



Strike Pay in the Building and Construction Industry

Strike pay refers to the payment by employers of wages to employees for periods during which they were engaged in industrial action. Industrial action not only includes strikes by employees, but also bans and work limitations.

Strike pay is unlawful under the *Fair Work Act 2009* and the *Building and Construction Industry Improvement Act 2005*.

In connection with building work, it is unlawful for employers to pay employees, and employees to accept payment, for taking building industrial action that is industrially-motivated and constitutionally-connected.

In the building industry employees can only be paid:

- for action based on a reasonable concern by the employees about an imminent risk to health or safety, provided that they did not refuse to comply with a reasonable direction by their employer to do other work that was safe
- for action authorised or agreed to in advance and in writing by the employer.

For more information refer to the fact sheet 'Unlawful Industrial Action in the Building and Construction Industry.'

WHO CAN BE HELD LIABLE FOR PENALTIES FOR UNLAWFUL STRIKE PAYMENTS?

Both the employer who makes unlawful strike payments and the employee who accepts them can be liable for penalties.

WHAT SHOULD AN EMPLOYER DO WHEN EMPLOYEES ENGAGE IN BUILDING INDUSTRIAL ACTION?

If an employee engages in unprotected industrial action, an employer must deduct the appropriate amount of pay from the employee's pay. If the duration of the industrial action is:

- less than four hours, deduct four hours pay
- more than four hours, deduct pay for the duration of the industrial action.

Where employees engage in protected industrial action the employer must deduct payment for the actual period of action.

PARTIAL WORK BANS

If an employee engages in a partial work ban that is protected industrial action the employer may deduct a proportion of the employees pay. The *Fair Work Regulations 2009* specify a method for determining the proportion. The employer is not required to make a deduction. The rules about proportionate deduction do not apply if the partial work ban is unprotected industrial action. In that case, the four hour rule would apply.

WHAT PENALTIES CAN A COURT IMPOSE ON THOSE WHO MAKE UNLAWFUL STRIKE PAYMENTS?

Penalties of up to:

- \$110,000 in respect of strike payments by a corporation
- \$6,600 in respect of strike payments by or to an individual.

WHO CAN APPLY FOR PENALTIES IN RELATION TO STRIKE PAYMENTS?

Either of the following people:

- an ABCC inspector
- a person with an interest in the matter e.g. a project owner, a head contractor or a subcontractor.

CAN UNIONS OR UNION OFFICIALS MAKE DEMANDS FOR STRIKE PAY?

No, it is unlawful to make a claim for strike pay.

WHO CAN BE HELD LIABLE FOR UNLAWFUL DEMANDS FOR STRIKE PAY?

Unions, union officials and union members are liable to civil penalties if they claim strike pay from an employer.

Similarly, those who accept a payment from an employer or ask an employer to pay strike pay are also liable to civil penalties.

WHAT PENALTIES CAN A COURT IMPOSE ON THOSE MAKING UNLAWFUL DEMANDS?

Penalties of up to:

- \$110,000 for claims by a body corporate
- \$6,600 for claims by an individual.

Additionally:

- compensation to the employer as the Court thinks appropriate
- injunctions and other orders to stop the breach or remedy its effects.

WHO CAN APPLY FOR PENALTIES IN CONNECTION WITH DEMANDS FOR STRIKE PAY?

Either of the following people:

- the employer or contractor concerned
- an ABCC Inspector
- a person with an interest in the matter.

Please note: The Australian Government has proposed changes to the building industry legislation. The contents of this fact sheet will apply until the BCII Act is amended.



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