

Can I be fired for that?

Can I be fired for that? It's a question that thousands of Aussies have asked over the years after losing their jobs. Sometimes they can. But sometimes, they can't.

There are some things you definitely can't and shouldn't do in a role, or leading up to securing one, that could put you in the firing line. They include:

- Telling lies in your job application
- Sexually harassing or assaulting co-workers
- Complaining about your company on social media
- Sharing company secrets with competitors
- Being dishonest – especially stealing from the company or breaking other laws
- Breaching company policies on things such as viewing pornography, and misusing company phones and email
- Breaking health and safety procedures
- Repeated poor performance or failing to complete assigned work

Don't panic! Fortunately, Australian unfair dismissal laws are fairly robust and protect workers from one-off incidents for a range of disciplinary issues, such as tardiness or poor performance, says [Randstad](#) Employment Market Analyst, Steve Shepherd. "Employers cannot let people go if they have not demonstrated a track record of informing workers of acceptable standards," he says.

This of course assumes that your organisation knows the law and follows it. Not all do, as cases before the employment courts show.

There are also specific processes in Australia that employers must follow, and some Australian-specific rules include:

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- Employers of more than 15 workers must comply with the Fair Work Act, and those of fewer need to obey the Small Business Fair Dismissal Code.

- You can only be “sacked” (i.e. fired or instantly dismissed) for “serious misconduct” and this overrides the notice period in your contract.
- Usually “serious misconduct” means conduct that damages the relationship of trust between the employer and employee, according to Adelaide-based Andersons Solicitors. It can also mean significant breaches of work health and safety procedures.
- In Australia, you can argue unfair dismissal if you can show it was “harsh”, “unjust” or “unreasonable.”
- An employer must have proper disciplinary policies and procedures in place and give you warnings if they believe you are not performing to a satisfactory level.
- Your employer must start the disciplinary process with a counselling session following your performance evaluation meeting and inform you of all problems.
- They must also investigate any alleged under-performance and give you a chance to achieve their performance criteria.
- Only in the case of “serious misconduct,” can you be dismissed instantly. But even then, employers must follow specific procedures.
- The [Small Business Fair Dismissal Code](#) outlines a number of questions employers must ask themselves before dismissal including whether there was serious misconduct such as defrauding the business, if they believe conduct to be unsatisfactory, if they warned the employee, gave them time to improve, offered training or skills development, and whether written records were kept.
- If an employer forces you to resign or makes your work life intolerable, this is called “constructive dismissal” and you may have grounds to make a claim against them.
- Redundancy, where your position is no longer needed by the company, is not the same as being fired.

Next steps. If you think your employer has breached the rules, then seek help. If you’re a union member, contact your union and they will assist you through the complaints process.

Alternatively, if you believe you have been unfairly dismissed or dismissed for a [prohibited reason](#) on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin, you can request assistance from the Fair Work Ombudsman (FWO) at www.fairwork.gov.au. The FWO has a [useful quiz](#) that will help you determine if you're eligible to request for assistance. If you prefer to ask questions verbally, call the Fair Work Commission on 1300 799 675.

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