

#### **474 Payments not to be made relating to certain periods of industrial action**

- (1) If an employee engaged, or engages, in industrial action that is not protected industrial action against an employer on a day, the employer must not make a payment to an employee in relation to:
- (a) if the total duration of the industrial action on that day is at least 4 hours—the total duration of the industrial action on that day; or
  - (b) otherwise—4 hours of that day.

Note: This subsection is a civil remedy provision (see Part 4-1).

- (2) However, if the industrial action is, or includes, an overtime ban, this section does not apply, in relation to a period of overtime to which the ban applies, unless:
- (a) the employer requested or required the employee to work the period of overtime; and
  - (b) the employee refused to work the period of overtime; and
  - (c) the refusal was a contravention of the employee's obligations under a modern award, enterprise agreement or contract of employment.

Note: An employee is able to refuse to work additional hours if they are unreasonable (see subsection 62(2)). There may be other circumstances in which an employee can lawfully refuse to work additional hours.

(2A) If:

- (a) the industrial action is, or includes, an overtime ban; and
- (b) this section applies in relation to a period of overtime to which the ban applies;

then, for the purposes of this section:

- (c) the total duration of the industrial action is, or includes, the period of overtime to which the ban applies; and
- (d) if paragraph (1)(b) applies—the period of 4 hours mentioned in that paragraph includes the period of overtime to which the ban applies.

(3) If:

- (a) the industrial action is during a shift (or other period of work); and
- (b) the shift (or other period of work) occurs partly on one day and partly on the next day;

then, for the purposes of this section, the shift is taken to be a day and the remaining parts of the days are taken not to be part of that day.

Example: An employee, who is working a shift from 10 pm on Tuesday until 7 am on Wednesday, engages in industrial action that is not protected industrial action from 11 pm on Tuesday until 1 am on Wednesday. That industrial action would prevent the employer making a payment to the employee in relation to 4 hours of the shift, but would not prevent the employer from making a payment in relation to the remaining 5 hours of the shift.

- (4) For the purposes of subsection (3), overtime is taken not to be a separate shift.