FREQUENTLY ASKED QUESTIONS

AEU-NT PROTECTED INDUSTRIAL ACTION
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Q1. What is ‘protected’ industrial action?

Industrial action under the *Fair Work Act 2009* (Cth) (FW Act) will be protected if:

a) the Fair Work Commission has granted an order for protected action ballot and the ballot has endorsed action being taken (at least 50% on the voting roll participated in the ballot, and more than 50% who voted were in favour); and

b) the employer has received three clear working days’ notice of what action will be taken and from when; and

c) it is performed by a AEU-NT member; and

d) is an action that does not involve personal injury or damage, destruction or taking of property.

The AEU-NT formally notified a full day work stoppage on Tuesday 12 November 2013.

As of the date of this information sheet, this is the only action that can be taken as ‘protected’ action.

Q2. What is ‘unprotected’ industrial action?

Action that does not meet the criteria outlined under Q1 (a) to (d) will be considered ‘unprotected’ industrial action.

If an employee engages in ‘unprotected’ industrial action the employer can take disciplinary action and / or legal action against such individual(s).

Q3. Can any employee engage in protected industrial action?

No. Only an employee who is an AEUNT member and who is covered by the current NTPS Teachers & Educators Agreement can take the action listed in the notice from the AEU-NT.

If any other employee takes industrial action this means that the action is ‘unprotected’.

Q4. If I, as a AEU-NT member, participate in protected industrial action, will I be paid?

No. The FW Act provisions do not allow an employer to make payments to an employee for the total duration that the employee is engaged in protected industrial action.

This means that if a AEU-NT member participated in a one day work stoppage they will not be paid for the total period of time he / she was not at work.

Other industrial action such as bans or limitations on work, such as refusing to perform yard duty or write reports may also attract a deduction in salary under the FW Act.
Under the FW Act compliance and enforcement provisions penalties of up to $10,200 may apply if payment is made to employees for engaging in industrial action. It is also prohibited for an employee (or their union) to ask for and for an employee to accept payment for the duration industrial action is taken.

Q5. I am an AEU-NT member. Do I have to take part in industrial action that my union has organised? What if another union member tells me to take action?

AEUNFT members are under no obligation to take part in any form of industrial action unless they wish to do so. If you are an AEUNFT member and choose not to participate in industrial action (that is will be attending work as normal), ensure you let your principal know.

It is unlawful to coerce union members to engage in industrial action. If you are being threatened or harassed because you choose not to participate in industrial action let your principal or the Office of the Commissioner for Public Employment know immediately.

Q6. Does notice need to be given before taking industrial action?

Before employees take industrial action, the union must give three clear working days written notice to the employer.

The written notice must specify the nature of the action that will be taken and the day it will start. Protected industrial action must not take place without this notice being given. Notice has been received for the one day stoppage on Tuesday 12 November 2013 only. This means no other action can be undertaken without further notice.

Q7. Can my principal ask me if I am a union member?

Yes, a principal needs to be able to distinguish between union members and non-union members to be able to determine if the action being taken is protected industrial action.

Q8. Do I have to advise my principal when I am participating in protected industrial action?

Yes, a principal needs to know when you are working or not in order to make adequate plans for supervision of pupils.

Q9. I am a principal, what are my responsibilities during protected industrial action?

As a principal you will be required to make adequate arrangements for your school on the day of industrial action and ensure parents are informed.

You will also be required to identify which employees in your workplace are partaking in industrial action. You may have a form to complete to assist payroll to correctly adjust salaries accordingly.

You will need to ask these questions and make these observations every day that there may be industrial action in your workplace.

You must not coerce or otherwise interfere or mistreat employees exercising their right to take ‘protected’ industrial action.