

## Industrial action

Industrial action is taken by employers or employees to settle a workplace dispute about working conditions. It includes, when employees:

- don't come to work
- fail, or refuse to perform any work at all
- delay or put a ban or limit on the work they do
- are locked out of a workplace by their employer.

We provide general information on industrial action only. For information on taking, suspending and stopping industrial action visit the Fair Work Commission website [↗](https://www.fwc.gov.au/resolving-issues-disputes-and-dismissals/industrial-action) (<https://www.fwc.gov.au/resolving-issues-disputes-and-dismissals/industrial-action>) .

### When is industrial action protected?

Industrial action can legally be taken when bargaining for a new [registered agreement](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2034) ([www.fairwork.gov.au/Dictionary.aspx?TermID=2034](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2034)) is unsuccessful. This is known as protected industrial action.

Several requirements must be met for industrial action to be protected. These are that:

- the existing agreement has passed its nominal expiry date
- parties have genuinely tried to reach an agreement
- the action is authorised by a protected action ballot
- the notice requirement for action is met
- the action taken is in support of claims about 'permitted matters ([www.fairwork.gov.au/Dictionary.aspx?TermID=2150](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2150)) '
- the action taken is not about [unlawful terms](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2138) ([www.fairwork.gov.au/Dictionary.aspx?TermID=2138](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2138))
- there is no [pattern bargaining](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2137) ([www.fairwork.gov.au/Dictionary.aspx?TermID=2137](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2137)) '.

### What can happen when protected industrial action is taken?

Civil action (eg. being sued) can be taken where the industrial action involves or is likely to involve:

- injuring someone
- wilful or reckless property destruction or damage
- unlawfully taking, keeping or using of property
- defamation.

The Fair Work Commission (the Commission) can suspend or end protected industrial action that might:

- cause significant economic harm to the employers or employees covered by the registered agreement
- endanger someone's life, personal safety, health or welfare
- cause significant damage to the Australian economy or an important part of it.

### What can't happen when protected industrial action is taken?

When an employee takes part in protected industrial action, an employer must not threaten to dismiss or discriminate against the employee.

Civil action cannot be taken against employers, employees and unions who participate in protected industrial action.

### When is industrial action unprotected?

All other industrial action is unlawful, and not protected.

### What happens when unprotected industrial action is taken?

The Commission can make an order to stop or prevent unprotected industrial action. The Commission can make this order by itself or through an application.

Employers, employees and bargaining representatives who take unprotected industrial action can face other consequences. For example, being sued for damages for losses suffered as a result of the action, by anyone affected by the action, such as a business that lost money because it couldn't get hold of goods it needed.

Where unprotected industrial action breaches the Fair Work Act 2009, we can also investigate these matters. For example, when prohibited payments are made during industrial action.

Source reference: [Fair Work Act 2009 s.406 - 469 and 477](http://www.comlaw.gov.au/Series/C2009A00028) (http://www.comlaw.gov.au/Series/C2009A00028)

## Need help resolving general protections issues?

### For employees:

If you've lost your job, contact the Fair Work Commission (the Commission) first if you think you were sacked because of:

- [discrimination](http://www.fairwork.gov.au/Employee-entitlements/Protections-at-work/protections-from-discrimination-at-work) ([www.fairwork.gov.au/Employee-entitlements/Protections-at-work/protections-from-discrimination-at-work](http://www.fairwork.gov.au/Employee-entitlements/Protections-at-work/protections-from-discrimination-at-work))
- a reason that is harsh, unjust or unreasonable
- another protected right.

You have 21 days starting from the day after you were dismissed to lodge an application with the Commission. Check the information at the [Commission website](https://www.fwc.gov.au/) (https://www.fwc.gov.au/) to find out if you can apply for:

- [unfair dismissal](https://www.fwc.gov.au/termination-of-employment/unfair-dismissal) (https://www.fwc.gov.au/termination-of-employment/unfair-dismissal) (not available if you lost your job because of a genuine [Redundancy](http://www.fairwork.gov.au/Ending-employment/Redundancy/default) (www.fairwork.gov.au/Ending-employment/Redundancy/default) )
- a general protections dismissal
- unlawful termination.

For other general protections issues:

- consider whether the action taken against you was unlawful after reading the information on this page
- see our [Help resolving workplace issues](http://www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default) (www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default) section for practical advice on:
  - talking to your employer about fixing the problem
  - getting help from us if you still can't resolve it.

### For employers:

Take general protections issues seriously. Speak with your employee to address the problem after reading the information on this page.

We have resources to help you:

- Take our [Difficult conversations in the workplace - manager course](http://www.fairwork.gov.au/how-we-will-help/online-training/online-learning-centre/difficult-conversations-in-the-workplace-manager-course) (www.fairwork.gov.au/how-we-will-help/online-training/online-learning-centre/difficult-conversations-in-the-workplace-manager-course) to learn how to handle the conversation well and deal with the problem.
- Download our [Managing underperformance best practice guide](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/managing-underperformance) (www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/managing-underperformance) for information about how to take reasonable management action to make sure employees are doing their job properly. Disciplinary action should be carried out by a manager in a reasonable, lawful way.

### What to do next

- Find out about [Payment during industrial action](http://www.fairwork.gov.au/Employee-entitlements/industrial-action-and-union-membership/Industrial-action/payment-during-industrial-action) (www.fairwork.gov.au/Employee-entitlements/industrial-action-and-union-membership/Industrial-action/payment-during-industrial-action)
- Visit the [Commission website](https://www.fwc.gov.au/resolving-issues-disputes-and-dismissals/industrial-action) (https://www.fwc.gov.au/resolving-issues-disputes-and-dismissals/industrial-action) for more information on industrial action
- Read the [Commission's industrial action benchbook](https://www.fwc.gov.au/resources/benchbooks/industrial-action-bench-book) (https://www.fwc.gov.au/resources/benchbooks/industrial-action-bench-book) for information about protected and unprotected industrial action.

### Help for small business

- Find tools, resources and information you might need on our [Small business page](http://www.fairwork.gov.au/Find-help-for/Small-business/default) (www.fairwork.gov.au/Find-help-for/Small-business/default) .

### You might also be interested in

- [Industrial action fact sheet](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/industrial-action) (www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/industrial-action)
- [Pay during temporary closures](http://www.fairwork.gov.au/pay/pay-during-stand-down-and-severe-weather) (www.fairwork.gov.au/pay/pay-during-stand-down-and-severe-weather)

- [Protections at work \(www.fairwork.gov.au/employee-entitlements/protections-at-work/default\)](http://www.fairwork.gov.au/employee-entitlements/protections-at-work/default)
- [Agreements \(www.fairwork.gov.au/awards-and-agreements/Agreements/default\)](http://www.fairwork.gov.au/awards-and-agreements/Agreements/default)

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## Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.