



# Employment law in early learning.

Employment related disputes are an increasing trend in child care and early learning claims reported to Guild Insurance. These claims indicate that some employers may not be aware of their obligations and the laws governing them as an employer. This can have serious consequences for their business as there are a number of legal avenues available to an employee if they feel they have been treated unfairly.

## Case examples

1. Following complaints about an employee's unprofessional conduct towards children, the employer investigated the matter and subsequently decided to terminate the employee. The employee then lodged an unfair dismissal claim with Fair Work Australia.
2. An employee lodged a complaint with Fair Work Australia claiming she was expected to attend meetings outside of work hours and was not

paid for these. Her employer claimed attendance was optional and that's why she was not paid.

3. An employer did not pay the outstanding wages and leave entitlements to an employee following their resignation. The employer stated this was because of the unprofessional conduct and behaviour of the employee since leaving. A complaint was lodged with Fair Work Australia.
4. An already-employed staff member undertook a course of further study. During this period his salary was dropped to a trainee salary. The employee disputed this and claimed back pay.

## How to avoid or manage these claims

It's important for every employer to understand that there are laws that govern what they do as an employer. There are laws surrounding salaries and awards, leave entitlements and

terminating employment. Employers can't simply do as they please, no matter how their employee behaves. They must follow the law.

The following two websites contain a great deal of easy-to-follow information to assist employers, and employees, understand their obligations.

> [fairwork.gov.au](https://fairwork.gov.au)

> [fwc.gov.au](https://fwc.gov.au)

If you employ fewer than 15 people, you need to make yourself aware of the Small Business Fair Dismissal Code. Details on this can be found at [fairwork.gov.au/ending-employment/unfair-dismissal](https://fairwork.gov.au/ending-employment/unfair-dismissal).

While you aren't expected to become an expert in employment law, it is worth becoming familiar with the 11 National Employment Standards. Information on these can be found at [fairwork.gov.au/employee-entitlements/national-employment-standards](https://fairwork.gov.au/employee-entitlements/national-employment-standards).

If you find yourself in a difficult situation regarding an employment matter and you hold a Guild Insurance Early Learning Business Insurance policy, you are entitled to two (2) hours of free legal advice under the policy. This advice can assist you to deal with a matter correctly and fairly while it's still in its early stage which may prevent the situation escalating into a more serious legal matter.

#### Final key tips

1. Keep records of all discussions had with staff regarding performance or warnings, even if meetings are

informal. Complaints can arise many months after an event and you may not recall what was said or agreed to.

2. Follow correct procedural fairness when there is any sort of employment related investigation. Assistance with this can be found at [fairwork.gov.au](https://www.fairwork.gov.au).
3. Don't make decisions in the heat of the moment. Take time to think about a matter before acting.
4. Be aware of your obligations when making arrangements for staff who are returning to work following parental leave

([fairwork.gov.au/leave/maternity-and-parental-leave](https://www.fairwork.gov.au/leave/maternity-and-parental-leave)) or having been injured (seek information from your state or territory workers' compensation authority).

5. Seek legal advice before acting to be sure you comply with the law. As previously mentioned, legal advice is available under the Guild Insurance Early Learning Business Insurance policy.



1800 810 213  
[guildinsurance.com.au](https://www.guildinsurance.com.au)



**Don't go it alone**

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