



# EMPLOYERS 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.

Your employees are regarded as being engaged in industrial action if they 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 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. How can I respond to protected industrial action?

An employer can respond by taking a form of industrial action called a "lockout" – this means employees are kept out of their premises and are unable to work.

You may apply to the Australian Industrial Relations Commission (AIRC) either to have the bargaining period suspended or terminated, or for assistance with conciliation.

### 4. 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 AIRC has ordered a ballot by union members on the industrial action, but that ballot has not taken place.

## 5. How can I respond to unprotected industrial action?

In the first instance, you should always seek your own legal advice from your employer association or solicitor. They may advise you to:

- apply to the AIRC for an order to cease or prevent the industrial action; and/or
- apply to the AIRC for permission to sue the other party for damages resulting from the industrial action; and/or
- commence legal proceedings for penalties or an injunction against the industrial action.

## 6. Do I have to pay my employees while they are 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. However if an employee is unable to perform their normal work duties they are required to accept reasonable alternative work provided by the employer.

The prohibition also does not apply to employees who are on leave or on a rostered day off.

## 7. 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, or threatening or violent behaviour, it may be unlawful and you may then apply for 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.

## 8. Where can I get more information?

In the first instance, you should always seek your own legal advice from your employer association or solicitor. In addition you can contact the WageLine service or the AIRC in your State or territory.

### WAGELINE CONTACT DETAILS

[www.wagenet.gov.au](http://www.wagenet.gov.au)

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

### AIRC CONTACT DETAILS

[www.airc.gov.au](http://www.airc.gov.au)

ACT	(02) 6209 2400
NSW	(02) 8374 6666
NT	(08) 8936 2800
QLD	(07) 3000 0399
SA	(08) 8308 9863
TAS	(03) 6214 0200
VIC	(03) 8661 7777
WA	(08) 9464 5172