

**Guidance TO headteachers on**

**Industrial Action – Jan 2023**

# Frequently Asked Questions

It is important that you are aware of what will happen, if industrial action goes ahead. The following questions and answers address the most commonly raised issues.

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## What happens if I take industrial action?

* Taking part in industrial action is a breach of contract and you will have no entitlement to pay for the period of the action. Members of a trade union which has correctly conducted ballots and notified the employer are able to take protected strike action, which means that no action will be taken against them for the breach of contract.

## How much pay will be deducted?

* For teachers, the Conditions of Services for School Teachers in England and Wales (the Burgundy Book) state that deductions are made on the basis of 1/365 for each day’s action.
* If you are a part time employee, the pay deduction will be for the hours you would normally have worked on the day of the action.
* Support staff do not have a mandate for industrial action on this occasion, but if they do it will be based on 1/260 for each days action.

## I am not in a trade union. What happens if I take Industrial Action?

* If you are not in a trade union and go on strike this is a breach of contract and you will have no entitlement to pay for the period of the action.  Provided you are not in another Trade Union this will be classed as protected action.  You will not be paid for the day(s) that you do not work but no action will be taken against you for breach of contract.

* If you are a member of a trade union which has not balloted or has returned a ‘no’ vote you will not have the same protection.  This would be classed as unofficial action and a breach of contract.  You will not be paid for the day(s) that you do not work.

## How does industrial action affect my pension?

* Time spent on industrial action does not count towards your pensionable service. This means that for every day of industrial action, the period of service used to calculate your pension entitlement is reduced by a day. Also, the pay lost will slightly reduce the average pay used to calculate any benefits.
* There is **no provision** in the Teachers Pension Service for teachers to buy back strike days.

## What happens if there is picketing?

* Picketing must be peaceful, and consist of obtaining or communicating information, or peacefully persuading an individual to abstain from work. There is no legal limit on the number of people on a picket line. The codes of practice for picketing recommend having six people, but if the picket is peaceful there can be more than six people.
* If picketing takes place, you will still be expected to attend work as normal.
* If you decide not to cross a picket line, you will be regarded as being on strike. You will not be paid for the day(s) that you do not work

## Will any groups be exempt from industrial action?

* Exemptions may be agreed with some schools with individual staff and their trades unions. Please consult locally in regard to this.

## Can Headteachers ask individuals whether they intend to take industrial action?

* It is reasonable for headteachers to ask employees individually whether they intend to take industrial action or not. Employees cannot be forced to provide this information, but should they refuse to tell you, then you should plan on the basis that they will not be attending.
* If headteachers decide to ask employees if they are taking industrial action, they should ensure employees are aware they are not required to answer and do not feel pressured to provide an answer.

## Can I re-allocate work to non-striking employees or engage agency (supply) staff?

* You may ask other teachers to cover the classes of those taking industrial action. Where teachers are employed under the *School Teachers’ Pay and Conditions Document*, however, they cannot be compelled to provide cover for other teachers during industrial action. Striking teachers cannot be compelled to set work for students to complete on strike days.
* Support staff are able to carry out 'specified work' provided they are subject to the direction and supervision of a qualified teacher, and the headteacher is satisfied that they have the skills required to carry out the work. This should not include TA’s and STA’s, and HLTA”s unless they are contracted to provide cover as part of their normal duties.
* You can ask for volunteers to cover for different roles, however any health and safety or training issues should be considered but there is no obligation for them to do so.
* You cannot force an employee to do work which conflicts with their contract of employment unless it is reasonable. Reasonableness will depend upon the importance of the task and the employee’s ability to perform it.
* Following the repeal of Regulation 7 in July 2022, it is now possible for employers to engage with agency staff to replace the work of those taking official strike action.

## DfE Guidance on Staff Deployment

Taken from DfE ‘Handling strike action in schools’ guidance document.

While employees are not required to tell their employers whether they intend to take strike action, employers are able to ask staff in advance if they intend to strike to enable them to plan how to manage the strike.

Headteachers may ask other teachers to cover the classes of those taking industrial action. Where teachers are employed under the *School Teachers’ Pay and Conditions Document*, however, they cannot be compelled to provide cover for other teachers during industrial action. Cover supervisors, or teachers who are employed wholly or mainly to provide cover and are not taking industrial action themselves, can be directed to provide cover during industrial action by teachers or non-teaching staff.

