

11 July 2023

IEU-QNT MEMBERS: PROTECTED ACTION BALLOTS

Why am I being requested to vote in a Protected Action Ballot arranged by the IEU-QNT?

The IEU-QNT has sought and obtained Protected Action Ballot Orders (**PABO**) for some schools. IEU-QNT members can only take protected industrial action (**PIA** - e.g. strikes and bans on certain duties) if they approve of doing so in a Protected Action Ballot (**PAB**) in accordance with the *Fair Work Act 2009* (**the Act**).

What must be the PAB vote result at each school to approve taking PIA?

The Act requires the following conditions be met:

1. at least 50% of IEU-QNT members listed in the PABO must cast a valid vote; **and**
2. of those, more than 50% must vote “yes” to approve the taking of PIA.

Can IEU-QNT members be forced to vote (or not) in a PAB or to vote in a particular way?

No, [section 462 of the Act](#) makes it unlawful for a person to, in essence:

1. threaten any disadvantage to, offer an advantage to or intimidate an IEU-QNT member to:
 - a. vote in the PAB; or
 - b. not vote in the PAB; or
 - c. vote in a particular way; or
2. request, require or induce IEU-QNT members to show how they are voting or how they voted.

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This means it is entirely voluntarily whether an IEU-QNT member votes or not. An IEU-QNT member cannot be compelled by any person (including a chapter representative, IEU-QNT organiser or another member) to:

- tick off a roll of IEU-QNT members at the school to indicate they voted in the PAB; or
- attend a chapter meeting in which members are expected to bring a device and vote in the PAB.

If taking PIA is approved, will this change the timelines to finalise EB10 negotiations?

No, since November 2022, employers have been consistent in their approach, aiming to give employees an opportunity to **vote and approve** an EB10 agreement as soon as possible. If such a vote is unsuccessful, then the terms and conditions of EB9 will continue to apply and no enhancements under the proposed EB10 agreement will come into operation (including the proposed dates for the 2023 wage increases and associated backpay) – see [EB10 FAQs](#).

How can employers respond to IEU-QNT members taking PIA at schools?

If **partial work bans** are implemented (e.g. IEU-QNT members refuse to attend meetings or collect data), then employers can issue a notice pursuant to [section 471\(4\) of the Act](#). Such a notice means that:

- employers will refuse to accept the performance of any work unless all normal duties are performed; and
- any IEU-QNT members not prepared to perform all duties will not be entitled to payment of any wages.

If **strike activities** are undertaken (i.e. complete stoppage of, or non-attendance at work), then IEU-QNT members are not entitled to any payment of wages or salaries for the period of the strike.

Is a s471(4) notice by an employer the same as a “lockout”?

No, it is not a “lockout”. A “lockout” is when employees are prevented by an employer from coming to work and being paid. With a “lockout”, employees have no choice, and it is a form of industrial action taken by an employer.

A section 471(4) notice can be given by an employer where notice is given of a 'partial work ban'. The s471(4) notice gives an employee a choice as to whether they will attend for work and perform all of his or her normal duties:

- If the employee does not agree to perform all of their normal duties, the employer is entitled to refuse to accept the partial performance of work until the employee is prepared to perform all of his or her normal duties, and the employee will not be paid for that period.
- If the employee agrees to perform all of their normal duties, they will be entitled to work and be paid.

Therefore, the employee has the choice as to whether they will engage in the partial work ban or perform all of their duties instead.

How long can a union member not be entitled to be paid?

In this respect, IEU-QNT members are encouraged to read [s471\(4\) and \(5\) of the Act](#) for accurate information. The provisions essentially provide:

- in response to partial work bans, an employer can issue a written notice stating that a union member will not be entitled to any payments until the member is prepared to perform **all** of his or her duties [see s471(4)(c)(i) & (ii)]; and
- the union member is not entitled to any payments in relation to the “industrial action period”, which starts when the partial work bans notified by the IEU-QNT are implemented and until the partial work ban(s) cease [s471(4) & (5)].

Accordingly, the impact on union members is determined by the IEU-QNT and how long the IEU-QNT wish to implement partial work bans. Of course, a union member is able to choose not to participate in any partial work ban(s) and instead perform all of his or her normal duties and be paid as normal.

What is the full list of PIA proposed by the IEU-QNT?

The full list of PIA is outlined in Appendix 1 on the following page.

List of IEU-QNT proposed industrial action -

“Do you, for the purpose of advancing claims in the negotiation of an Enterprise Agreement between the [employer] and its employees, represented by the Union, authorise industrial action against the [employer] which may involve you and/or other employees engaging in any or all of the following forms of action, separately, concurrently and/or consecutively:

- (i) employees will not perform any work unless they are wearing a campaign badge, campaign sticker or campaign clothing; and*
- (ii) employees will not attend, for an indefinite period, any meeting involving two or more members of staff (howsoever described, and regardless of the stated reason for the meeting), with the exception of meetings regarding student welfare, and staff and student safety; and*
- (iii) an unlimited number of indefinite bans on any duties or activities (including discussions with students) during their scheduled meal breaks; and*
- (iv) an unlimited number of indefinite bans on the working, or taking, of supervision or cover periods, howsoever described; and*
- (v) an unlimited number of indefinite bans on playground or transport supervision, or of any other designated duty area; and*
- (vi) an unlimited number of indefinite bans on any duties or activities required to comply with employer requests for data, data collection, and/or data analysis; and*
- (vii) an unlimited number of stoppages of a duration of between 5 minutes and 24 hours; and*
- (viii) a ban on all communications, by email or telephone or any other electronic forms of communication, outside of 8.30am to 3.30pm, Monday to Friday; and*
- (ix) making oral or written statements, while working, explaining why union members are taking protected industrial action, in communications with any person while on a school site.*

Yes []

No []