

SAPN/Enerven Industrial Action Explainer

The SBU Union representatives have received quite a few questions about industrial action recently, this newsletter is an attempt to explain the basics and answer some frequently asked questions.

What is industrial action?

Under the *Fair Work Act*, industrial action is defined as to include the following actions:

- employees performing work in a manner different to how it is normally performed
- employees adopting a practice that restricts, limits or delays the performance of work
- a ban, limitation or restriction by employees on performing or accepting work
- a failure or refusal by employees to attend for work or perform any work
- the lockout of employees from their employment by their employer.

Industrial action under the FW Act can be protected or unprotected.

Protected industrial action can only be taken when negotiating for a proposed enterprise agreement. A main importance of industrial action being protected is that it gives immunity from civil liability. The *Fair Work Act* protects people against adverse action being taken against them for taking, or not taking, part in industrial action.

Industrial action is only protected if:

- it is action taken by employees to support claims in relation to an enterprise agreement or;
- it is action taken by employers or employees in response to industrial action taken by the other party (employer or employee response action) and
- the action meets the common and additional requirements for protection, which include:
 - not taking action before the nominal expiry date of an industrial agreement
 - the parties are genuinely trying to reach agreement
 - observing the notice requirements
 - complying with any relevant orders or declarations
 - **authorisation by secret ballot** (for employee claim action only)

To take protected industrial action an application must be made to the Fair Work Commission for a Protected Industrial Action Ballot order. If the order is granted and a majority of employees who vote in a secret ballot vote in favour, employees then gain the right to take protected industrial action if they choose to.

Fines can be imposed on individual employees and/or unions for breaches of the *Fair Work Act* in relation to industrial action. The SBU will ensure that any industrial action if taken by members is in accordance with the *Fair Work Act*. The SBU will not support or endorse the taking of unprotected industrial action.

Does a protected action ballot for action mean employees have to take industrial action?

No, industrial action is not compulsory. The SBU will not endorse any industrial action that is not supported by a majority of employees in any workgroup.

Is the SBU asking members to take industrial action?

No, the SBU's role is to provide advice, explain options and assist in executing the decisions made by members. Decisions of members are made democratically, the SBU unions will be guided by the majority view of their members. If our members direct us to, the SBU unions will apply to the Fair Work Commission for a Protected Action Ballot order.

What about 'work to rule'?

'Working to rule' i.e. following all workplace rules and procedures put in place by your employer is NOT industrial action. It is what all employees should be doing at all times. Not following all relevant workplace rules and procedures exposes employees to disciplinary action up to and including termination of employment.

The SBU's strong advice is – **Do not risk your safety, or your job**, ensure you understand and fully comply with all workplace rules and procedures for all tasks at all times.

For more information regarding the SAPN/Enerven enterprise agreement negotiations, contact your relevant Union Workplace Delegate or call your Union Organiser:

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