

Risk Alert

JULY 2023



Is your business at risk of a costly employment relations settlement?

HOW UP TO DATE IS YOUR EMPLOYMENT PRACTICE COMPLIANCE?

Employment and workplace-related disputes are becoming more common and complicated.

Organisations are finding it challenging to navigate the complex employment practices landscape with constantly changing workplace laws and regulations. Staying up to date with the numerous jurisdictions and related risks is complex. Employment practices cover a broad scope of legislation and practices with cases brought to the Fairwork Commission, Australian Human Rights Commission, state courts, regulators, and the federal court resulting in penalties, pay-outs and reputational damage.

This Risk alert aims to help you:

- Know what Employment Practice rules apply to the organisation
- Ensure that the organisation meets those rules
- Know how EPL Insurance will help defend a claim on your Employment Practices

EMPLOYEE FAIR WORK SETTLEMENTS RISE

Australia is becoming increasingly litigious, and claims for unfair dismissal, sexual harassment and racial discrimination are becoming more common.

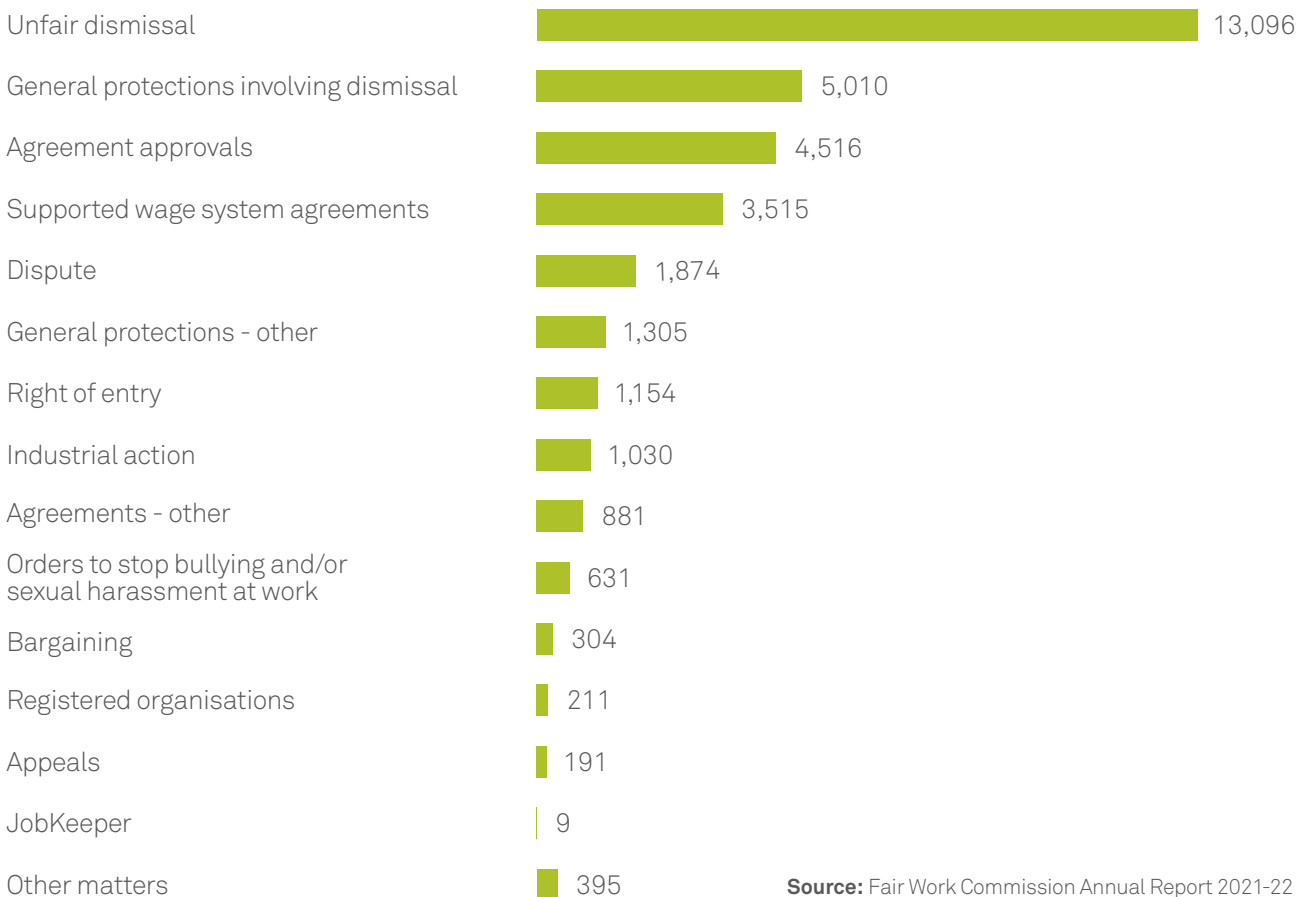
Changing workplace laws and regulations and the risk of employment practices means adopting **Employment Practices Liability (EPL) insurance** is part of an effective strategy to support your **HR Systems and Processes**.

