

Managing Industrial Action

Managing Industrial Action guidelines has been developed to provide agencies with a process to deal with industrial action by unions and/or employees.

Agencies must notify NSW Industrial Relations, immediately they become aware of either the intention of unions and/or employees to take industrial action or the existence of industrial action.

Agencies must immediately record the action and assess its possible or actual impact on service delivery, other agencies or the public, as well as any financial implications arising from the action.

Agency responses to industrial action

There are varying levels of response available to agencies in relation to possible or actual industrial action, including:

1. Agencies should inform employees that they are required to attend for duty as normal and in accordance with the provisions of their industrial instruments; that any unauthorised absences will be unpaid; and that time in lieu credit and accrued flexitime cannot be used to cover any unauthorised absence.
2. Agencies should not approve applications for recreation or extended leave, flex time or adjusted core times where they coincide with known industrial action involving stopping work, except in exceptional emergency circumstances.
3. Agencies should take immediate steps to record the period of unauthorised absence for each employee involved in industrial action.
4. If, as a result of taking industrial action, an employee refuses or fails to carry out duties that he or she has been lawfully instructed to perform, agencies should not pay salary to the employee for any time on which he or she refuses or fails to carry out those duties.
5. Agencies should advise employees that a medical certificate must be produced to support applications for sick/carers leave in relation to any period during which industrial action has been taken by employees from the applicant's workplace.
6. Agencies should apply the hours of work provisions of industrial instruments, including the terms of any Flexible Working Hours Agreement, in accordance with their operational needs. Agencies may refuse to authorise absences or may require staff to be present at particular times (excluding allowable meal breaks and in accordance with relevant hours or work provisions) in order to maintain an appropriate level of staffing.
7. Agencies are not to approve requests by unions to meet with staff during normal working hours. Meetings may be held out of normal business hours, e.g. during lunch breaks or before or after normal working hours. Agencies should also notify employees that they cannot access agency vehicles, equipment or facilities to promote or participate in industrial action.

8. All employees who want to work are to be permitted to do so and should be treated in the normal manner.

9. There will be no victimisation of staff members prior to, during or following industrial action.

Dispute resolution provisions

All parties must comply with the dispute resolution and/or grievance provisions of the relevant industrial instrument.

Agencies should be prepared to seek the assistance of the Industrial Relations Commission (IRC) at the earliest opportunity and, where appropriate, seek Orders from the IRC to cease or refrain from taking industrial action. In particular, agencies should seek the IRC's urgent assistance where:

- the public interest is compromised
- there is a danger to the public
- the business of the agency is severely impacted either in performing services to the community or suffering financial loss.

Agencies must consult with the Industrial Relations Unit in the first instance.

Legislation

Industrial Relations Act 1996

Government Sector Employment Act 2013

Industrial Instruments

Flexible Working Hours Agreements

Agency specific Awards

Crown Employees (Public Service Conditions of Employment) Reviewed Award - 2009

Philip Gaetjens

Secretary

Further information:

Which agencies does this Circular apply to?

The government sector as defined in the *Government Sector Employment Act 2013*, including Public Service agencies, Departments, Executive agencies, State Owned Corporations including their subsidiaries and independent statutory bodies, including persons identified in Section 5 (1) (b – f) of the *Government Sector Employment Act 2013*.

Who needs to know about this Circular?

Secretaries, Senior Executives, Managers, Employees, Payroll, Industrial Relations, Human Resources.

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