ATONE AGRI EMPLOYMENT LAW SERIES

THE REAL COST OF UNFAIR DISMISSAL

ARTICLE 1 OF 2

It's not enough to be right.
You need to be able to prove it.

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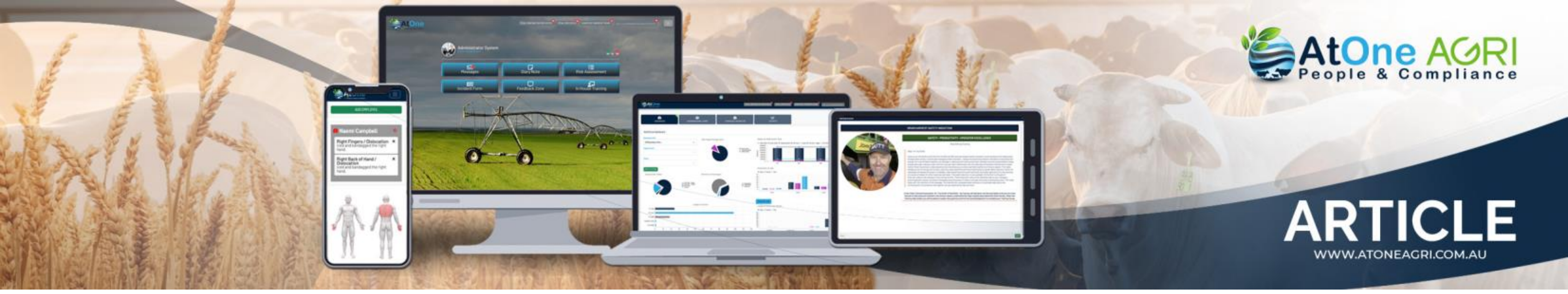


The Real Cost of Unfair Dismissal

It's not just the payout. Here's what an unfair dismissal claim really costs your agribusiness and how to stay ahead of it.

It Starts with the Wrong Question

When most employers hear the term "unfair dismissal claim", their first instinct is often to ask:

"How much compensation could I be ordered to pay?"

It's a fair question, but it often focuses on the wrong cost. For many employers, the biggest impact of an unfair dismissal claim is not the compensation itself, it is the legal expenses, management time, operational disruption and commercial pressure that begin the moment the claim is lodged.

Under the Fair Work Act, compensation is generally determined using the **Sprigg formula**, which broadly looks at lost income, deducts post-dismissal earnings, and adjusts for factors such as employee misconduct or the likelihood employment would have ended regardless. The outcome (payout) is capped at 26 weeks' pay or half the high-income threshold.

For most agribusiness roles, that cap keeps the theoretical payout relatively modest. However, focusing on that number alone overlooks where the real cost often lies.

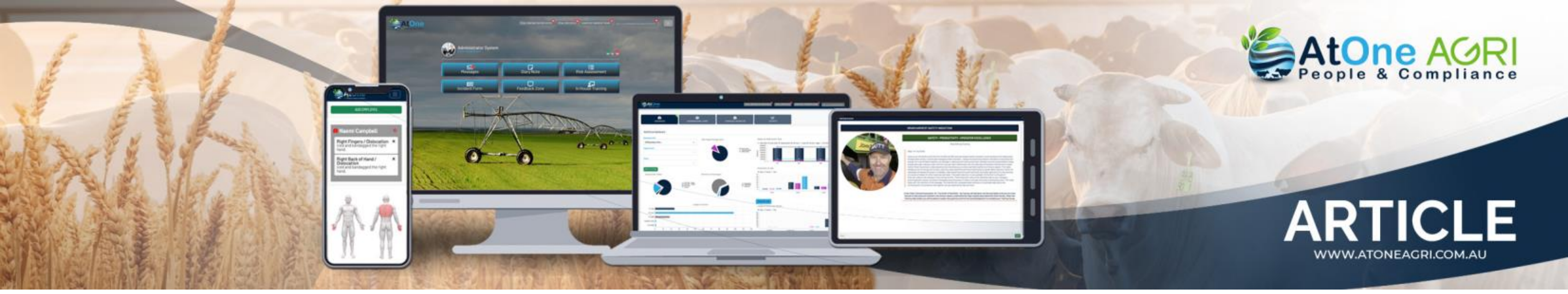
Why Even a Strong Defence Still Costs You

The Fair Work Commission operates on a no-costs basis.

This means:

- You pay your own legal and advisory costs.
- The employee pays theirs.
- This means that even if you successfully defend the claim, you generally do not recover your costs.

There are limited exceptions, but in practice, cost recovery is rare. The result is simple: Every Unfair Dismissal claim costs you money, regardless of merit.



What a Claim Really Looks Like in Practice

Once a claim is lodged, costs can accumulate quickly:

- Legal or HR support.
- Preparing responses and evidence.
- Gathering payroll and employment records.
- Drafting witness statements.
- Attending conciliation conferences.
- Management time diverted from operations.