During 2021, Australia saw a distinct shift upward in settlement expectations. Employees are pushing proceedings further at Fair Work Australia. Rather than resolving at conciliation, more matters were proceeding further, leading to judicial determination – becoming costlier for the businesses, a 12 per cent increase moving to hearings.



TYPES OF APPLICATIONS LODGED WITH FAIR WORK

In 2021-2022 over 34,000 applications involving unfair dismissal lodged with Fair Work Australia.



Source: Fair Work Commission Annual Report 2021-22

EMPLOYMENT PRACTICE LIABILITY INSURANCE

Employment practices related risks are among the most potentially damaging exposures. Legal suits can result in significant financial loss but also cause irreparable damage to an employer’s reputation and brand.

EPL Insurance provides coverage to organisations for actions taken by employees against employers alleging discrimination, unfair dismissal, sexual or workplace harassment and other employment-related issues.

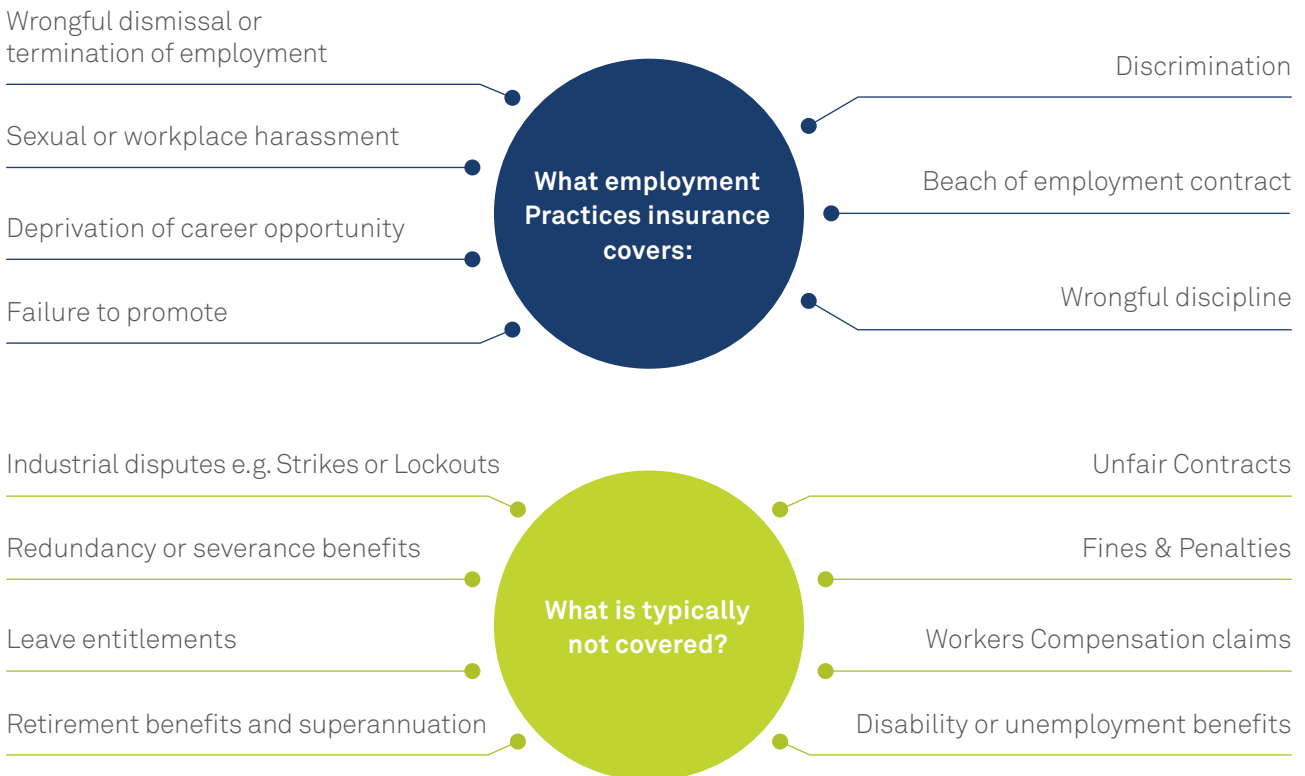
The Ansvar Insurance EPL Insurance is part of our Management Liability insurance suite. It aims to help minimise the harm and potential cost of employment-related claims brought by employees.

