

INDUSTRIAL ACTION

POLICY OBJECTIVES

- ***Understand:***
 - ***what constitutes industrial action and how it should be dealt with by agencies;***
 - ***that employees are not entitled to be paid unless they are ready, willing and able to perform work as directed.***
- ***Prevent and settle industrial disputes principally by conciliation.***
- ***Maintain harmonious employer-employee relationships and the effective operation of the public sector.***

POLICY PRINCIPLES

- ***Agencies should respond quickly to industrial action or threatened industrial action.***
- ***The Public Sector Directorate of the Department of Commerce Labour Relations Division must be consulted immediately when an agency becomes aware of industrial action or the threat of industrial action and prior to any response being initiated.***
- ***Agencies should not endorse industrial action.***
- ***An employee must not be paid if they are unwilling to perform their duties, in part or in full. The only exceptions to this are where:***
 - ***there is an immediate and genuine risk to employee's health and safety; or***
 - ***the agency has authorised a stop work meeting during paid hours.***
- ***Where appropriate, the Western Australian Industrial Relations Commission (WAIRC) should be used to resolve industrial action.***

STATEMENT

1. The impact of industrial action at the workplace is to be minimised. Agencies should ensure that their response to industrial action is timely and fits the particular circumstances.
2. Agencies must not pay an employee for any form of industrial action that occurs during working hours.
3. In the case of work bans, work to rule or other limitations on the performance of work, a manager must direct an employee to perform all their duties, and advise the employee that failure to do so or performing duties other than those directed will result in their pay being stopped.
4. Where possible, the non-payment of wages or salaries due to participation

- in industrial action should occur in the same pay period as the industrial action.
5. Resumption of pay must only occur when the employee has resumed full duties as directed.
 6. All steps taken in relation to an employee's failure to follow a direction to perform all duties, and the cessation and resumption of pay, must be recorded in writing.
 7. Agencies must follow the attached procedural guidelines when stopping pay due to industrial action.
 8. Agencies affected by industrial action may seek orders from WAIRC under the *Industrial Relations Act 1979* for the industrial action to cease or not proceed. **Agencies must contact their Department of Commerce labour relations adviser prior to seeking WAIRC orders.**

FORMS OF INDUSTRIAL ACTION

9. Industrial action can take several forms.
 - a) **Stop work meetings:** that are not sanctioned by Government and/or agencies.
 - b) **Work bans:** a refusal to do certain types of work or impose other restrictions on the performance of work.
 - c) **Go-slows:** a withdrawal of cooperation.
 - d) **Work to rule:** working to the letter of the contract of employment and commonly includes a ban on voluntary overtime or other 'extra' activities.
 - e) **Strike activity:** employee ceases work in furtherance of resolving a claim or grievance.
10. **Picketing** often accompanies industrial action and can range from small groups of employees standing at the entrance to a workplace to convey their message to those entering and exiting the building, to mass demonstrations that seek to prevent all access to the workplace. Although picketing is not necessarily unlawful, it becomes so if it involves obstruction and besetting (constant harassment). Violent picketing may also constitute a criminal offence.

AGENCY RESPONSE TO INDUSTRIAL ACTION

11. Agencies must act when industrial action is threatened or being taken by employees and are required to notify the Department of Commerce immediately. **An agency's Department of Commerce labour relations adviser must be informed of threatened or actual industrial action and consulted when the agency is considering what action to take, before any action is taken.**
12. The action to be taken by an agency will depend on the situation. Agencies should consider:

- a) the nature of industrial action, i.e. strike, stop work meeting, work ban or limitation;
 - b) the nature of the matters in dispute and the possible impact on the agency and public;
 - c) the anticipated length of action;
 - d) the date of commencement and notified or anticipated cessation of the action;
 - e) the number of employees taking action/expected to take action;
 - f) any relevant award or agreement provisions, including any applicable dispute settlement procedure (DSP).
13. Action available to agencies for dealing with threatened or actual industrial action may include:
- a) seeking compliance in the WAIRC with any applicable award or agreement DSP (the scope of the DSP must cover the dispute in question);
 - b) stopping an employee's pay;
 - c) seeking the assistance of the WAIRC to resolve the dispute under the *Industrial Relations Act 1979* (usually through a section 44 compulsory conference);
 - d) disciplinary action;
 - e) common law proceedings in the Supreme Court of Western Australia (e.g. tort action). An urgent interim or interlocutory injunction can be sought to stop industrial action pending final determination of the proceedings.

OCCUPATIONAL SAFETY AND HEALTH MATTERS

14. The *Occupational Safety and Health Act 1984* (WA) provides that an employee may refuse to work where they have reasonable grounds to believe that to continue to work would expose them or any other person to a risk of imminent and serious injury, or imminent and serious harm to their health. In most instances, the Occupational Safety and Health Tribunal can deal with such issues.

INDUSTRIAL ACTION: PROCEDURAL GUIDELINES

Strikes

1. When strikes occur, managers must ask striking employees to return to work immediately.
2. When employees engage in strike activity, managers must record which employees participate in the strike and for what period of time.
3. Agencies must not pay an employee who engages in strike activity during working hours. Non-payment of salaries/wages for the duration of the stoppage must occur at the earliest possible time, preferably in the same pay period as the strike.

