

WHAT IS A PROTECTED ACTION BALLOT?



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What is a protected action ballot?

A protected action ballot is when union members hold a vote to decide whether or not they want access to lawful industrial action (such as overtime bans, go-slows, strikes etc).

A protected action ballot (sometimes called a "PAB") can occur during enterprise agreement negotiations, when discussions have stalled and no more progress is being made.

Access to protected industrial action is important so that union members can progress and advance their claims for better pay and conditions.

A protected action ballot can only occur after the union makes an application to the Fair Work Commission to seek the necessary orders.

At this time, the company can oppose a protected action ballot order being issued, and/or exercise their rights to appeal. Many companies will do this.

When is a protected action ballot required?

A protected action ballot must happen before the union members can take industrial action.

Who conducts a protected action ballot?

These are normally conducted by an independent ballot agent, such as the Australian Electoral Commission (AEC).

What are you protected from?

A successful protected action ballot - which has been approved by the majority of workers on the roll of voters - allows workers to lawfully take any or all of the actions they have approved in the ballot.

Because the industrial action is protected, workers can participate without fear of repercussions from their employers or the Fair Work Ombudsman.

Employers are not allowed to take adverse action against employees who are engaging in protected industrial action. This includes being sacked, being demoted, being transferred, etc.

(You may not use protected action to do things like destroy or steal company property, injure others, or defame the company on social media. The company may take action against you if you do this.)

What has to occur for a protected action ballot to happen?

Two things need to happen first.

1. Your bargaining representatives (usually the union) must be genuinely trying to reach an agreement with the company. This means a lot of meetings.
2. The union must make an application for a protected action ballot to the Fair Work Commission. This cannot be done more than 30 days before any existing enterprise agreement expires.

What will a protected action ballot order look like?

If the union is successful in the application, the Commission will issue an order, which is a written document supplying details of the ballot.

These details will include things like the names of the parties involved, which workers are entitled to vote, the voting date, and so on.

Who can vote in the ballot?

Only union members who will be covered by the new enterprise agreement may vote.

When is a ballot successful?

A ballot is successful if more than 50% of the union members on the roll vote, and 50% of those voters vote 'YES'. Each question on the ballot is measured individually.

For example, 60% of union members might vote 'YES' to a 2-hour strike, but only 40% of members might vote 'YES' to a 24-hour strike. This would mean only the 2-hour strike was successful and could later be taken as protected action.

Protected action should be taken within 30 days of a successful vote, though an extension may sometimes be granted.

If we vote 'YES' to the proposed action does that mean we have to take the action?

No! The ballot simply tells the Commission what type of action you want protected.

Whether or not you take the action is entirely up to the workers. You can take any, all, or none of the actions that have been approved as you see fit.

In many cases, a successful vote on a protected action ballot, without even taking any action, is enough to convince the employer to offer you a better deal.

However, the successful vote gives you the power to take those actions if you need.

Need more information?

Visit the Fair Work Commission website at www.fwc.gov.au

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