The Specified Work Regulations 2012 require classes to be taught by qualified teachers in maintained schools and some academies. Free schools, academies established after 29 July 2012 and any academy established prior to this date that has agreed a change to their funding agreement, are **exempt from these requirements**. The Regulations do not prevent schools from using support staff to provide cover supervision or oversee alternative activities. Support staff are able to carry out 'specified work' provided they are subject to the direction and supervision of a qualified teacher, and the headteacher is satisfied that they have the skills required to carry out the work.

The Regulations also allow schools to employ industry experts without qualified teacher status as instructors where specialist qualifications and experience are required. Schools may choose to bring together groups and classes with teachers and support staff working together, as long as pupils’ health and safety is ensured. For pupils older than seven there are no set ratios for the number of staff required to supervise pupils on site.

A headteacher on strike should delegate their duties to another member of the leadership team. If the whole leadership team is on strike, the governing body or academy trust can approach another staff member to carry out the headteacher’s duties, for example a senior teacher or a retired headteacher employed by the school.

## I want to come to work, but my school/place of work will be closed because of the industrial action. What should I do?

* Employees who are not taking industrial action should make every effort to attend for work. For staff in schools, it will depend on the level of closure of the school e.g., whether the school is closed to staff and pupils or just pupils. Your Headteacher will confirm the level of closure.
* It may be possible for some staff (including centrally employed teachers) to work from another location, or work from home, if this is appropriate and agreed in advance. You should make arrangements with your manager to confirm you are present at work. If an alternative workplace and/or duties cannot be found, then you would be sent home with full pay.
* If employees do not attend work, or confirm their availability for work, they will not receive payment for that day as they will be deemed to be taking industrial action.

## How should I confirm my attendance on the day?

* Headteachers will be required to complete a record of who has taken industrial action so that the necessary deduction from pay can be made. You should ensure that you confirm your attendance/availability to your headteacher.
* If you are in a role where you do not necessarily see your manager e.g. community based, mobile or home workers, it may not be clear if you are taking industrial action or not. To ensure clarity, you should telephone your headteacher (or the nominated person) at the start of your working day to confirm you are working. Alternatively, headteachers may contact you to check if you are working or not. Any non –attendance at work or lack of telephone contact without an explanation will be considered to be industrial action and you will not be paid.

## Can annual leave be granted for the day of action?

* If you have pre-booked annual leave eg as part of a fortnight’s holiday, this will not be affected by the industrial action and there will be no pay implications.
* In order to ensure that services which are already affected by industrial action are not further affected, annual or flexi leave which is requested specifically for the date(s) identified for industrial action will not be granted, unless there are exceptional reasons.

## What happens if I am absent due to sickness?

* If you are absent due to sickness immediately before the industrial action starts, you will be assumed to be on sick leave, where possible you should provide a doctor’s certificate to cover the absence.
* If you ring in sick on the day scheduled for industrial action, you should approach your GP to see if you can obtain a fit note covering the absence. If your GP is unable to provide a certificate you should submit a self certification in the normal way.

## What happens if the school that my child attends is closed as all the teachers are on strike?

* You should in the first instance discuss this with your headteacher. Where it is agreed that you will be unable to attend your normal place of work, the following guidelines should be applied:
  + Agree home working arrangements where this is feasible, or
  + Agree that available flexi-time credit should be used if applicable, or
  + Agree extensions to the debit limits within the flex time scheme, or
  + Agree that time off in lieu is appropriate e.g. if you have a bank of lieu time accrued, or
  + Agree that you should take paid time off your annual leave entitlement (this should only be agreed if all alternative options have been exhausted), or
  + Agree that the time lost will be made up at a later date, or
  + Agree that unpaid time off is appropriate in the circumstances
* The above should be applicable to most situations, either singularly or in a combination. However, in exceptional circumstances, if none of the above is appropriate, the Headteacher can agree to sanction additional paid time off.
* It will be the responsibility of the appropriate line manager to determine if Stuck not Sick/Urgent Domestic Leave will be applicable in line with the schools absence policy and the amount of notice which was given for any school closures.
* Head teachers should not present any one option as compulsory but should take everyone’s needs and circumstances into account.

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