Bans and limitations - action prior to stopping pay

4. The following steps must be followed where bans and limitations are put in place that mean an employee is not performing all of their duties.
 - a) Managers must determine whether an employee is performing their full duties. This must be done on an employee-by-employee basis, according to what is considered reasonable in each circumstance.
 - b) An explanation should be sought from each employee who is not performing their full duties. If an employee does not have a satisfactory explanation for the part performance of their duties or advises that they are participating in industrial action, the manager must direct the employee to perform all their duties. This direction must make it clear that the banned work must be performed in priority to other work and the performance of other duties will not be accepted. The employee should then be advised that failure to follow this direction will result in their pay being stopped. A suggested form of written direction is at **Attachment 1**. If this direction is refused, the employee's pay should be stopped.
 - c) It should be made clear to an employee that performing duties **other than** those required by the manager will still result in their pay being stopped.
 - d) There should be a witness present when a manager questions an employee about their reasons for failing to perform their full duties. A written record of each question and response should be taken at the meeting and it should document the presence of the witness.
 - e) When an employee offers an explanation, such as feeling unwell, the manager will need to determine whether the explanation for the part performance of their duties is reasonable. If the explanation is not reasonable, a written direction should be issued as per 4(b) above.
 - f) Managers should **not** accept nor facilitate the performance of duties by an employee other than those directed.

INDUSTRIAL ACTION

Bans and limitations - stopping and resuming pay

5. When it is determined that an employee will not comply with a manager's written direction to perform all their duties, the employee is not to be allocated work and should be advised that:
 - a) anything less than performance of full duties as directed is unacceptable and the employee must not perform duties other than those directed by the manager;
 - b) as they have refused to comply with direction they will have their pay stopped from when their industrial action commenced;
 - c) if the employee performs work other than that required by the manager, they will not be paid;
 - d) they will remain without pay until they indicate that they are prepared to perform all duties; and
 - e) when they are ready to perform **all** duties, they should advise their manager.
6. Suggested written advice to an employee that their pay is to be stopped is at **Attachment 2**.
7. If an employee whose pay has been stopped indicates they wish to resume full duties, their pay should be recommenced when they resume full duties.
8. Before an employee resumes full duties, they should be given or read the statement contained in **Attachment 3** and only be permitted to resume duties if they give an unambiguous affirmative response.

Rolling stoppages and bans

9. If the employee's industrial action involves rolling bans and stoppages, managers will need to follow these procedures on each occasion there is a stoppage or a failure to perform full duties.

Employee leaving the workplace

10. Managers should not direct an employee engaging in industrial action to leave the workplace. If an employee leaves the workplace it should be made clear to the employee that they are required to perform work as lawfully directed.

Recording action taken

11. All steps taken by managers must be accurately recorded, including:
 - a) a written record of conversations with employees;
 - b) a copy of documents given to employees (**Attachments 1 and 2**);
 - c) a summary document in the form of **Attachment 4**.

ATTACHMENT 1

INDUSTRIAL ACTION

You..... (name of employee) are instructed to resume..... (specify duty/ies) which is/are within the range of duties appropriate to your regular position or for which you are qualified within your classification.

If you do not report to..... (name of supervisor) within 30 minutes, ready and willing to perform.....(specify duty/ies) and thereafter resume the performance of any or all of your full range of duties in accordance with the direction of: (name of supervisor) you will not be paid until you demonstrate your preparedness to comply with the foregoing instruction. Performance of any work other than as directed will not be accepted.

Manager..... Witness.....

Date..... Date.....

ATTACHMENT 2

INDUSTRIAL ACTION

Mr/Mrs/Ms..... (name of employee).

At.....am/pm on..... 20..., you failed to comply with a lawful direction to do.....(specify duty/ies), a duty/duties appropriate to your regular position, or for which you are qualified within your classification.

As a result of this failure, your pay has been stopped and will remain so until such time as you demonstrate a preparedness to perform the above mentioned duty/ies in the appropriate manner.

Performance of any work other than as directed will not be accepted and therefore will not be paid for.

If you decide to resume performance of the above mentioned duty/ies and, thereafter, the full range of your duties, you shall notify.....authorised person) of your decision. (Telephone No:)

Your pay will be recommenced when you resume full duties as directed.

Manager..... Witness.....

Date..... Date.....

ATTACHMENT 3

INDUSTRIAL ACTION

(To be read to employee in the presence of a witness)

Mr/Mrs/Ms..... (name of employee)

At.....am/pm on.....20..., you failed to comply with a lawful direction to do.....(specify duty/ies) in a manner appropriate to your regular position, or for which you are qualified within your classification.

As a result of this failure, you have been taken off pay and will remain so until such time as you demonstrate a preparedness to perform the above-mentioned duty/ies in the appropriate manner.

Although you now have reported for duty, you are required to unequivocally confirm that you are ready and willing to resume performance of..... (specify duty/ies) as well as your full range of duties before your report for duty is accepted.

Do you state that you are ready and willing to perform your full range of duties as directed?

Employee's answer: Yes/Any answer other than yes (*Circle the employee's answer*)

If employee answers Yes:

You are required to report to..... (name of supervisor) within 30 minutes for duties as directed.

If employee answers in a way other than yes:

I am required to advise you that because you did not answer categorically in the affirmative that your pay will remain stopped until such time as you demonstrate a preparedness to resume performance of your full range of duties as directed.

Manager..... Witness.....

Date..... Date.....

ATTACHMENT 4

NO WORK AS DIRECTED - NO PAY SUMMARY DOCUMENT

Name of Authorised Person Title Date of Instruction

Name of Official Witness Title

Name of employee	Classification	Time employee read/given lawful direction	Did employee comply? (Yes/No)	Witnessed (Yes/No)	Time employee advised pay would cease	Did employee comply? (Yes/No)	Witnessed (Yes/No)	General comments

Signature of Authorised Person.....

Date of Signature