

Teacher strikes

# Industrial Action FAQ for Schools

**Q. What constitutes ‘industrial action’?**

A. In general, the following may amount to industrial action:

* A collective withdrawal of labour (strike);
* Refusal to undertake some duties;
* Refusal to carry out reasonable instructions;
* Work to rule, go slow or sits-ins; and
* Picketing.

**Q. Who decides whether a school should open if industrial action is to be taken?**

A. In a maintained school, the decision lies with the headteacher.

In an Academy or MAT, the decision rests with the Trust Board, who normally delegate this decision down to individual headteachers, who should consult with the Trust, Local Governing Bodies, parents and Diocesan representatives as appropriate.

The National Governance Association (NGA)’s advice is that governing bodies in maintained schools should take appropriate action for dealing with industrial action: *“Governing bodies and head teachers should be encouraged to keep schools open to maintain continuity of educational provision, taking into account health and safety requirements.”*

**Further information:**

* Reg 6(4) of the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013: *Headteachers’ responsibilities include the organisation, management and control of the school.*
* The Department for Education (DfE) expects all reasonable steps to be taken to keep the school open for as many pupils as possible.
* The DfE recently updated its guidance, [‘Handling strike action in schools: Guidance for school leaders, governing bodies and employers’](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1150450/Schools_Strike_Guidance_April_2023.pdf), in April 2023.

**Q. What about health and safety?**

A. Remember that legislation is not suspended during industrial action – you still have responsibilities to keep people safe.

* Assess the risk/impact from the action.
* Plan as early in advance as you can – ask staff if they plan to strike so you know where the biggest gaps will be.
* 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.
* Think about adjustments needed, such as classes being condensed and offering alternative activities to the standard timetable so that you can make use of the skillsets available.
* Staff still have an obligation to leave the school and any equipment safe for others to use.
* Ensure picket lines are safe and follow the rules – non-staff may not partake. You would not expect to see greater than six pickets at an entrance to the site.
* Ensure you discuss exemptions with the Trade Union for roles where safety might be otherwise compromised.

1. **What happens if a member of staff not involved in the industrial action refuses to cross a picket line?**
2. Employees will normally be treated as also taking part in the industrial action and treated accordingly. Members of trade unions that didn’t cross the threshold for industrial action, or didn’t vote for industrial action, don’t have the same unfair dismissal rights as those who are taking part in lawful, official industrial action.

Employees who are not union members are protected in the same way as those who are taking official industrial action if they decide not to cross the picket line.

If the member of staff wants to work but is concerned about their health and safety in crossing the picket line, the school should ensure their health and safety is protected or allow them to work elsewhere if that is not possible.

If the school believes the staff member has made every effort to attend work, they may decide not to treat their absence as industrial action.

1. **Can the school ask staff who are not taking part in industrial action to cover other classes?**
2. If staff are employed under the School Teachers Pay and Conditions Document (STPCD), they cannot be compelled to provide cover during industrial action.

Cover supervisors or teachers employed to provide cover can be directed to provide cover if they are not taking part in industrial action.

Support staff, other than in nurseries, can provide cover supervision or oversee alternative activities.

Support staff are able to carry out “specified work” provided they are under the direction and supervision of a QTS.

If staff are willing to carry out the work to help maintain the essential running of the school, that’s fine. However, staff shouldn’t be given work that they are not competent to perform.

If staff refuse, you will need to consider whether the request is reasonable in terms of their skill set and job description. Staff cannot be compelled to undertake work not withing their contract of employment unless it is reasonable to do so, such as where it is necessary to prevent a breach of statutory duty or vital for service provision. The overall goodwill of staff also needs to be taken into account when making such requests.

Schools can choose to bring together groups and classes with teachers and support staff working together, so long as health and safety is ensured.

**Further information:**

* STPCD – Teachers – professional responsibilities:
  + 50.7 – *“Subject to para 52.7 supervise and so far as practicable teach any purpose where the person timetabled to take the class is not available to do so.”*
  + 52.7 – *“Teachers should be required to provide cover in accordance with paragraph 50.7 only rarely, and only in circumstances that are not foreseeable (this does not apply to teachers who are employed wholly or mainly for the purpose of providing such cover).”*
* The Education (Specified Work) (England) 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 which has agreed a change in its funding agreement, are exempt from these requirements.

**Q. What are the requirements regarding ratios for nursery and infant classes?**

A. Schools can provide activities flexibly on strike days provided there are sufficient members of

qualified staff present.

**Further information:**

Check the Statutory Framework for Early Years Foundation Stage ratios.

**Q. Can schools use agency staff to provide cover?**

A. Following the successful application by various unions for Judicial Review of The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022 (SI 2022/852), schools can no longer use agency staff to fill in for striking workers. To do so could result in criminal sanctions against the agency and, arguably, the employer, as well as potential injunctive proceedings to stop their use.

**Q. Can schools ask for volunteers or students to cover?**

A. Yes, but subject to relevant DBS checks.

**Q. What deductions do we make if staff take part in strike action?**

A. You will need to check employees’ contracts, but normally teachers and those employed under the

Burgundy Book will have pay deducted at 1/365 per day they do not work.

**Q. What do we pay staff if they refuse to do some duties but don’t actually strike?**

A. Employers can refuse to accept the partial performance of the contract of employment. It is

advisable to inform employees that they should only attend work when they are prepared to work in full compliance with their contracts. If they refuse to do so, they will not be entitled to be paid.

**Further information:**

* If schools decide not to pay staff for partial performance, it’s very important that this is made clear to all staff beforehand.
* If schools decide to pay staff for the work that they do but make a deduction for any work they refuse to undertake as part of industrial action, they will need to make an appropriate deduction. However, what constitutes an appropriate deduction can be difficult to quantify. For example, in *Royle v Trafford Metropolitan Borough Council [1984]*, as part of industrial action, a teacher refused to take different classes or accept additional children into his class. The High Court decided that a proportionate deduction of 5/36ths of his salary was a reasonable estimate of the damages incurred. This was based on the number of children excluded by the teacher from the class. Relevant here was that the school hadn’t faced additional cover costs or claims from parents.
* If a school decides to pay an appropriate amount, it should ensure it is made clear that deductions are being made in lieu of damages for their breach of contract to avoid allegations that this is action in retaliation for taking industrial action.

**Q. What about staff on long-term sick or maternity leave?**

A. For staff who are off work in any event, they would normally continue to be paid maternity or sick pay

as normal as they are not working irrespective of the industrial action.

**Q. Can we ask teachers to make up extra time lost due to industrial action?**

A. No. Schools will need to decide how to minimise disruption to pupils’ learning due to industrial

action.

**Q. Can we require teachers to set work for students to complete on strike days?**

A. Teachers cannot be compelled to do so, but many will try to reduce the impact on pupils.

**Q. Do strike days count for reckonable service within the TPS?**

A. Absence due to strike days doesn’t count for reckonable service.

**Further information:**

The Teachers’ Pensions website provides further guidance on how to record strike days.

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