

# Managing Protected Industrial Action Work Instructions

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## INTRODUCTION

Charles Darwin University acknowledges the right of its Employees and their representatives to take Protected Industrial Action. We expect that any Protected Industrial Action (PIA) will be taken in accordance with the requirements of the *Fair Work Act 2009* (Cth) (the Act).

These work instructions provides information and practical steps to Supervisors on how to manage industrial action in their areas.

## SUPERVISOR RESPONSIBILITIES

Supervisors have a responsibility during periods of industrial action to ensure that operational requirements continue to be met and that Employees who are not participating in industrial action attend work.

Supervisors have an important role to play in managing PIA. As a Supervisor you are responsible for:

- Communicating University messages to Employees;
- Preparing contingency plans for your Organisation Unit;
- Advising Employees of the University response to industrial action at the local level;
- Managing teaching and the performance of duties during industrial action;
- Reporting on any aspects of the industrial action as requested;
- Determining the effects of industrial action at the local level and implementing the appropriate response;
- Reporting suspected misconduct should this occur.

## NOTIFICATION OF PROTECTED INDUSTRIAL ACTION

Following the PIA ballot, if the results show that Employees want to pursue PIA, the Act requires the bargaining representative (the Union) provide notification of the taking of PIA.

The notification must be in writing, provide a minimum of 3 working days' notice and must specify the nature of the action (what kind of PIA will be taken) and the day on which it will start.

After receiving notification of PIA, the University will notify Supervisors as soon as practicable. This will allow Supervisors to put in place contingency plans for the period of PIA.

## STOPPAGES (STRIKE ACTION)

The University is obliged by the Act to cease pay for the duration of strike action for a union member taking protected industrial action.

In relation to Academics, pay withholding is for the notified period of the industrial action, not just affected teaching periods.

## BANS AND PARTIAL BANS

With the exception of stoppages (strike action) where pay must be deducted, the University has some discretion in how bans and partial bans are managed.

In relation to bans / partial bans the Act gives options to the employer to:

- Give notice to the Employee/s that partial fulfilment of duties will not be accepted and that until such time as they complete their full duties they will not be paid.
- Give the Employee notice that until such time as they undertake the full responsibilities they will receive a percentage of their pay (i.e. reduced by the percentage they do not undertake); or
- Accept the bans/ Partial bans without any adjustments in pay.

The University has decided that each of these options will be appropriate for different bans/ partial bans proposed by the NTEU.

Supervisors will be required to report bans or partial bans to Employee Relations, so a decision can be made about how to deal with payments during this period.

To ensure compliance with legislative requirements, it is important that the University documents which Employees are participating in work bans, and the precise date and time that the bans are implemented.

## SALARY DEDUCTIONS

Where Employees participate in PIA, Supervisors are responsible for monitoring who participates in Industrial Action and ensuring the forms are completed and returned to Employee Relations to ensure the appropriate salary deduction can be actioned.

Employees are required to complete a "Notification of Industrial Action" form.

Should an Employee not complete the form, Supervisors are responsible for completing the form, providing it to the Employee for signature and then returning it to Employee Relations.

If an Employee refuse to sign the form, please note this on the form you complete on their behalf.

## UNPROTECTED INDUSTRIAL ACTION

There are forms of industrial action which are not protected. This means that the action is in contravention of the Act.

If a Supervisor is unsure of whether the action is protected or not, please contact Employee Relations for assistance.

For employees who are not entitled to take protected industrial action the University is obliged by the Act to cease pay for a minimum of four hours (for unprotected industrial action of less than four hours) or a full day for unprotected industrial action of over four hours.

Unprotected industrial action could include Employee's taking action who are not a member of the Union proposing that action and actions taken that fall outside what has been proposed in the ballot.

## SUPPORT AVAILABLE

If you are unsure of your responsibility as an Employee or Supervisor please contact Employee Relations in People and Capability for further advice and support. The appropriate contact details are: [employeerelations@cdu.edu.au](mailto:employeerelations@cdu.edu.au)

## SUPERVISOR SCRIPTS

### 1. Notifying Employee/s that partial fulfilment of duties will not be accepted and that until such time as they complete their full duties they will not be paid.

As set out above, there will be instances where an Employee who chooses to participate in work bans will not be entitled to any payment for any period in which they engage in a partial work ban. In these instances we must also refuse to accept the performance of any other work by the Employee until they are prepared to perform all of their normal duties.

Set out below are instructions for Supervisors to record this information. Supervisors must follow and comply with all of the instructions set out in this script, including completing a file note.

#### 1.1. Step 1 – Witness

Find another supervisor (e.g. College Manager, Director or a Manager) to assist you and act as a witness.

#### 1.2. Step 2 – Approach each Employee

Both you and the witness should approach each Employee who is refusing to perform all of their normal work.