Who is covered?
Typically, the Ansvar Employment Practices Liability Insurance covers the organisation and its directors, officers and employees.

Why do you need it?

Employers must be aware of EPL claims’ financial repercussions on an organisation. Ansvar Insurance offers EPL cover to support their compliant HR Management Systems, which can safeguard your organisation from these financial impacts.

An EPL policy with Ansvar usually covers the legal costs involved in defending your **HR Systems and Processes** when an employee makes a claim and any settlement costs, which may also include the claimant’s costs (subject to policy terms and conditions).

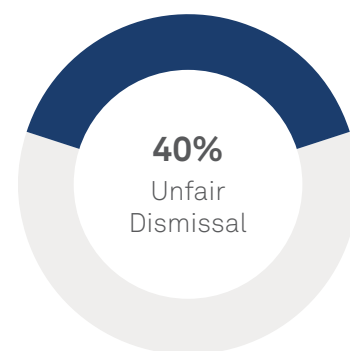


Note: It’s important to seek advice from your broker and/or Ansvar Insurance before appointing any legal providers to a potential claim. You may not be fully covered should you choose to appoint lawyers without Ansvar’s prior agreement.

Do you know the unfair dismissal process?

The Fair Work Act sets out the requirements for unfair dismissal, and the process that needs to be followed should an employee choose to lodge a claim for unfair dismissal:

- Application for unfair dismissal by a former employee must be filed with the Fair Work Commission within 21 days after the dismissal,
- The Commissioner will send a letter to the Employer advising that their response to the application is to be received within seven days,
- The Employer must respond to the employee's application within the required time frame.
- A Notice of Listing is issued to all parties by Fair Work Commission.



Nearly 40% of claims through the Fair Work Commission are for Unfair Dismissal.

What do you need to do if you receive a Letter from the Fair Work Commission?

If you receive a 'Notice of Listing' contact Ansvr Insurance or your broker, who can help you:

- File a Response referencing your documented procedural fairness management actions, employment contracts and workplace policies.
- Attend the Conciliation (usually conducted by phone)
- While Conciliation is a voluntary process with no requirement for legal representation, Ansvr Insurance can provide you with legal representation to help prepare or work with you during this process.

What should you do if you have a claim?

A claim is any written demand for legal assistance, civil proceedings, including Fair Work Australia, and any criminal or regulatory proceeding alleging a breach in employment practice

If you receive an employee claim, notify your broker and Ansvr Insurance as soon as possible after:

- **the allegation is first made; or**
- **you receive notice from the employee (or their legal representatives); or**
- **In the case of unfair dismissal, as soon as you receive notice from the Fair Work Commission.**

It's important to seek advice from your broker and/or Ansvr Insurance before appointing any legal providers to a potential claim. You may not be fully covered should you choose to appoint lawyers without Ansvr Insurance's prior agreement. The earlier you contact your Broker and/or Ansvr Insurance increases the chances of a settlement that doesn't leave your organisation out of pocket.

Our EPL policies can include investigations, examinations or inquiries, alternative dispute resolution (such as arbitrations, mediations, and conciliations) and appeals.

Your HR Systems and Processes, including employment contracts, policies and documented case procedures, may be required to assist in defence of the claim.

Need advice

Organisations such as Business360 can help you with HR advice to help you with any employee-related enquiries, Business 360 is part of the Ansvr Insurance preferred Provider Network helping organisations with their Employment Practices. If you need assistance, contact them direct 1300 287 360.

Why do you need to contact your Broker and Ansvar insurance early?

Timing is critical as the cost of defence of employment-based litigation can be greater than the cost of any settlement or award. Some of these costs will be covered by EPL Insurance. However, the organisation may bear certain out-of-pocket expenses, such as legal costs, by the organisation's legal representatives. Contact your broker and/or Ansvar as soon as you receive an employee claim.

Speak to your Broker

Not all Management Liability Insurance policies include EPL insurance. Please get in touch with your broker for further information on your Management Liability Insurance or a quotation for Ansvar Insurance Employment Practices Insurance.



For more information

The Risk Solutions team are here to provide a range of consultancy services to assist clients to review and enhance their systems, processes and practices and the time to act is now.

For further advice, email us at info@ansvarrisk.com.au



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As Ansvar Risks' ERM Product Development Consultant, David works to support Ansvar's clients to help management and executives build governance and risk management capability and develop effective approaches that supports decision making, advance performance and optimise objectives.

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