

# Potential Strike Action 2023 – Frequently Asked Questions

Date of issue: 17 January 2023

The following FAQs are provided to help schools ahead of the planned strike action by NEU across February and March 2023.

Question	Answer
1. Which unions are taking industrial action?	<p>NEU are currently the only union taking strike action.</p> <p>This applies only to teacher members in England.</p> <p>Their action does not apply to support staff members where they did not reach the required threshold.</p>
2. When will action take place?	<p>NEU have announced action across 7 dates with any given area to be affected on 4 of these dates as follows:</p> <ul style="list-style-type: none"><li>• Wednesday 1 February 2023: all eligible members in England and Wales.</li><li>• Tuesday 14 February 2023: all eligible members in Wales.</li><li>• Tuesday 28 February 2023: all eligible members in the following English regions: Northern, North West, Yorkshire &amp; The Humber.</li><li>• Wednesday 1 March 2023: all eligible members in the following English regions: East Midlands, West Midlands, Eastern.</li><li>• Thursday 2 March 2023: all eligible members in the following English regions: London, South East, South West.</li><li>• Wednesday 15 March 2023: all eligible members in England and Wales.</li><li>• Thursday 16 March 2023: all eligible members in England and Wales.</li></ul> <p>Hertfordshire falls within the Eastern region and therefore at this time will be subject to action on:</p> <ul style="list-style-type: none"><li>• Wednesday 1 February 2023;</li><li>• Wednesday 1 March 2023;</li></ul>

Question	Answer
	<ul style="list-style-type: none"> <li>• Wednesday 15 March 2023; and</li> <li>• Thursday 16 March 2023.</li> </ul>
3. Is industrial action a breach of contract?	Strike action clearly constitutes a breach of contract. Consequently, there is no entitlement to pay for those that partake in strike action. Deductions from pay are covered in more detail below.
4. Do union members have to go on strike?	<p>No. This is a decision entirely for the individual employee and, as it is a decision that has a direct impact on their pay and own contract of employment, no-one should feel that they are under pressure to do either one thing or another.</p> <p>Individuals may however wish to check their Union Rulebook to establish how the union might regard a decision not to strike.</p>
5. What happens if the Headteacher decides to take strike action?	<p>Usually, where a Headteacher is absent from duty, a Deputy Headteacher is required to cover for the Headteacher, therefore the Deputy Headteacher (or relevant designated senior person) may cover for the Headteacher.</p> <p>In schools where there is no Deputy Headteacher, other arrangements should already be in place to provide cover for an absent Head.</p>
6. What happens if the Headteacher and Deputy Head take action at the same time?	<p>If the Headteacher and Deputy Headteacher (or relevant designated senior person) take strike action at the same time, the Governing Body will need to consider the statutory duty in respect of pupils and staff including their health and safety.</p> <p>This may call for the decision to close the school to pupils for the day, although staff not involved in strike action should still attend work as usual.</p> <p>The site will nearly always be possible to be open for staff not taking part in action so that they may report for work. The responsibility for opening will fall to someone that is already designated as a key holder such as an Office Manager, Business</p>

Question	Answer
	Manager or Site Manager.
7. Whose decision is it to close the school or not?	<p>In the event of strike action at a school, the Department for Education expects the headteacher to take all reasonable steps to keep the school open for as many pupils as possible.</p> <p>The decision to open, restrict attendance, or close a maintained school is for the headteacher. The decision for academies rests with the academy trust but is usually delegated to the principal.</p> <p>It is best practice for headteachers to consult governors, parents and the Local Authority, academy trust or diocesan representative (where appropriate) before deciding whether to close. Headteachers are entitled to ask staff whether they intend to strike.</p> <p>If it is necessary to close (wholly or partially) a school, the Headteacher should give parents and carers as much notice as possible and if requested inform the Director of Childrens Services (we have sought confirmation from HCC on this).</p>
8. What if I need to close the school to some pupils but not others?	<p>It might be necessary for some schools to close partially, to particular classes or year groups.</p> <p>Where schools must restrict attendance, they should consider, where possible, providing remote education in line with the <a href="https://www.gov.uk/guidance/providing-remote-education">Providing remote education: guidance for schools - GOV.UK (www.gov.uk)</a></p>
9. If the school is closed to pupils, either wholly or partially, should staff who are not on strike report for work as normal?	Yes, all teaching and support staff who are not on strike should report for work as normal and fulfil those duties which they are able to do.
10. If the school is partially closed are there any groups that should be prioritised for attendance.	Continued attendance is important for all pupils. However, if the numbers of staff on strike mean you need to temporarily prioritise places in your setting you should, where possible, apply the

Question	Answer
	<p>principles set out in the emergency planning and response guidance by giving priority to vulnerable children and young people and children of critical workers.</p> <p>In addition to prioritising vulnerable children and young people and children of critical workers, schools should consider prioritising pupils due to take public examinations and other formal assessments.</p>
<p>11. May I ask my teachers if they intend to undertake strike action?</p>	<p>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.</p> <p>Unions usually recognise that the ability to keep parents informed aids goodwill.</p> <p>We usually find that in most settings enough employees give an indication to be able to make plans.</p> <p>Given that there are multiple days of action planned it will become easier to predict and identify those likely to go out on strike across the course of the planned action.</p>
<p>12. Can I ask staff who are not on strike to cover for staff who are on strike?</p>	<p>Yes, considerations for different groups of staff are set out below:</p> <p>Headteachers may ask other teachers to cover the classes of those taking industrial action. Where teachers are employed under the <i>School Teachers' Pay and Conditions Document (STPCD)</i>, however, they cannot be compelled to provide cover for other teachers during industrial action.</p> <p>STPCD para. 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</p>