#### 1.3. Step 3 – Ask questions

You must ask each individual Employee the questions set out below. While you are asking these questions, you or the witness must record the Employee's answers on the attached file note.

Questions to ask:

- (a) I see that you are not [describe what is required by the Employee].
- (b) Is this because of and/or as a result of a union ban on this activity? [record answer]
- (c) It is not acceptable to CDU that you do not perform the whole of your duties. CDU requires you to perform all of your duties including [list specifically any tasks or duties which the Employee is not performing].
- (d) If you are not prepared:
  - (i) to perform your full range of duties according to your contract of employment;
  - (ii) including [specific task]; and
  - (iii) to perform your duties without any ban, limitation or other restriction,during the period in which you are not prepared to perform your full normal duties you will not be paid.
- (e) Do you understand what I am directing you to do? [record answer]
- (f) Do you agree to work as directed under your contract of employment and agree to perform your full range of duties without any ban, limitation or other restriction for the whole of your shift? [record answer]

#### 1.4. Step 4 – If the Employee refuses to agree.

If the Employee refuses to agree, read out the following:

“You are off pay until such time as you are prepared to agree that you will comply with your contract of employment and perform all of your duties as required by your contract of employment, for the whole of your rostered shift.”

**1.5. Step 5 – Complete and send the file note**

Immediately after you have finished talking to the Employee, you and the witness must complete the Partial Work Not Accepted File Note, as a contemporaneous record of your discussion. Upon completing the Partial Work Not Accepted File Note please immediately send a copy via email to [employeerelations@cdu.edu.au](mailto:employeerelations@cdu.edu.au)

Please contact Employee Relations if you have any questions about this protocol.

**1.6. Final step – When the employee recommences performance of full duties.**

Pay will be ceased for the Employee until such time as they recommence performing the full duties of their position. Employees, for whom pay has been ceased, are to be instructed to advise you when they recommence full duties in order that pay can be recommenced. This is to be advised to Employee Relations without delay.

**2. Notifying Employees that until such time as they undertake the full responsibilities they will receive a percentage of their pay (i.e. reduced by the percentage they do not undertake)**

As a general principle where an Employee undertakes bans or partial bans the Employee will have their pay reduced by the percentage of their duties that they do not perform.

Set out below are instructions for Supervisors to record this information. Supervisors must follow and comply with all of the instructions set out in this script, including completing a file note in the form attached.

**2.1. Step 1 – Witness**

Find another Supervisor (e.g. College Manager, Director or a Manager) to assist you and act as a witness.

**2.2. Step 2 – Approach each Employee**

Both you and the witness should approach each Employee who is refusing to perform all of their normal work.

**2.3. Step 3 – Ask questions**

You must ask each individual Employee the questions set out below. While you are asking these questions, you or the witness must record the Employee's answers on the attached file note.

Questions to ask:

- (a) I see that you are not [describe what is required by the Employee].
- (b) Is this because of and/or as a result of a union ban on this activity? [record answer]
- (d) If you are not prepared:
  - (i) to perform your full range of duties according to your contract of employment;
  - (ii) including [specific task]; and
  - (iii) to perform your duties without any ban, limitation or other restriction, during the period in which you are not prepared to perform your full normal duties your pay will be reduced by a proportionate percentage to the work ban until such time as you are prepared to perform the whole of your duties.
- (e) The percentage reduction that will apply to you [has been / will be] set out in a formal written notice from the University to you.
- (f) Do you understand that you will only receive a proportionate percentage of your pay until you undertake your full normal duties? [record answer]

- (g) Do you agree to work as directed under your contract of employment and agree to perform your full range of duties without any ban, limitation or other restriction for the whole of your shift?  
[record answer]

2.4. **Step 4 – If the employee refuses to agree.**

If the Employee refuses to agree, read out the following:

“Your pay will be reduced by a proportionate percentage to the work ban until such time as you are prepared to agree that you will comply with your contract of employment and perform all of your duties as required by your contract of employment, for the whole of your rostered shift.”

2.5. **Step 5 – Complete and send the file note**

Immediately after you have finished talking to the Employee, you and the witness must complete the Partial Work Performed File Note, as a contemporaneous record of your discussion. Upon completing the Partial Work Performed File Note please immediately send a copy via email to [employeerelations@cdu.edu.au](mailto:employeerelations@cdu.edu.au)

Please contact Employee Relations if you have any questions about this protocol.

2.6. **Final step – When the employee recommences performance of full duties.**

Pay will be at the determined percentage advised to the Employee until such time as they recommence to perform full duties of their position. Employees, for whom pay has been reduced, are to be instructed to advise you when they recommence full duties in order that pay can be recommenced. This is to be advised to Employee Relations without delay.