

Industrial Action Guidelines

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Purpose

These Guidelines have been developed to meet the requirements of the *Fair Work Act 2009* (the Act) in relation to protected industrial action and to accommodate the obligations of the University to staff, students and the wider community during periods of industrial action.

Scope

These Guidelines apply to all employees of the University.

Legislative Context

- [University Collective Agreement](#)
- Federation University Australia TAFE Teaching Staff Agreement 2019
- Fair Work Act 2009 (Cth)

Definitions

Act	The Fair Work Act 2009
Industrial Action:	The Act defines industrial action in section 19 as any action of the following kinds:

	<p>(a) 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 in relation to work by an employee, the result of which is a restriction or limitation on, or a delay in, the performance of the work;</p> <p>(b) 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;</p> <p>(c) 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;</p> <p>(d) the lockout of employees from their employment by the employer of the employees. It does not include action by employees that is authorised or agreed to by the employer or action by an employee if the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety.</p>
Strike	A strike is a collective withdrawal of labour, of varying duration, during which employees refuse to attend or perform work.
Work Bans	<p>Work bans include staff refusing to perform all their normal duties. The bans may include:</p> <ul style="list-style-type: none"> • Recording or transmitting of exam results • Participation on work allocation meetings • Working overtime • Involvement in other institution specific programs or initiatives • Communicating with senior staff of the University (often at Vice-Chancellor and Deputy Vice-Chancellor level) <p>Bans are a form of industrial action under the Act</p>
Partial Work Ban	<p>A <i>partial work ban</i> is industrial action that is not:</p> <p>(a) a failure or refusal by an employee to attend for work; or</p> <p>(b) a failure or refusal by an employee who attends for work to perform any work at all; or</p> <p>(c) an overtime ban</p>
Protected Industrial Action:	<p>Industrial action is only protected if (amongst other requirements) it occurs after the nominal expiry date of a workplace agreement, after the industrial action has been authorised by a ballot, and following at least 3 days written notice to the employer of any particular industrial action.</p> <p>It is unlawful to harm or disadvantage employees in their employment because they have participated in protected industrial action.</p> <p>Unprotected industrial action exposes employees to the possibility of penalties both at common law and under the Act.</p>

Guidelines Statement

The University recognises that its employees have the right to take lawful Industrial Action in accordance with the Act. The University must also continue to operate and provide quality services to its students, customers and clients during periods of industrial action hence the University supports those employees who wish to continue to work on days when their colleagues are engaged in Industrial Action. These guidelines have been developed to accommodate the obligations of the University to students and the wider community and to meet the requirements of the Act. Employees will not be paid for any period that they participate in Industrial Action. No staff member will have their pay debited if they attend work and perform their full duties.

General Guidelines

Stop work meetings

An authorised stop work meeting may take place by agreement between the employer and the relevant union or a group of employees. Employers sometimes find it convenient to authorise a stop work meeting, for example to allow a union to recommend a Workplace Agreement to employees or to lift industrial action. A meeting like this does not constitute industrial action. Likewise, a meeting held during a lunch break or out of ordinary hours would not constitute industrial action. An unauthorised stop work meeting is effectively a short strike, and time spent at a stop work meeting that would normally be work time may be unpaid (see s470 of the *Fair Work Act 2009*).

Picket lines

Staff should make every reasonable effort to enter the campus but if prevented from doing so, they should report to the supervisor or manager of their area by telephone as soon as possible. The University will monitor the behaviour of picket lines and will take all reasonable steps to prevent unruly or abusive behaviour and minimise any risk to the safety of employees, students or visitors of the University.

Staff members wishing to cross a picket line, either on foot or in a motor vehicle, should be able to do so and should not engage in any altercation with picketers.

Drivers of motor vehicles must not attempt to speed or drive aggressively through a picket line and should under no circumstances drive their vehicle in a way that threatens or causes harm or injury to any person.

The Full Federal Court has held that picketing is not in itself “industrial action” for the purposes of the *Workplace Relations Act 1996* and it can never therefore be “protected industrial action”. Staff who absent themselves from ordinary duties to attend a picket line are treated as being on strike.

Payment during Industrial Action

The Act provides that it is unlawful to pay employees and unlawful for employees to accept payment during periods they are taking Industrial Action, other than in cases of partial work bans (s. 470(1)). Where industrial action takes the form of partial work bans, the University may either:

- reduce payments in proportion to the amount of time that the employee would usually spend performing that task during the day; or
- refuse to accept the performance of any work by the employee(s) engaged in the partial work ban and not make any payment to the employee(s) for the period of the bans; or
- take no action.

Leave during Industrial Action

Supervisors have a responsibility during periods of Industrial Action to ensure that operational requirements continue to be met and that staff who are not participating in Industrial Action attend work. If a leave arrangement is made and approved correctly and well in advance of the Industrial Action the arrangement should not be cancelled. Prior arrangements to take flexi time or some form of time in lieu may need to be cancelled. If the supervisor does not wish to cancel such an arrangement they should satisfy themselves that the arrangement was

made well in advance of the Industrial Action; will not impede operational requirements being met and is in accordance with University Governance Documents.

In other cases, supervisors should not approve any form of absence from work, including work from home arrangements, leave applications, time in lieu arrangements, rostered days off and other short term leave unless the supervisor is satisfied of the following:

- 1) operational requirements will be met; and
- 2) the proposed arrangement is not designed to avoid obligations to attend for work during periods of industrial action;

Responsibilities of staff and supervisors

Unless they are participating themselves in the Industrial Action, supervisors are responsible for minimising any disruption to the normal work of the University. This includes:

- advising other staff of their rights and responsibilities;
- advising students of teaching and other arrangements during a period of Industrial Action;
- ensuring that employees they supervise are correctly paid during periods of Industrial Action;
- reporting as directed on any aspect of the industrial action to the Director, People and Culture.

Staff are responsible for advising the University whether they participated or are participating in Industrial Action.

Superannuation during strike periods

Staff participating in the Strike will not have superannuation contributions made for the period they are on trike as this is not approved leave, therefore no employee or employer contributions will be remitted to the relevant Superannuation fund on behalf of these staff. Staff members will have the option of maintaining both employee and employer superannuation contributions for the period of the Strike, but the option to maintain employee contributions only will not be available.

Cases of alleged misconduct and/or serious misconduct

Employees should report to their supervisor any cases and provide particulars of alleged misconduct and/or serious misconduct e.g. instances of excessive or discriminatory verbal abuse, harassment, threats, insults, assault or personal injury, obstruction, besetting or the deliberate interference with free passage at the workplace or public road, damage or theft of property when crossing a picket line or on University premises or of being ostracised as a result of having crossed a picket line.

In addition to any civil action that may be taken, the University reserves the right to investigate cases of alleged misconduct and/or serious misconduct and take any disciplinary action against a staff member or student who breaches these Guidelines.

Responsibility

These Guidelines will be approved by the Chief Operating Officer. The Director, People and Culture is responsible for ensuring the effective implementation of the Guidelines.

Promulgation

The [Industrial Action Guidelines](#) will be communicated throughout the University via:

1. an Announcement Notice on the FedNews website and through the University Policy - 'Recently Approved Documents' webpage to alert the University-wide community of the approved Guidelines; and

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2. inclusion on the University's online Policy Library.