Even a straightforward matter can easily cost $10,000 or more before any escalation occurs. In agriculture, the timing is often as damaging as the financial cost, with claims frequently arising during harvest, planting or other peak operational periods.

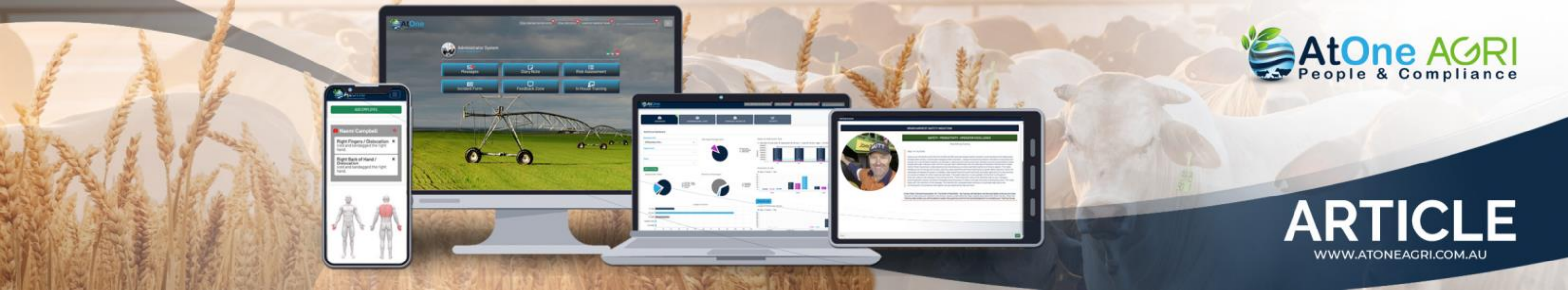
A Common Real-World Example

If a Workplace Health & Safety regulator attended your business following an incident or complaint, they would typically examine:

- An employee is dismissed for repeated lateness.
- The concern is genuine; however, the employer has never formally documented the issue.
    - There is no evidence that the employee was warned, counselled, or reprimanded regarding their repeated lateness. As a result, the employee lodges an unfair dismissal application with the Fair Work Commission.
- While the employer believes they had a valid reason for dismissal, defending that position now requires time, effort and significant cost to gather and present evidence demonstrating a pattern of repeated lateness.
- A Fair Work conciliation conference is scheduled, and the employer finds themselves underprepared due to the lack of documented records and supporting evidence.
- Faced with mounting legal costs, management time and uncertainty, the employer makes a commercial decision to settle the matter rather than continue through the process.
    - The claim settles for $9,000, not because it was a strong claim, but because it existed and was too costly to defend.

The Outcome

The employer is left paying a substantial sum to an underperforming and unreliable employee simply to bring the matter to a close and avoid further expense. Understandably, they feel frustrated by the process. From their perspective, the employee appears to have been rewarded for poor behaviour, while they have been penalised for addressing it.



Unfortunately, this is an all-too-common experience within agribusiness. Employers who fail to establish and maintain proper documentation often lack the evidence required to defend themselves against weak or opportunistic workplace claims.

The issue is not whether the employer was right, it is whether they can prove it.

Why Most Claims Settle

Well over 70% of unfair dismissal matters resolve during conciliation. However, this is not necessarily because the employee has a strong case or because the employer has done something wrong. More often, both parties recognise the cost, uncertainty and time involved in continuing the dispute.

For employers, settlement frequently becomes a **commercial decision rather than a legal one**. It is often cheaper to pay a negotiated amount and move on than it is to continue defending a matter through the process. As a result, even a weak claim can sometimes produce a payout.

This creates an important reality:

The greatest leverage is created before the dismissal decision is made, not after the claim is lodged.

What Actually Reduces Your Risk

Two key mechanisms can help reduce exposure:

1. Contingency Discounts

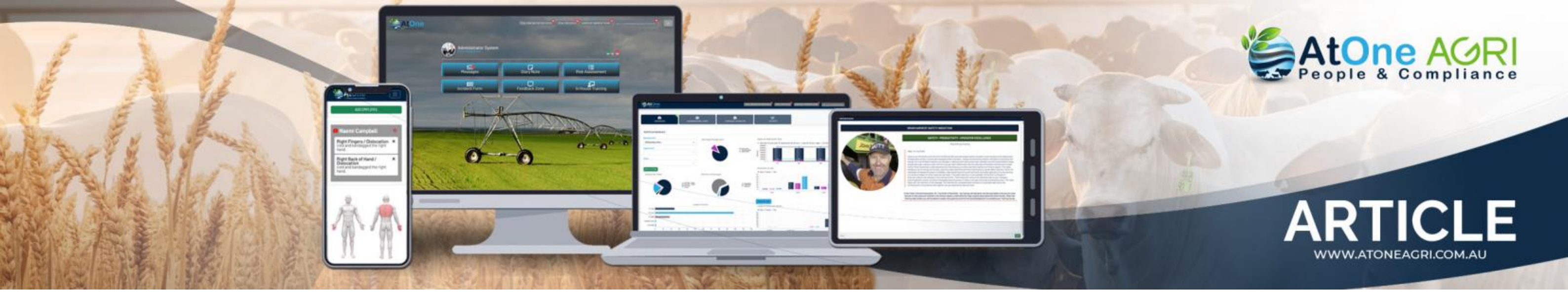
Where employment was likely to end in any event, such as:

- Seasonal roles.
- Fixed-term employment.
- Ongoing documented performance concerns.

