



# Employment disputes in early learning services.

Employment related disputes are an increasing trend in 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. Our claims also suggest employers aren't taking the appropriate steps to implement and adhere to processes and policies that ensure their compliance with regulatory requirements.

Employment disputes can have serious implications for a business. There are several legal avenues available to an employee if they feel they have been treated unfairly. These pathways can be stressful and distracting to navigate while also running a business. Further to that, these disputes can create an unhappy working environment which could negatively impact other staff as well as the children attending the service.

## Case examples

Both of these case examples led to complaints with the Fair Work Commission.

1. Allegations were made against a staff member of physical abuse towards children. The employee was stood down while investigations were conducted and then terminated upon the outcome of the investigation. The employee commenced proceedings alleging unfair dismissal. The legal fees to defend this matter were in excess of \$100,000 and the employee was awarded approximately \$40,000 for lost income.
2. An employer sought to make changes to an employee's rostered start time due to operational requirements. The employee resisted the change stating it didn't align with their responsibilities as a carer. The employee was offered

alternative options however the employee would only agree to keep their original rostered hours. The employee lodged a complaint alleging discrimination. It was found the changes were reasonable and allowed under the contract of employment, yet the matter still cost almost \$20,000 to defend.

## Understand your obligations

The key first step to avoiding employment related disputes in an early learning service is to understand employment laws and regulations. While you aren't expected to become an expert in employment law, not being informed carries significant risk. And keep in mind that legal requirements can change over time so be sure you stay informed.

There are many resources available to assist businesses understand their requirements.

The Fair Work Ombudsman provides best practice guides to assist businesses and employees manage various workplace issues such as underperforming staff and requests for flexible arrangements. These guides can be found at [fairwork.gov.au/tools-and-resources/best-practice-guides](https://www.fairwork.gov.au/tools-and-resources/best-practice-guides)

Small businesses, with less than 15 employees, have unique rules for dismissing staff. Information about the Small Business Fair Dismissal Code can be found at [fairwork.gov.au/ending-employment/unfair-dismissal](https://www.fairwork.gov.au/ending-employment/unfair-dismissal). And further information to support small businesses can be found at [smallbusiness.fairwork.gov.au](https://www.smallbusiness.fairwork.gov.au)

There are National Employment Standards (NES) which detail the minimum entitlements which must be provided to all employees in Australia. These standards cover areas such as leave entitlements, superannuation contributions and notice of termination. Details on the NES can be found at [fairwork.gov.au/employment-conditions/national-employment-standards](https://www.fairwork.gov.au/employment-conditions/national-employment-standards)

### Create processes and policies for your business

To ensure you and your staff are complying with employment best practice and the law, create processes and policies for your business.

These processes and policies will:

- > Guide training so all staff know what's expected of them in their place of work.
- > Ensure consistency among all staff when dealing with employment matters.
- > Provide support and guidance when dealing with a potentially challenging employment matter or dispute.

Processes and policies are only beneficial when regularly referred to and utilised. It's therefore vital they aren't documents that are created only to be filed away. They should be stored somewhere that is easily accessible by staff, and regularly discussed with staff, such as in team meetings. You should also consider integrating these processes and policies into your induction and ongoing training programs.

### Seek assistance

If you find yourself in a difficult situation regarding an employment matter, the sooner you reach out for support, rather than trying to navigate the situation yourself, the better for all involved.

If you hold a Guild Insurance Early Learning Business Insurance policy, you're entitled to receive free legal advice with our expert legal advisers, Meridian Lawyers. You can access three free telephone advice sessions (each session is capped at two hours) when you're dealing with an employment or registration issue.

### Keep records

Unfortunately, complaints and insurance claims regarding employment matters can arise some time after an event.

To be sure you're best placed to deal with any complaints should they occur, it's important to keep records of all discussions had with staff regarding performance and entitlements, even if meetings and discussions are informal.



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



**Don't go it alone**