

Claims Are Rising. Here's What Every Employer Needs to Know.

No employer wants to receive a Fair Work Commission claim.

Unfortunately, even organisations with well-written policies, documented procedures and experienced managers are increasingly finding themselves responding to workplace claims.

The reality is simple. You cannot stop an employee from making a claim. What you can do is significantly reduce your risk and place your organisation in the strongest possible position to defend its decisions.

Recent insights from the Fair Work Commission highlight just how quickly the landscape is changing.

Claims Are Increasing at an Unprecedented Rate

The Fair Work Commission has experienced a 70% increase in workload over the past three years, with approximately 84% of employees who are dismissed now challenging their dismissal.

Several factors are contributing to this increase:

- Greater awareness of workplace rights.
- Easier access to legal information online.
- More employees representing themselves.
- The growing use of artificial intelligence to prepare claims.

Workplace disputes are becoming more common, regardless of the size or sophistication of an organisation and documentation has never been more important.

The strongest defence begins long before a claim is lodged.

Employers should be asking themselves:

- Would an independent third party understand why this decision was made?
- Have the reasons been documented?
- Are our records consistent?
- Could we produce evidence six or twelve months from now?

Contemporaneous records and documents created at the time decisions are made continue to carry significant weight in Fair Work proceedings.

This includes:

- Investigation notes
- Performance discussions
- Meeting records
- Warning letters
- Show cause correspondence
- Decision-making rationale

Good documentation doesn't eliminate claims, but it dramatically strengthens an employer's position.

Understanding the Difference Between Unfair Dismissal and General Protections

Many employers are familiar with unfair dismissal claims, but general protections applications are now one of the fastest growing jurisdictions. The distinction is important.

Unfair Dismissal

An unfair dismissal claim generally examines:

- Whether there was a valid reason for dismissal.
- Whether procedural fairness was followed.

Compensation is capped under the Fair Work Act.

General Protections

General protections claims focus on why a decision was made.

If an employee alleges they experienced adverse action because they exercised a workplace right or possessed a protected attribute, the legal burden shifts to the employer to prove that was not the reason for the decision.

Unlike unfair dismissal claims, general protections claims:

- have no compensation cap;
- may include future economic loss;
- may include general damages; and
- can expose organisations to significantly greater financial risk.

The Fair Work Commission Is Changing Its Approach

To manage increasing claim volumes, the Fair Work Commission has introduced several procedural changes.

Employers should expect:

- Earlier engagement from the Commission.
- Faster initial assessments.
- Shorter conciliation conferences.
- Greater emphasis on resolving matters early.

These changes mean organisations need to assess risk, gather evidence and determine their response much sooner than they may have in the past.

Artificial Intelligence Is Changing Workplace Litigation

AI is making it easier than ever for employees to prepare legal applications.

While many AI-generated claims appear sophisticated, they often contain:

- incorrect legislation;
- non-existent case references;
- inaccurate legal reasoning; or
- factual inconsistencies.

Employers should never assume a claim is legally accurate simply because it appears professionally written.

Every allegation should be carefully reviewed against the available evidence.

Practical Steps Every Employer Should Take

At HR Navigator, our advice remains consistent.

The organisations that navigate workplace disputes most successfully are those that invest in prevention rather than reaction.

We recommend every organisation:

- Maintain clear and current workplace policies.
- Apply policies consistently across the workforce.
- Document conversations and decisions as they occur.
- Train leaders in procedural fairness.
- Seek advice before making high-risk employment decisions.
- Keep employment records organised and readily accessible.

The Bottom Line

Claims are becoming more frequent, more complex and more accessible for employees to pursue.

That doesn't mean employers should become risk averse.

It means organisations need stronger governance, better documentation and well-considered decision-making.

The most successful employers are not those who never receive a claim.

They are the organisations that can confidently demonstrate what decision was made, why it was made, and the evidence that supported it.

At HR Navigator, we help organisations build exactly that foundation. Practical systems, commercially sound advice and compliant employment practices that stand up when they're needed most.

Need support managing a complex workplace matter?

Whether you're navigating a performance issue, workplace investigation, disciplinary process or termination, HR Navigator provides practical, evidence-based advice that helps organisations make confident decisions while reducing legal and commercial risk.



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