



Title:

Industrial Action Policy

Version	1.0
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Short description	This policy has been developed 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.
Relevant to	All employees
Authority	Vice Chancellor
Responsible officer	Executive Director, Human Resources
Responsible office	Division of Human Resources
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Next scheduled review date	September, 2012
Related University documents	Code of Conduct for Staff Generic Responsibilities of CSU Staff CSU Enterprise Agreement 2005 - 2008 CSU Leave Manual
Related legislation	Fair Work Act 2009 NSW Anti-Discrimination Act 1977 Sex Discrimination Act 1984 Workplace Relations Act 1996 Occupational Health and Safety Act 2000
Key words	Policy, industrial action, payment, leave, responsibilities of supervisors, picket line,

1. General Policy

- 1.1 This policy has been developed 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.
- 1.2 The University recognises that its employees have the right to take lawful industrial action in accordance with the Fair Work Act 2009. However, the University also supports those employees who wish to continue to work on days when their colleagues are on strike or otherwise engaged in industrial action.
- 1.3 The University will continue to operate and provide quality services to its students, customers and clients during periods of industrial action. All CSU campuses will remain open for normal operating hours and work will be available for all employees during industrial action. However, in exceptional circumstances, the University may need to close part or all of a building where there are concerns related to health, safety and security.
- 1.4 Employees will not be paid for any period that they participate in work stoppage or strikes.
- 1.5 No employee will have their pay deducted if they attend work and perform their full duties.

2. Protected industrial action

- 2.1 It is unlawful to harm or disadvantage employees in their employment because they have participated in protected industrial action, however, unprotected industrial action exposes employees to the possibility of penalties both at common law and under the Fair Work Act 2009.
- 2.2 Industrial action is only protected if it occurs after the nominal expiry date of a workplace agreement (s.413(6)), 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 (s.414(2)). The protection ceases when the 'bargaining period' ends
- 2.3 Protection from civil liability does not include civil wrong (e.g. assault or personal injury, obstructing, besetting or the interference with free passage at the workplace or public road, defamation, damage or theft of property).

3. Types of industrial action

Types of industrial action include strikes, bans and stop work meetings. The Fair Work Act 2009 defines industrial action in s19 as any action of the following kinds:

- “(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;
- (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;

- (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;
- (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 University 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.

3.1 Strikes

- i. A strike is a collective withdrawal of labour, of varying duration, during which employees refuse to perform all work.

3.2 Bans

- i. Work bans include staff refusing to perform certain duties. The bans commonly include:
 - (a) Recording or transmitting of exam results
 - (b) Participation on work allocation meetings
 - (c) Working overtime
 - (d) Communicating with senior staff of the University
 - (e) Involvement in other institution specific programs or initiatives
- ii. Bans are a form of industrial action under the Fair Work Act 2009.

3.3 Stop work Meetings

- i. An authorised stop work meeting may take place by agreement between the University and the relevant union/s or a group of employees. The University may sometimes find it convenient to authorise a stop work meeting, for example to allow a union to recommend a new Enterprise 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.
- ii. An unauthorised stop work meeting is effectively a short strike, and time spent at a stop work meeting that would normally be work time must be unpaid (s470 of the Fair Work Act 2009).

3.4 Picket Lines

- i. Employees 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.
- ii. 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.
- iii. Should any employee, whether a member of the union calling for the industrial action or not, take a personal decision not to cross a picket line, their absence will be considered as supporting the industrial action.

- iv. The Full Federal Court has held that picketing is not in itself “industrial action” for the purposes of the Act and it can never therefore be “protected industrial action”. Employees who absent themselves from ordinary duties to attend a picket line are treated as being on strike.
- v. 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 attempt to ensure that unreasonable behaviour is minimised or eliminated.
- vi. As previously mentioned employees who picket the University are not protected from civil liability if they engage in a civil wrong.

4. Payment during industrial action

- 4.1 The Fair Work Act 2009 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:
 - (a) reduce payments in proportion to the amount of time that the employee would usually spend performing that task during the day; or
 - (b) 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
 - (c) take no action.
- 4.2 If it is proposed to reduce pay, or to not pay at all, the University will provide prior written notice to all affected employees. If it is intended to reduce the employees’ pay then the notice will include the proportion by which it is intended to reduce their payments.
- 4.3 Salary calculations and normal working hours for the purpose of this policy shall be based on a five (5) day week. For the purposes of calculating the salary forfeited by an employee, a day’s salary constitutes one fifth of their weekly rate of salary.

5. Leave during industrial action

- 5.1 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.
- 5.2 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 policies.
- 5.3 In other cases, supervisors should not approve any form of absence from work, including working 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:

- (a) operational requirements will be met;
- (b) the proposed arrangement is not designed to avoid obligations to attend for work during periods of industrial action;
- (c) sick leave applications must be supported by a medical certificate.

6. Responsibilities of staff and supervisors

- 6.1 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:
 - (a) advising other staff of their rights and responsibilities;
 - (b) advising students of teaching and other arrangements during a period of industrial action;
 - (c) ensuring that employees they supervise are correctly paid during periods of industrial action;
 - (d) reporting as directed on any aspect of the industrial action to the Executive Director, Human Resources.
- 6.2 Employees are responsible for advising the University whether they participated or are participating in industrial action.

7. Superannuation during strike periods

- 7.1 Employees participating in a strike will not have superannuation contributions made for the period they are on strike, as this is not approved leave. Accordingly, no employee or employer contributions will be remitted to a Superannuation Fund on behalf of these staff.
- 7.2 Employees 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.

8. Cases of alleged misconduct and/or serious misconduct

- 8.1 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 ostracized as a result of having crossed a picket line.
- 8.2 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 this policy.

Table of amendments

Version number	Date	Short description of amendment