

High Income Threshold for Unfair Dismissal Increased:

From 1 July 2010, the high income threshold for determining eligibility to make unfair dismissal applications at Fair Work Australia increased from \$108,300 to \$113,800. This threshold is calculated and indexed annually on 1 July each year.

Employees who earn over the high income threshold are prohibited from making an unfair dismissal claim. There are, however, some notable exceptions to this exclusion. For example, an employee who earns in excess of the high income threshold will not be precluded from lodging an unfair dismissal claim if that employee is covered by an award or an enterprise agreement.

The compensation that is payable on a successful claim for unfair dismissal also increased on 1 July 2010 to \$56,900, or the equivalent of six months of the dismissed employee's wage, whichever is lower.

What is included in the definition of earnings?

In assessing whether an employee is earning above this threshold, the following are to be included in any calculation:

- Wages
- Amounts applied or dealt with in any way on the employee's behalf or as the employee directs (this could include amounts which an employee elects to salary sacrifice)
- The agreed value of non-monetary benefits which the employee is entitled to for the performance of work (for example, personal use of a company car or mobile phone).

The following payments are not to be included in a high income threshold calculation:

- Payments which can't be determined in advance (i.e. commissions and incentive based payments)
- Bonuses
- Overtime (unless the overtime is guaranteed).
- Reimbursements



- Statutory Superannuation Payments (SGT)

Implications for employers:

Employers are cautioned against assuming that simply because their employee earns over this high income threshold. Another caution is that payments which cannot be determined in advance (e.g. commissions, bonuses, overtime, etc) are not included when assessing if an employee is earning above the high income threshold. This is important in industries where an employee may earn a significant portion of their remuneration via commission such as in the real estate industry.

HR Navigation cautions employers against assuming an employee does not have access to unfair dismissal due to high earnings and recommend that they get professional advice when considering the dismissal of any employee.

For more information please contact HR Navigation on 1300 669 747 or email enquiries@hrnavigation.com.au



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