

Protected Industrial Action

Fact Sheet



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 will be taken in accordance with the requirements of the *Fair Work Act 2009* (Cth) (the Act). As such, this factsheet provides information about what Protected Industrial Action is, who is eligible to take Protected Industrial Action and the possible impacts.

DEFINITIONS

Employee means anyone employed by the University and includes all continuing fixed-term, casual, adjunct or honorary staff or those holding University offices or who is a member of a University committee.

Organisational unit means college, school, centre or other academic unit; a department, or other administrative unit within the University.

Protected Industrial Action (PIA) means action of any of the following kinds:

- the performance of work by an Employee in a manner different from that in which it is customarily performed, or the adoption of a practice which results in a restriction, or limitation on, or a delay in the performance of work;
- a ban, limitation or restriction on the performance of work by an Employee or on the acceptance of or offering for work by an Employee; or
- a failure or refusal by Employees to attend for work or a failure or refusal to perform any work at all by Employees who attend for work.

Supervisor means the person responsible for day-to-day supervision of an Employee or a group of Employees.

TAKING PROTECTED INDUSTRIAL ACTION

Protected Industrial Action (PIA) is industrial action which is taken by Employees for the purpose of supporting or advancing claims in relation to an enterprise agreement negotiation under the Act. There are various requirements which need to be met before industrial action is Protected Industrial Action. For instance, the industrial action must:

- be authorised by a Protected Action Ballot Order (PABO);
- not be in support of, or advance, claims to include unlawful terms in the agreement; and
- be taken only if the required notice has been given to the other party.

A **protected action ballot** is a process by which Employees can choose, by means of a fair and democratic secret ballot, whether or not to authorise Protected Industrial Action for a proposed enterprise agreement. In other words, the protected action ballot is conducted to determine whether Employees wish to engage in particular PIA.

In order for a protected action ballot to be conducted, an application must be made to the Fair Work Commission (FWC) by a bargaining representative (i.e. in this case the NTEU, AEU, United Voice, CPSU or AMWU) who is representing Employees who will be covered by the proposed enterprise agreement.

Protected action can only be taken by an Employee after the proposed action has been approved by the FWC and subsequently voted for by eligible Employees in a protected action ballot.

The Protected Industrial Action must commence within 30 days after the declaration of the results of the ballot.

To be eligible to take PIA an Employee must:

- be in the group of Employees specified in the protected action ballot order;
- be covered by the proposed enterprise agreement, and either:
 - be represented by a bargaining representative who is an applicant for the protected action ballot order, or
 - be a bargaining representative for themselves but also a member of a union (if that union is an applicant for the protected action ballot order); and be eligible to be included on the roll of voters.

If an Employee is not eligible to vote, they will not be able to take protected industrial action.

Protected Industrial Action is authorised if:

- the industrial action was the subject of the ballot;
- at least 50% of Employees on the roll of voters for the ballot voted in the ballot;
- more than 50% of the valid votes cast were votes approving the PIA, and
- the PIA commences within the 30 day period starting on date of declaration of the results of the ballot.

The bargaining representatives must give notice before a Employee engages in Protected Industrial Action. The minimum notice period before taking action as required by the Act before PIA commences is 3 working days, unless otherwise explicitly stated by the FWC. If the FWC is satisfied that there are exceptional circumstances justifying a longer period of notice, the protected action ballot order may specify a period of up to 7 working days.

The notice must specify the nature of the action and the day on which it will start.

There is a legal **restriction to making payments** for PIA. If an Employee engaged, or engages, in PIA, on a day the employer must not make a payment to the Employee in relation to the total duration of the industrial action on that day.

In the case of a partial work ban, the University can take steps to reduce any payment completely or by a specified proportionate amount.

Under the Act it is unlawful for anyone (including the University, Employees or union representatives) to take adverse action against Employees or otherwise require them to participate or not to participate in a protected action ballot or any subsequent PIA.

EMPLOYEE RESPONSIBILITIES

Employees are not forced to take PIA and do not have to participate in PIA, even if they participated in the protected action ballot.

Employees who are not participating in or eligible to take PIA will be expected to attend work and continue with the performance of their work.

Employees who engage in PIA are obliged to inform People and Capability of the length of PIA taken.

This can be done via the Notification of Industrial Action Form. It is important that Employees engaging in PIA inform the University of the amount of PIA as there is a legal obligation for PIA to be unpaid. If an Employee fails to inform People and Capability, this could be a contravention of the Act.

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.

LEAVE ARRANGEMENTS

If a **leave arrangement** is made or requested during a period of industrial action the arrangement or request should be dealt with in accordance with the standard policies and procedures for leave.

In the ordinary course, any leave requests will be subject to the University's operational requirements and applicable policies. When considering any request for absence from work during a period of PIA, including requests to work from home, take leave, use accrued time in lieu, use accrued rostered days off and other short term leave, the supervisor should consider whether:

- operational requirements will be met if the request is approved;
- whether the request is designed to avoid obligations to attend for work during periods of industrial action (in that case, the supervisor should seek advice from OPC); and
- applications for Personal Leave should be approved where the normal requirements on the current Enterprise Agreement have been met (i.e. a medical certificate after three days).

EMPLOYER ACTION

Employers have a legal right to respond to industrial action being taken and can do so by locking out Employees.

Other actions employers can take include:

- standing-down Employees in accordance with Part 3–5 of the Fair Work Act, or
- declining to pay Employees for partial work bans in accordance with partial work bans under s.471(4)

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