**F. A. Q’s Industrial Action – Schools and WCC Services who employ Teachers**

**Guidance on Employment Related Matters**

**It is important to note that during any period of Industrial Action efforts should be made to maintain harmonious working relationships with and between different groups of staff who may or may not be taking action.**

1. **Who is taking part in Industrial Action and when will it take place.**

The NEU has announced national and regional action in England and we have been notified that NEU members in this region will undertake Industrial Action on the following dates:

Wednesday 1st February 2023

Wednesday 1st March 2023

Wednesday 15th March 2023

Thursday 16th March 2023

The NAHT and NASUWT have also balloted their members but failed to meet the legal threshold for strike action. Both unions have said that they may re-ballot their members in the coming months.

1. **What will the industrial action consist of?**

Industrial Action will be in the form of Strike Action. Strike action is a complete withdrawal of labour for a defined period of time, e.g. part of a day, a single day, intermittent days or for a continuous period.

1. **Who can strike and who can’t**

Managers may ask staff about their intentions in relation to any industrial action, but they should do so courteously and in a way that will not inflame the situation or undermine longer-term employee relations.

Managers should be aware however that staff are not obliged to say in advance whether they plan to participate in industrial action – so assumptions may need to be made that staff will be participating.

Where managers themselves plan to participate in industrial action it is helpful if they can inform their own managers in advance.

Staff who have not been covered by the call for industrial action, including non-union staff, are expected to work as normal during industrial action and every support should be given to enable them to do so.

If a strike is called lawfully by a union, members of that union can take industrial action. Even though this is a breach of contract, you can’t dismiss these staff members, and should instead deduct their pay for days they didn't work.

Staff who aren’t members of a union participating in formal strike action are not recommended to join another union’s strike. However, as long as the industrial union is lawful, they are [protected from dismissal](https://www.gov.uk/if-your-business-faces-industrial-action/nonunion-employees-and-strikes) and have the same rights as union members.

1. **Risk Assessment**

You should undertake a risk assessment to decide whether or not you can keep the school open and conduct lessons as normal.

While there's no specific legal requirement for a risk assessment for industrial action, you need to make sure that you aren't risking the health and safety of pupils or staff.

[The Health and Safety at Work etc Act 1974](https://www.legislation.gov.uk/ukpga/1974/37/contents) requires the employer in a school to take "reasonable steps" to do this, and a risk assessment is the easiest way to make sure you're looking out for everyone’s safety.

Consider:

* The number of staff present
* Safe evacuation in case of emergency
* How many first-aiders and fire marshals will be present
* Whether you can effectively safeguard pupils
* Safe food preparation
* Any alternative activities you will be putting on instead of lessons
* Undue stress for staff members who have to take on a greater workload than normal

1. **Picketing**

To be lawful, picketing may only consist of ‘peacefully obtaining and communicating information and persuading a person not to attend work’ – a member of staff who wants to cross a picket line must be allowed to do so and must not be disciplined by the trade union for so doing.

The government’s Code of Practice on Picketing suggests no more than six pickets at any one entrance to a workplace. In the event of any apparent breach of the law or Code of Practice, please contact the WES HR Advisory Service for further advice.

1. **What happens to staff not taking part in Industrial Action**

Staff who do not take industrial action but are prevented from working because of industrial action, should be paid for the day. However, they will need to be able to demonstrate that they were ready and willing to work but were prevented from doing so by matters beyond their control. If they were not ready and willing to work, they should not be paid.

Staff who decline to cross picket lines should notify you of their intention and will be considered to be taking part in industrial action or on unauthorised absence.

1. **What happens if an employee is off sick?**

It is recommended that normal reporting procedures and attendance management procedures are followed on dates where industrial action is due to take place.

Staff who are absent on account of sickness before the industrial action starts should be assumed to be on sick leave, providing that any necessary certification is produced.

1. **What should I do if an employee requests annual leave on a strike day?**

If a member of staff is entitled to paid leave during term-time it is suggested that the normal criterion should be applied in such situations.

1. **Asking Staff to Cover**

### Teaching staff

You may ask other teaching staff to cover the classes of staff who are striking. However, if a teacher is employed under the STPCD, they can't be made to provide cover for other teachers during industrial action (DfE guidance, page 5).

### Support staff

You may use support staff to provide cover supervision or oversee alternative activities. You can also use them to carry out 'specified' teaching work. (DfE guidance, page 6).

Care should be taken in the reallocation of work as this may endanger goodwill with your staff who aren't involved in strike action.

**Agency Staff**

Following changes to legislation agency workers such as supply teachers can be used to cover strike action. However you should be aware that bringing in agency staff may impact your relations with trade unions and staff members who are taking industrial action.

**Directly employing individuals**

An employer can directly employ individuals to cover striking staff. The DfE recommends that you issue a fixed-term contract setting out the length of their employment period (see page 7 of the strike guidance). These cover workers are subject to the same pay and working conditions as the rest of your staff, and must be subject to the usual safer recruitment checks.

**Volunteers**

You can:

* Use existing school volunteers (who have the relevant DBS checks) to provide supervision
* Identify new volunteers to support your existing school volunteers - they would need to be supervised by staff or volunteers with relevant DBS checks

1. **What happens to an employee’s pay if they are on strike?**

It should must be made clear that anyone taking strike action will not be paid for the day concerned.

**Strike Deductions**

As per the School Teachers Pay and Conditions Document (STCPD) the deduction for strike will be as follows:-

1/365*th* of annual pay in payment at the time of striking (this will include any adjustments should a different salary be paid in the future for that period).

If you subscribe to WES Payroll - The method for recording the Absence will be communicated shortly (once testing has been completed) and will be the responsibility of the school/ or Council department to enter the absence on the employees record.

If you do not subscribe to WES payroll you should contact your payroll provider for information on how to record strike days.

For centrally employed teachers – the method for recording will be communicated shortly (once testing is completed) but is likely to be in accordance with the recording of other absences.

**Pension: The following information is taken from the TPS website**

*If you’re a full time member of staff on the days that you are absent due to industrial action you won’t accrue any reckonable service and the days will be recorded as ‘days out’ on the service return from your employer.*

*If you’re a part time member of staff strike days won’t be recorded as reckonable and therefore won’t be used in any calculation for pension purposes.*

*You’ll remain covered for the ‘in-service’ death grant if you die while on strike.*

*There’s no provision for you to be able to buy back strike days into your pension.*