2. Misconduct Reductions

Where the employee's own conduct contributed to the outcome. However, both of these protections rely on one critical factor:

Documentation: Without written warnings, records of conversations and evidence of a fair process, the value of these protections can be significantly reduced.



Where Employers Get Caught

Some of the most common pitfalls include:

- Acting on a “final straw” without documented previous issues and history.
- Failing to give an employee a genuine opportunity to respond.
- Inconsistent performance management.
- Poor, incomplete or fragmented record-keeping.
- Assuming casual or seasonal employment automatically means lower risk.

A Simple Pre-Dismissal Check

Before terminating employment, ask yourself:

- Have issues been documented?
- Has the employee been given an opportunity to respond?
- Is the reason for dismissal clear, consistent and defensible?
- Would this decision stand up during conciliation?
- Have I obtained advice where necessary?

If you cannot confidently answer ‘Yes’ to these questions, it may be worth slowing down and reviewing the process before proceeding.

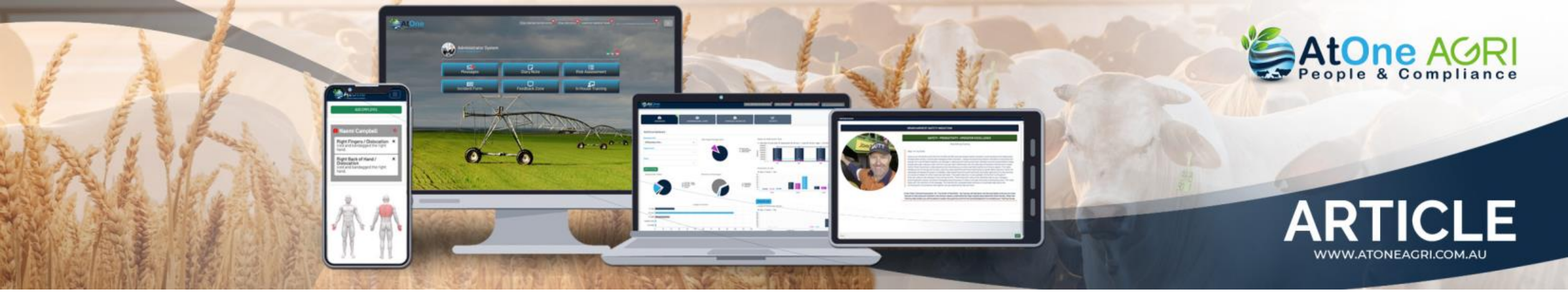
Why This Matters in Agribusiness

Agriculture presents unique workforce challenges:

- Supervisors are often managing employees across multiple locations.
- Seasonal labour can come and go quickly.
- Operational demands commonly take priority over paperwork and administrative processes.

Unfortunately, these same conditions can make it difficult to produce the documentation needed when a claim arises months later. The businesses that consistently manage employment risk well are not necessarily those with the largest HR departments, they are the businesses that:

- Document issues early and consistently.
- Address concerns before the escalate.
- Follow a consistent process.
- Maintain accessible records.
- Seek advice before making high-risk decisions.



Increasingly, these agribusinesses rely on **simple, centralised systems** that create consistency across sites, supervisors and workforce groups.

Key Takeaways

- The compensation cap is rarely the real cost.
- You carry your own costs, even if you successfully defend the claim.
- Most claims settle regardless of their legal strength.
- Documentation and process are your strongest forms of protection.
- Employment risk is often created at the decision point, not once the claim is lodged.

Coming Next

In this article we have focused on unfair dismissal, the most common employment related claim. However, there is another category of workplace claim that carries **significantly greater risk**:

General Protections Claims:

- **No compensation cap.**
- **Reversed burden of proof.**
- **Much broader legal reach.**

Final Thoughts

How AtOne AGRI Supports Farmers & Agribusinesses

AtOne AGRI helps farmers and agribusinesses create the systems, records and processes needed to manage employment obligations with confidence. By improving visibility, consistency and record-keeping across HR, Safety and Contractor Management, businesses are better positioned to demonstrate compliance and defend their decisions when challenged.

In employment matters, it is often not enough to have done the right thing. You also need to be able to prove it.

That is where AtOne AGRI offers protection and peace of mind for Agribusiness Owners, Directors and Managers.