



About the F39 application form

Application for an order in relation to certain partial work bans

Who can use this form

Use this form if you want to make an application to seek a variation to the proportion by which employees' payments are to be reduced in relation to a partial work ban and you are:

- an employee, or
- an employee's bargaining representative.

About partial work bans

The [Fair Work Act 2009](#) (the Fair Work Act) allows protected industrial action to be taken by employees or employers in certain circumstances. Protected industrial action can occur as part of bargaining for a proposed enterprise agreement.

The Fair Work Act prohibits payments being made to employees on a day that they engage in protected industrial action against an employer in relation to the total duration of the protected industrial action on that day (section 470).

However this prohibition does not apply to **partial work bans**. A partial work ban is industrial action that is **not**:

- a failure or refusal by an employee to attend for work; or
- a failure or refusal by an employee who attends for work, to perform any work at all; or
- an overtime ban (sections 470(2) and (3)).

An employer can reduce payments to employees engaged in protected industrial action that is a partial work ban, if the employer gives written notice that because of the partial work ban, the employee's payments will be reduced by a proportion specified in the notice. (section 471(1)(c)).

The Commission can make an order varying the proportion by which an employee's payments are reduced, if an application is made.

The [Fair Work Regulations 2009](#) include the following formula for working out the proportion for an employee or class of employee:

Step 1: Identify the work that an employee or 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 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.

The Commission must take the following matters into account when considering making an order:

- whether the proportion specified in the employer notice was reasonable having regard to the nature and extent of the partial work ban to which the notice relates, and
- fairness between the parties taking into account all the circumstances of the case (section 472(3)).

Lodging and serving your completed form

1. **Lodge** with the Commission:

- This **form** and any supporting documents, and
- A copy of the **written notice** given by the employer to the employee under section 471(1)(c) of the [Fair Work Act 2009](#) (advising that, because of the partial work ban, the employee's payments will be reduced by a proportion specified in the notice).

You can lodge:

- by email to lodge@fwc.gov.au, or
- by post or in person at the [Commission's office](#) in your state or territory.

2. **As soon as practicable** after lodging, **serve** a copy all documents lodged with the Commission on each Respondent listed in this application.

You can serve documents several ways, including by email, express post or registered post.

Where to get help

Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- processes in the Commission
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you answer the question following.

Legal or other representation

Representation is where another person (such as a lawyer or paid agent, or an employee of a union) speaks or acts on a person's behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to

participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person's lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person's behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

an employee or officer of the person or

a bargaining representative that is representing the person or

an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 13(2) of the [Fair Work Commission Rules 2024](#) sets out further exceptions to the requirement to give notice and seek permission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12, 13 and 14 of the [Fair Work Commission Rules 2024](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Applicant – This is the person or organisation that is making an application.

Lawyer – This is a person who is admitted to the legal profession by a Supreme Court of a state or territory.

Paid agent – In relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

Party – A party is a person or organisation involved in a matter or case that is brought to the Commission.

Respondent – The person or business responding to an application made by an Applicant.

Service – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document several ways, including by email, express or registered post, or in person. Part 5 of Chapter 1 and Schedule 1 of the *Fair Work Commission Rules 2024* deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and may disclose this information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference – it contains useful information.

Form F39 – Application for an order in relation to certain partial work bans

[Fair Work Act 2009](#), section 472; [Fair Work Commission Rules 2024](#), rule 79 and Schedule 1

This is an application to the Fair Work Commission for an order relating to partial work bans in accordance with Part 3-3 of the [Fair Work Act 2009](#).

The Applicant



These are the details of the person who is making the application.

A person who may make an application is an employee or an employee’s bargaining representative.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

If the Applicant is a company or organisation please also provide the following details

Legal name of business	
Trading name of business	
ABN/ACN	
Contact person	

Do you need an interpreter?



If you have trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help in your language](#) on our website.

Yes – Specify language

No

Do you require any special assistance at the hearing or conference (for example a hearing loop)?

Yes – Please specify the assistance required

No

Do you have a representative?



A representative is a person or organisation who is representing you. This might be a lawyer or paid agent, or a union. There is no requirement to have a representative.

Yes – Provide representative’s details below

No

Your representative



These are the details of the person or organisation that is representing you (if any).

Name of person			
Firm, union or company			
Representative’s ABN (if applicable)			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

Is your representative a lawyer or paid agent?

<input type="checkbox"/> Yes – please select:	<input type="checkbox"/> Lawyer <input type="checkbox"/> Paid agent
<input type="checkbox"/> No	

The Respondent



These are the details of the employer.

Legal name of business			
Trading name of business			
ABN/ACN			
Contact person			
Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

1. Coverage

1.1 What industry is the employer in?

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2. Application for order

2.1 What variation is being sought?



Specify the variation you are seeking to the proportion by which employee payments are reduced

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2.2 What are the grounds being relied on?

2.2.1 Using numbered paragraphs, specify the grounds on which the Applicant relies, including:

- the nature and extent of the partial work bans and the days on which such bans were applied;
- the reduction in employee payments notified and/or made by the employer (attach a copy of any notice(s) from the employer pursuant to section 471(1)(c) if available);
- the facts or circumstances that make it fair and reasonable to vary the proportion by which employee payments are reduced.

Attach additional pages, if necessary.

Authority to sign and signature



For 'Authority to sign':

3. If you are the Applicant – insert 'Applicant'
4. If you are the Applicant's representative and have provided your details in this form – insert 'Representative'.

Authority to sign	
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Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field.

Signature	
Name	
Date	

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS