

*Your responses suggest that the statutory protection from the dismissal may apply in your circumstances. If it is so, you may be entitled to apply for the Fair Work Commissioner to deal with the matter.*

## **772 Employment not to be terminated on certain grounds**

- (1) An employer must not terminate an employee's employment for one or more of the following reasons, or for reasons including one or more of the following reasons:

- (a) temporary absence from work because of illness or injury of a kind prescribed by the regulations;

(Fair Work Regulation 2009)

### **6.04 Temporary absence—illness or injury**

- (1) For paragraph 772(1)(a) of the Act, this regulation prescribes kinds of illness or injury.

Note: Under section 772 of the Act, an employer must not terminate an employee's employment because the employee is temporarily absent from work because of illness or injury of a kind prescribed by the regulations.

- (2) A prescribed kind of illness or injury exists if the employee provides a medical certificate for the illness or injury, or a statutory declaration about the illness or injury, within:

- (a) 24 hours after the commencement of the absence; or  
(b) such longer period as is reasonable in the circumstances.

Note: The Act defines *medical certificate* in section 12.

- (3) A prescribed kind of illness or injury exists if the employee:

- (a) is required by the terms of a workplace instrument:  
(i) to notify the employer of an absence from work; and  
(ii) to substantiate the reason for the absence; and  
(b) complies with those terms.

- (4) An illness or injury is not a prescribed kind of illness or injury if:

- (a) either:  
(i) the employee's absence extends for more than 3 months; or  
(ii) the total absences of the employee, within a 12 month period, have been more than 3 months (whether based on a single illness or injury or separate illnesses or injuries); and  
(b) the employee is not on paid personal/carer's leave (however described) for a purpose mentioned in paragraph 97(a) of the Act for the duration of the absence.

- (5) In this regulation, a period of paid personal/carer's leave (however described) for a purpose mentioned in paragraph 97(a) of the Act does not include a period when the employee is absent from work while receiving compensation under a law of the Commonwealth, a State or a Territory that is about workers' compensation.

(Fair Work Act 2009)

### **773 Application for the FWC to deal with a dispute**

If:

- (a) an employer has terminated an employee's employment; and
- (b) the employee, or an industrial association that is entitled to represent the industrial interests of the employee, alleges that the employee's employment was terminated in contravention of subsection 772(1);

the employee, or the industrial association, may apply to the FWC for the FWC to deal with the dispute.

### **774 Time for application**

- (1) An application under section 773 must be made:
  - (a) within 21 days after the employment was terminated; or
  - (b) within such further period as the FWC allows under subsection (2).
- (2) The FWC may allow a further period if the FWC is satisfied that there are exceptional circumstances, taking into account:
  - (a) the reason for the delay; and
  - (b) any action taken by the employee to dispute the termination; and
  - (c) prejudice to the employer (including prejudice caused by the delay); and
  - (d) the merits of the application; and
  - (e) fairness as between the person and other persons in a like position.

### **775 Application fees**

- (1) The application must be accompanied by any fee prescribed by the regulations.
- (2) The regulations may prescribe:
  - (a) a fee for making an application to the FWC under section 773; and
  - (b) a method for indexing the fee; and
  - (c) the circumstances in which all or part of the fee may be waived or refunded.