

METRO COUNCIL MEB PROTECTED INDUSTRIAL ACTION FACTSHEET

What is Protected Industrial Action?

Protected Industrial Action is a legal form of industrial action, which can involve strikes and/or work bans. For industrial action to be protected, it must be taken in compliance with Fair Work Act 2009 (Cth). Protected industrial action enables workers to take industrial action without experiencing disciplinary consequences from their employer.

What is Unprotected Industrial Action?

Unprotected Industrial Action is where industrial action is taken which is not in compliance with Fair Work Act 2009 (Cth). If you take unprotected industrial action, you could be subject to disciplinary action by your employer. If you follow the ASU's instructions, you will not be taking Unprotected Industrial Action.

What industrial actions will we be undertaking?

The industrial actions listed on the ballot are all actions that have legal protection if we choose to take them. They range from activities such as wearing union badges and t-shirts to work, to handing out leaflets to the public, all the way through to going on strike.

Having all these actions doesn't mean that we must use all of them - it just gives us the ability to do so with legal protection if we choose to. We'll hold regular union meetings where we can come together and discuss which industrial actions we want to undertake and when.

An agreed industrial action can only be taken after the ASU has given the required notice to your employer of the intention to take that agreed action. The ASU will advise you when you can commence any agreed industrial action.

Do you have to be an ASU member to take Protected Industrial Action?

Yes, only ASU members are legally entitled to take Protected Industrial Action. If your co-workers are not members yet, encourage them to join now so they can stand with you and your fellow union members. As soon, as their membership application is processed, they will have the right to stand with you to take protected action.

Do I have to notify my boss when I am taking an industrial action?

The formal notifications to your employer are issued by the ASU, not individual members. If asked, you should however comply with directions from your employer to inform them about what duties you will or will not be performing on that day (see next section for further information).

Can my boss ask me if I am taking industrial action?

Your boss should not ask you about your intention to take industrial action in the future. If your boss asks this, you do not have to respond. Questions you do not need to respond to include:

- Do you plan to take industrial action?
- Are you going to strike?
- Are you intending to join the union action?

If you are asked directly by your boss if you're doing an industrial action and it's within one day or while that action being taken, you **need** to respond honestly. You do not need to go out of your way to notify your boss.

If your boss gives you a lawful and reasonable direction and you are refusing to do it because you are taking part in industrial action, you **must** state this.

Can management stop or punish Protected Action?

No. Employers cannot lawfully prevent, discourage or discriminate against workers for taking Protected Industrial Action. There are hefty penalties for employers found guilty of these offences. If you believe you are being treated unlawfully, escalate to your local ASU delegate or organiser.

Will I be paid if I take part in industrial action?

If you take part in a total work ban or strike, which is where you refuse to attend work or perform any work, you will not be paid for the time you are taking part in that action.

If you take part in a partial work ban, which is essentially all industrial action apart from total work bans, then you will be paid unless your employer has given written notice that they will reduce your pay.

Your employer has discretion to proportionately reduce your pay if you take part in a partial work ban. Your employer can only reduce your pay if they have given written notice of their intention to do so and that notice is in accordance with the Fair Work Act 2009 (Cth). If you have not received written notice then your pay cannot be reduced because of a partial work ban. The earliest such a notice can take effect is from the day AFTER you receive it. It cannot act retrospectively.

Can I still take leave while industrial action is happening?

The normal process for taking leave continues while industrial action is happening.

While are on any approved leave, including annual leave or long service leave, then you are not taking part in industrial action. You can apply for leave at any time during industrial action and the normal process for leave approval should occur.

Personal leave, including sick leave and carer's leave, can still be taken for the reasons specified in your Enterprise Agreement and according to the normal process, including the provision of supporting evidence where required.

You cannot use sick leave to take part in industrial action or as a form of industrial action.

You should not be accused of taking sick leave to strike. You should not be pressured to give any further explanation for your leave other than the evidence that is usually required.

Will I get in trouble for taking an action?

No – if you follow the ASU's instructions, you should not get in any trouble.

It is illegal for an employer to discriminate in any way against a member for undertaking or proposing to undertake Protected Industrial Action.

With large numbers of union members participating, our actions will not only be more effective, but we'll have 'strength in numbers' – there'll be so many of us undertaking action that we'll gain a large measure of safety and protection just from this.

Outside the Protected Industrial Action itself, you are still required to comply with your employer's policies and reasonable directions.

If you feel unsure about something, contact one of your Delegates or ASU Organiser before taking the action.

What if my boss does or says something they shouldn't during industrial action?

If you're concerned about something management does or says to you, please contact one of your Delegates or ASU Organiser ASAP.