



Unlawful Industrial Action in the Building and Construction Industry

Industrial action in the building and construction industry, except in certain circumstances, is unlawful. Persons or organisations engaging in such action are liable to be prosecuted.

WHAT IS BUILDING INDUSTRIAL ACTION?

Building industrial action by employees includes strikes, work stoppages, bans and other restrictions on the performance of work. Building industrial action by employers is locking out employees.

WHAT IS UNLAWFUL INDUSTRIAL ACTION?

Unlawful industrial action is defined as building industrial action that is 'industrially-motivated', 'constitutionally-connected' and not 'excluded action'.

WHAT IS 'INDUSTRIALLY-MOTIVATED' ACTION?

'Industrially-motivated' action is industrial action motivated by one of the following purposes:

- supporting or advancing claims against, or by, an employer in respect of the employment of employees of that employer
- advancing industrial objectives of an industrial association
- disrupting the performance of work.

WHAT IS 'CONSTITUTIONALLY-CONNECTED' ACTION?

'Constitutionally-connected' action is building industrial action that satisfies at least one of the following conditions, namely that the action:

- is taken by an organisation such as a union
- is taken by a constitutional corporation, or adversely affects a constitutional corporation as a building industry participant
- relates to work that is regulated by a Commonwealth industrial instrument
- relates to the bargaining or proposed bargaining for, or the making, or proposed making, of an enterprise agreement
- occurs in a territory or Commonwealth place.

WHAT IS 'EXCLUDED' INDUSTRIAL ACTION?

'Excluded' industrial action is action that is protected under the *Fair Work Act 2009*. Industrial action protected under state and territory laws is NOT excluded. It should be noted that there are strict limitations as to what is 'excluded' industrial action. Employers and employees should seek advice or they may expose themselves to financial penalties.

Some exemptions apply to action that is not protected, but is still lawful. If the action is authorised by an employer in writing before it takes place or the action was based on a reasonable concern of an imminent risk to health and safety, it is considered lawful.

WHAT ABOUT PICKETING AND BLOCKADING?

Picketing or blockading is not always regarded as building industrial action. However, failure to observe proper standards of conduct when taking such action could expose a person to penalties under other laws.

WHAT ARE THE PENALTIES FOR TAKING UNLAWFUL INDUSTRIAL ACTION?

If action is unlawful industrial action, the ABC Commissioner, an ABCC inspector or a person affected by the contravention may respond by:

- applying to a court for orders that participants pay
 - penalties of up to \$110,000 for a body corporate or \$22,000 for an individual
 - compensation for damage resulting from the unlawful industrial action
- applying for an injunction to restrain the action.

WHAT'S THE DIFFERENCE BETWEEN PROTECTED AND UNLAWFUL INDUSTRIAL ACTION?

Essentially, a party taking protected action is immune from the normal legal consequences of industrial action (except if it results in personal injury, wilful or reckless damage to property, theft or unlawful use of property).

If industrial action is protected, the other party may respond by:

- taking industrial action of its own
- applying to Fair Work Australia (FWA) to have the protected industrial action suspended or terminated.

FURTHER INFORMATION

For more information relating to payments during periods of unlawful industrial action, please refer to the ABCC's 'Strike Pay' fact sheet.

Fact sheets and other reference material is available from the ABCC:

- Hotline: 1800 003 338
- Website: www.abcc.gov.au

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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