otherwise within **5 working days**.

To check the progress of your application, the Department can be contacted on 1300 363 264 or at [UTAS@dewr.gov.au](mailto:UTAS@dewr.gov.au).

**If you are successful in your application for the grant**

If you are successful, you will be issued with a 'Voucher Letter', which entitles you to receive up to \$4000 worth of legal advice from any solicitor or barrister.

You will also receive a document containing the terms and conditions your solicitor or barrister must agree to and sign in order to provide advice under the Scheme. If you receive advice from a solicitor or barrister who has not signed that they agree to the terms and conditions of the grant, your Voucher Letter will be invalidated and the Department will not pay for the legal advice you have received.

A very important condition of the scheme is that the solicitor or barrister who provides you with legal advice paid for by the grant **cannot** represent you in any further court proceedings relating to your claim for unlawful termination.

This means if you receive legal advice paid for with the grant from a solicitor, that same solicitor cannot represent you when you go to court against your employer.

You may also only seek legal advice from one solicitor or barrister in relation to your unlawful termination claim if you wish the Department to pay for the advice.

**Time Limits**

The Voucher Letter expires **28 days** after the date on the AIRC certificate, but this can be extended by the Department in appropriate or special circumstances. An appropriate circumstance may be found where the Department has taken longer than 5 working days to notify an applicant of whether they were successful for the grant.

**If you are unsuccessful in your application for the grant**

If your application is unsuccessful, you may make a written request for the Department to review their decision. Applications that have been refused because the applicant earns over the threshold amount cannot however be reviewed.

You should make your request for a review to the Department as soon as you receive their decision that your initial application was unsuccessful. The decision not to provide you with the grant will be

reviewed by someone who was not involved in assessing your original application.

If you have any further information you think will help your application, you should provide it.

There is only one review right in relation to the Department's decision.

**If you are dissatisfied with the way your review has been handled**

If you are dissatisfied with the way the Department has reviewed your application, you can write to the Commonwealth Ombudsman and make a complaint. It is however advisable that a complaint is made direct with the Department first.

**6. Getting your legal bill paid**

Once you have received legal advice as to the merits of your claim for unlawful termination, both you and your legal practitioner must sign the **Services Received Declaration Form**.

Your solicitor's or barrister's invoice for the legal advice you have received is made out in your name. Your solicitor or barrister will send a copy of this invoice to the Department, which will pay your legal bill up to \$4000 including GST.

The invoice needs to include the UTAS Application Reference number provided on the Voucher Letter and the above Declaration Form.

**7. Starting an action against your employer for unlawful termination**

Even if you do not apply for the legal assistance grant or if you have been unsuccessful in obtaining it, after you receive your certificate from the AIRC you have **28 days from the date on the certificate** to bring court proceedings against your employer for unlawful termination.

You bring proceedings against your employer by completing and filing the following documents with the appropriate Registry:-

**In the AIRC**

You must file a **Form 33 – Notice of Election to proceed to further Court Action** with the AIRC. This lets the AIRC know you intend to proceed with your claim of unlawful termination in a Federal Court. A copy of the Form 33 also needs to be provided to your employer as soon as possible.

**In the Federal Court or Federal Magistrates Court**

You must complete a **Form 5 – Application** and also a **Form 5A – Claim of Unlawful Termination of Employment**.

**Remember:** the solicitor who provided you with legal advice which is paid for by the Department cannot represent you when you actually go

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to court against your employer. You will need to find another solicitor or represent yourself in court.

#### **8. Further Information**

If you would like further information about unlawful termination or help making an application for the grant, please contact Christopher Campbell on (07) 3223 6403 or Jo Sorrentini on (07) 3223 6450.

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