

# Warnings

This information sheet should be read in conjunction with  
Job Watch's infosheets on  
*"Unfair and Unlawful Dismissal and Constructive Dismissal"*

## Myths and Facts

**Myth:**

*"A warning must be in writing".*

**Fact:**

This is not necessarily true, unless you are covered by a binding agreement which specifies that warnings must always be in writing. In the absence of that, the fact is that warnings may be given verbally or in writing.

**Myth:**

*"Employees must be given 3 warnings before they can be dismissed".*

**Fact:**

This is incorrect. There is **no** minimum requirement that an employer must provide 3 warnings before a dismissal can occur.

## What is the purpose of a warning?

The purpose of a warning is to advise an employee that his/her work performance or conduct is unsatisfactory, and to put the employee



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an independent, not for profit, employment rights legal centre. It provides a free, confidential telephone information and referral service and other assistance to Victorian workers.

**Hours:- Monday – Friday 9am-5pm**  
(Except Tuesday 12-2pm)

**Phone: (03) 9662 1933 or**  
**1800 331 617**

**Website: [www.job-watch.org.au](http://www.job-watch.org.au)**

on notice that the performance or conduct in issue needs to be improved.

Warnings (or the lack of them) can be relevant in unfair dismissal claims, where the Australian Industrial Relations Commission must decide whether a termination of employment was harsh, unjust or unreasonable.

Warnings may also be relevant in assessing whether an employer is complying with its contractual obligations.

Finally, if warnings are issued unfairly and it can be shown that they are being used to target people with a particular characteristic (eg, people with a certain disability, of a certain age etc) it may be argued that the employer is in breach of Federal or Victorian anti-discrimination laws.

## Do I have to sign a warning?

**No**, you do not have to sign a warning.

In cases where you are under pressure to sign a warning and you disagree with it, you can write on the document:

*"I disagree with the contents of this document"*

sign it and then write a letter in response to the warning, objecting to the warning and explaining your concerns.

Even though you may choose not to sign a warning that has been issued to you, it still has effect as a warning.

It is always best to request a copy of the document and take it away with you so that you can respond to it (preferably in writing).

## What to do if you get a warning

If you disagree with either a written or verbal warning, respond to it in writing and keep a copy of your response. If the warning is disputed it is

important that you are able to show written evidence of having responded to it with your version of events. It is much harder to prove that you responded if you only did so verbally.

Diarise any conversations or meetings in which performance was an issue.

Find out if you are covered by a certified agreement, a workplace agreement (including an Australian Workplace Agreement or a collective agreement) or an internal policy document which outlines the procedure that should be followed by your employer wherever performance or misconduct issues arise. Check that your employer is complying with any such procedure.

Consider joining a union.

### Example of a response to a warning

*Dear Ms Jones,*

*I wish to respond to the warning letter which you gave to me on 25 January 2006.*

*Your letter states that I was forty minutes late to work on Tuesday and Thursday last week.*

*I disagree that I was late on both days. As I tried to explain to you over the phone on 24 January 2006, I arrived at work on Tuesday ten minutes early as usual and opened up the shop. The register roll will confirm that I made a sale at 9:05 in the morning.*

*I agree that I was late on Thursday. I was twenty minutes late, not forty. I did telephone the head office on Thursday morning at 8am and left a message on the answering machine stating that I would be 20 minutes late. The reason why I was late is because I had to make alternative childcare arrangements.*

*This is the first time that I have been late in 2 years and I believe that this should be taken into account.*

*Yours sincerely*

*Janet Smith*

### Relevance of warnings in unfair dismissal cases

Provided you do not fall within one of the categories of employees who are excluded from unfair dismissal (eg, employees of businesses with 100 employees or less), you may lodge an unfair dismissal complaint with the Australian Industrial Relations Commission (the Commission) if you believe that your termination of employment was harsh, unjust or unreasonable.

In assessing your claim, the Commission will consider:

- whether there was a valid reason for the termination related to your capacity or conduct; and
- whether you were notified of that reason; and
- whether you were given an opportunity to respond to any reason related to your capacity or conduct; and
- if the termination related to your unsatisfactory performance, whether you were given any warnings about that unsatisfactory performance before the termination; and
- the degree to which the size of your employer would be likely to impact on the procedures followed in effecting the termination; and
- the degree to which the absence of dedicated human resource management specialists or expertise in the undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination; and
- any other relevant matters.

Therefore, if you are eligible to file an unfair dismissal complaint, you may use the issue of warnings to argue that:

- your employer did not have a **valid** reason for dismissing you (this is also applicable if you are arguing constructive dismissal); and/or
- your employer did not follow a fair process in implementing the termination of employment (eg, because the employer was not clear about what was required or did not provide you with an opportunity to respond to any criticisms or did not provide you with an adequate timeframe within which to improve etc).

***Should I attend a meeting with the employer about my performance? Example of a response to a warning.***

If your employer requests that you attend a meeting to discuss your work performance or conduct it is important that you attend the meeting.

There is no statutory right to have a witness or a support person present in the meeting with you although employers normally allow someone to attend with you. It is important to request in writing that you wish to have a witness or support person present. The employer can refuse this request, but it may affect the overall fairness of the process and reflect badly on the employer if there is any dispute about what happened at the meeting.

Don't sign anything you disagree with or which you are unsure about at the meeting. Ask to take any documents away with you and give yourself an opportunity to read it (them) away from the workplace.

Take notes at the meeting and ask any questions you may have. Ask for a break if you need one.

***Where to get help***

**Job Watch Inc:**

(03) 9662 1933 (metro);  
1800 331 617 (rural)

**Workplace Rights Inquiry Line  
(WRIL) 1300 882 648**

**Workplace Infoline:** 1300 363 264

**Workplace Ombudsman:** 1300 724 200

**Workplace Authority:** 1300 366 632

**Australian Industrial Relations  
Commission:** 1300 79 9675

**Victoria Equal Opportunity and Human  
Rights Commission:**

(03) 9281 7111  
1800 134 142

**ACTU Worker Information line**  
(for referral to a union): 1300 362 223

**Law Institute of Victoria**  
(for referral to a lawyer): (03) 9607 9550

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