



EMPLOYEES INDUSTRIAL ACTION AT YOUR WORKPLACE

What you can do if it occurs

1. What is industrial action?

The *Workplace Relations Act 1996* (Cth) ("WRA") gives employees, employers and unions limited rights to take industrial action during the process of bargaining for a certified agreement or an Australian Workplace Agreement. You are regarded as being engaged in industrial action if you decide to do something which restricts, limits or delays the performance of work including strikes, work stoppages, bans and other restrictions but not including picketing, blockading or similar unlawful conduct. Industrial action may exclude action related to genuine occupational health and safety concerns.

The WRA distinguishes two types of industrial action, "protected" or lawful industrial action and "unprotected" or unlawful industrial action.

2. When is industrial action protected?

Industrial action can only be treated as protected if it occurs during a bargaining period for a certified agreement or an Australian Workplace Agreement. In addition, for industrial action to be protected, it must be taken to support a claim for an agreement, or be in response to industrial action by the other party.

The action must not take place before the start of the bargaining period, and unless the action is taken in response to action already taken by the other party, the other party must be given notice in writing at least three working days before the action begins.

3. When is industrial action unprotected?

Industrial action may be treated as *unprotected* if it does not comply with the statutory requirements for being protected industrial action. It occurs when:

- the party taking the action has not made a genuine attempt to reach an agreement with the

other party before taking action;

- the action is taken by a union, but has not been authorised by the union's management;
- the action is taken with a third party who is not involved with the negotiations; or
- the Australian Industrial Relations Commission (AIRC) has ordered a ballot by union members on the industrial action, but the ballot has not taken place.

4. Can I be paid while taking industrial action?

It is illegal for an employer to pay an employee for any period of industrial action, and for employees to accept pay for any period of industrial action. It is also illegal for a union and its members to make claims for pay for any period of industrial action or to threaten further industrial action for such pay. This prohibition applies even if the industrial action is "protected".

The prohibition does not apply where work has stopped or is being performed differently by an employee or employees who have a reasonable concern about an imminent risk to their personal health and safety owing to unsafe working conditions. Nor does it apply to employees who are on leave or on a rostered day off.

5. Can I be dismissed while I am on strike?

It is unlawful for an employer to dismiss or threaten to dismiss you for engaging in protected industrial action. However, this does not affect any right your employer might otherwise have to dismiss you. In other words, while you cannot be dismissed for engaging in protected industrial action, you can be dismissed for other reasons while engaged in protected industrial action.

If industrial action is not protected, you can be dismissed for engaging in it, but only if the dismissal is not unfair or unlawful. This means that the dismissal must not be harsh, unjust or unreasonable, and it cannot take place for an unlawful reason (for example, refusal to sign an Australian Workplace Agreement). Notice periods still apply.

6. Can my employer discriminate against me for taking industrial action?

Your employer must not alter your position of employment or prejudice your employment as a result of engaging in protected industrial action.

7. Do I have to participate in a strike if I don't want to?

No. Whether you choose to participate in a strike (or any other industrial action) is entirely up to you, and it is illegal for anyone to try to force you to participate.

8. What can I do if my employer is locking me out?

This will depend on whether the lockout is "protected" (ie. lawful) or "unprotected" (ie. unlawful). Lockouts are protected if:

- they occur during a properly notified bargaining period;
- there is a genuine attempt to reach agreement before the industrial action is taken; and
- your employer gives at least three working days' written notice to each party with whom they are negotiating (unless the lockout is a response to protected industrial action by employees).

If the lockout is protected, you (or your union) can only respond by taking industrial action of your own, applying to have the bargaining period terminated, or applying to the AIRC for assistance with conciliation.

If the lockout is unprotected, you (or your union) may be able to take legal action to force an end to the lockout, and/or apply for damages.

9. What can I do if my employer takes other industrial action against me?

In certain circumstances, employers may have rights to take other actions against employees. If you feel your employer is taking other industrial action against you, you should contact WageLine in your state or territory (see below) to assist in determining appropriate further action.

10. If my union wants me to take industrial action, do I have to?

No. The law on freedom of association means that certain conduct for the purpose of coercing an employee to take industrial action is illegal. Further, a union must not penalise a member of the union because the member has refused or failed to join in industrial action.

11. If my union is taking industrial action, can I be dismissed or penalised for joining in?

Possibly. This will depend on whether the industrial action is "protected" (i.e. legal) or "unprotected" (i.e. illegal). An employer cannot dismiss you for engaging in protected industrial action. However, if you participate in unprotected action, your employer will be able to take various sanctions against you. These sanctions may include dismissing you or taking legal action against you.

You should also note that the fact you are engaging in industrial action (either protected or unprotected) does not prevent your employer dismissing you for other reasons.

12. What about picketing, blockading or other unlawful conduct?

Picketing does not fall within the definition of the WRA. Whilst peaceful protesting may be lawful, if it involves interference with access to the premises, threatening or violent behaviour, it may be unlawful and your employer may be able to seek an injunction to stop the action. Picketing may also breach the general law (eg. breach of the peace or similar offences) and consequently police may intervene.

13. Where can I get more information?

In the first instance, you should always seek your own legal advice. In addition you can contact the WageLine service in your state or territory.

WAGELINE CONTACT DETAILS

www.wagenet.gov.au

NSW/VIC/	
TAS/NT/ACT	1300 363 264
SA	1300 365 255
WA	1300 655 266
QLD	1300 369 945