

(Fair Work Act 2009)

470 Payments not to be made relating to certain periods of industrial action

- (1) If an employee engaged, or engages, in protected industrial action against an employer on a day, the employer must not make a payment to an employee in relation to the total duration of the industrial action on that day.

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

- (2) However, this section does not apply to a partial work ban.

Note: For payments relating to periods of partial work bans, see section 471.

- (3) A ***partial work ban*** is industrial action that is not:

- (a) a failure or refusal by an employee to attend for work; or
- (b) a failure or refusal by an employee who attends for work to perform any work at all; or
- (c) an overtime ban.

- (4) 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.

- (5) 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, the total duration of the industrial action is, or includes, the period of overtime to which the ban applies.

(Fair Work Act 2009)

471 Payments relating to partial work bans

Employer gives notice of reduction in payments

- (1) If:

- (a) an employee engaged, or engages, in protected industrial action against an employer on a day; and
- (b) the industrial action is a partial work ban; and
- (c) the employer gives to the employee a written notice stating that, because of the ban, the employee's payments will be reduced by a proportion specified in the notice;

then the employee's payments are reduced in accordance with subsection (2) in relation to the period (the ***industrial action period***) referred to in subsection (5).

- (2) The employee's payments in relation to the industrial action period are reduced:

- (a) by the proportion specified in the notice; or
 - (b) if the FWC has ordered a different proportion under section 472—by the proportion specified in the order;
- and the modern award, enterprise agreement or contract of employment that applies to the employee's employment has effect accordingly.

- (3) The regulations may prescribe how the proportion referred to in paragraph (2)(a) is to be worked out.

Employer gives notice of non-payment

- (4) If:
- (a) an employee engaged, or engages, in protected industrial action against an employer on a day; and
 - (b) the industrial action is a partial work ban; and
 - (c) the employer gives to the employee a written notice stating that, because of the ban:
 - (i) the employee will not be entitled to any payments; and
 - (ii) the employer refuses to accept the performance of any work by the employee until the employee is prepared to perform all of his or her normal duties;

then the employee is not entitled to any payments in relation to the period (the ***industrial action period***) referred to in subsection (5).

- (4A) If:
- (a) an employer has given an employee a notice under paragraph (4)(c); and
 - (b) the employee fails or refuses to attend for work, or fails or refuses to perform any work at all if he or she attends for work, during the industrial action period;
- then:
- (c) the failure or refusal is ***employee claim action***, even if it does not satisfy subsections 409(2) and 413(4), if the related industrial action referred to in paragraph (4)(a) is employee claim action; or
 - (d) the failure or refusal is ***employee response action***, even if it does not satisfy subsection 413(4), if the related industrial action referred to in paragraph (4)(a) is employee response action.

The industrial action period

- (5) The ***industrial action period*** is the period:
- (a) starting at the later of:
 - (i) the start of the first day on which the employee implemented the partial work ban; or
 - (ii) the start of the next day, after the day on which the notice was given, on which the employee performs work; and
 - (b) ending at the end of the day on which the ban ceases.

Form and content of notice

- (6) The regulations may prescribe requirements relating to one or both of the following:
- (a) the form of a notice given under paragraph (1)(c) or (4)(c);
 - (b) the content of such a notice.

Manner of giving notice

- (7) Without limiting paragraph (1)(c) or (4)(c), the employer is taken to have given a notice in accordance with that paragraph to the employee if the employer:
- (a) has taken all reasonable steps to ensure that the employee, and the employee's bargaining representative (if any), receives the notice; and
 - (b) has complied with any requirements, relating to the giving of the notice, prescribed by the regulations.

Employer does not give notice

- (8) If:
- (a) an employee engaged, or engages, in protected industrial action against an employer on a day; and
 - (b) the industrial action is a partial work ban; and
 - (c) the employer does not give the employee a notice in accordance with paragraph (1)(c) or (4)(c);
- then the employee's payments for the day are not to be reduced because of the ban.

(Fair Work Regulation 2009)

Division 9—Payments relating to periods of industrial action

3.21 Payments relating to partial work bans—working out proportion of reduction of employee's payments

For subsection 471(3) of the Act, the proportion mentioned in paragraph 471(2)(a) of the Act is worked out for an employee or a class of employees by carrying out the following steps.

- Step 1** Identify the work that an employee or a class of employees is failing or refusing to perform, or is proposing to fail or refuse to perform.
- Step 2** Estimate the usual time that the employee or the class of employees would spend performing the work during a day.
- Step 3** Work out the time estimated in Step 2 as a percentage of an employee's usual hours of work for a day.
The solution is the proportion by which the employee's payment will be reduced for a day.

3.22 Payments relating to partial work bans—form of partial work ban notice

For paragraph 471(6)(a) of the Act, a notice given under paragraph 471(1)(c) or (4)(c) of the Act about the reduction of an employee's payments due to a partial work ban must be in a legible form and in English.

3.23 Payments relating to partial work bans—content of partial work ban notice

- (1) For paragraph 471(6)(b) of the Act, a notice about a partial work ban given to an employee under paragraph 471(1)(c) or (4)(c) of the Act must:
 - (a) specify the day on which the notice is issued; and
 - (b) specify the industrial action engaged in, or proposed to be engaged in, that constitutes the partial work ban; and
 - (c) state that the notice will take effect from the later of:
 - (i) the start of the first day of the partial work ban; and
 - (ii) the start of the first day after the day on which the notice is given to the employee, if the employee performs work on that day; and
 - (d) state that the notice will cease to have effect at the end of the day on which the partial work ban ceases.
- (2) If the notice is given under paragraph 471(1)(c) of the Act, it must also:
 - (a) state that the employee's payments will be reduced by an amount specified in the notice for each day the employee engages in the partial work ban; and
 - (b) specify an estimate of the usual time the employer considers an employee would spend during a day performing the work that is the subject of the work ban; and
 - (c) specify the amount by which the employee's payments will be reduced for each day the employee engages in the work ban.
- (3) If the notice is given under paragraph 471(4)(c) of the Act, it must also state that the employee will not be entitled to any payment for a day on which the employee engages in the partial work ban.

3.24 Manner of giving notice about partial work ban

- (1) For paragraph 471(7)(b) of the Act, this regulation prescribes how the employer may give employees notice for paragraph 471(1)(c) or (4)(c) of the Act.
- (2) The employer may give the notice to the employee personally.
- (3) The employer may send the notice by pre-paid post to:
 - (a) the employee's residential address; or
 - (b) a postal address nominated by the employee.
- (4) The employer may send the notice to:
 - (a) the employee's email address at work; or
 - (b) another email address nominated by the employee.
- (5) The employer may fax the notice to:
 - (a) the employee's fax number at work; or
 - (b) the employee's fax number at home; or
 - (c) another fax number nominated by the employee.