Question	Answer
	<p>providing such cover).</p> <p>For teachers it could be argued that the absence was foreseeable. But do note that this does not mean you cannot ask, they may agree to cover.</p> <p>Part time teachers may agree to undertake additional work on the day's action is scheduled to take place if that is not a normal working day. They would receive additional pay in the normal way for any such work.</p> <p>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.</p>
<p>13. Can I take on an agency temporary worker to provide cover?</p>	<p>Yes. Following a change in the regulations in July 2022, it is now possible for employers to engage with agency staff to replace the work of those taking official strike action.</p>
<p>14. My school is an academy and does not require teachers to have QTS. Does that give me more freedom to use support staff and others without QTS to cover for striking teachers?</p>	<p>Yes. Free schools and academies established after 29 July 2012, and any academy established prior to this date that has agreed a change to its funding agreement, are exempt from the Specified Work Regulations. They may deploy staff in whatever way they see fit, as long as pupils' health and safety is ensured.</p>
<p>15. Could a retired teacher come in and cover a lesson on a strike day?</p>	<p>Yes, providing that they were employed directly by the local authority (or governing body/academy trust if they are the employer). Alternatively retired teachers could be used as volunteers, provided they are given suitable tasks.</p> <p>It may not be possible for a DBS check to be done in time depending on when an application is made. In the absence of a DBS check, they should not work with children unsupervised, and all other relevant checks should be in place.</p>

Question	Answer
<p>16. May I call upon volunteers to support with cover?</p>	<p>The arrangements for the safeguarding and supervision of children are set out in Keeping Children Safe in Education. In the event of a strike by teaching staff or members of the wider school workforce (such as teaching assistants or lunch time supervisors), these arrangements allow schools to:</p> <ul style="list-style-type: none"> <li>• use existing members of the school volunteer workforce with relevant Disclosure and Barring Service (DBS) checks to provide supervision; and/or</li> <li>• identify other new volunteers who could support existing staff or volunteers for whom relevant checks have been carried out. These volunteers would need to be supervised by another member of staff or volunteer with a DBS check.</li> </ul> <p>For DBS checks to be relevant across roles, the school may wish to recommend the DBS update service.</p>
<p>17. Does strike action affect an employee's continuous service?</p>	<p>Although a strike breaks the contract of employment it does not break continuity of employment if the employee returns to work after the strike ends.</p> <p>However, days on strike will not count towards any relevant qualifying periods as the employee's service is regarded as being postponed by the actual duration of the strike. This may affect a service anniversary for redundancy pay entitlements for example resulting in a lower redundancy payment being due.</p>

Question	Answer
	Continuous service in the event of action short of a strike is not covered by legislation, so qualifying periods are not affected by such action.
18. Can a union use Union notice boards and the internal post system to promote the strike?	Yes. The Trade Unions are still entitled to all their usual facilities to enable them to carry out their duties.
19. Can unions hold workplace meetings in work time about the proposed action?	Employees will not be entitled to time off to attend such meetings. Where the purpose of the meeting is specifically to plan for or discuss for Industrial Action, union representatives will not be entitled to time off to attend meetings.
20. Will my school be picketed?	<p>It is likely that no more than a handful of schools will be picketed, if any at all.</p> <p>There is no explicit 'legal right' to picket, but if peaceful picketing remains within certain limits imposed by the law, it will not be unlawful. Picketing is an indirect form of industrial action that is protected from the law in the same way as industrial action in general i.e., by a system of immunities from legal proceedings. To retain these immunities, pickets must:</p> <ul style="list-style-type: none"> <li>• Be peacefully obtaining or collecting information;</li> <li>• Be peacefully persuading any person not to work;</li> <li>• Be picketing at or near their place of work- flying pickets are unlawful; and</li> <li>• Not commit any other unlawful act, such as nuisance, trespass, or obstruction.</li> </ul> <p>Picketing can only be carried out in support of official industrial action by people at or near their place of work. This means that pickets must be picketing their own workplace, or if they do not have a fixed one, the administrative centre from which their work is organised.</p> <p>A picket does not have the power to require people to stop, compel them to listen or to do what the</p>

Question	Answer
	<p>picket asks them to do. A person who wishes to cross a picket line must be allowed to do so. However, we would advise people to stop and listen to what the pickets have to say and to take any leaflets offered.</p>
<p>21. What should I do if I experience threatening behaviour or am made aware of threatening behaviour taking place toward staff when trying to cross picket lines?</p>	<p>Members of a picket line cannot break the criminal law by (for example) causing damage, intimidating employees, or creating public disorder. If they do, they would be committing an offence and the police should be notified.</p>
<p>22. Is there any restriction to the number of pickets that there can be?</p>	<p>The <a href="#">Code of Practice on Picketing</a> contains advice on picketing. It guides that pickets and their organisers should ensure that in general the number of pickets does not exceed six at any entrance to, or exit from, a workplace; frequently a smaller number will be appropriate.</p>
<p>23. What happens if an employee refuses to cross a picket line?</p>	<p>Where picketing takes place, employees not directly involved in the industrial action may refuse to cross picket lines. Such employees can normally be regarded as being on strike and treated accordingly with pay deducted for this day.</p> <p>Occasionally however, employees may be willing to cross picket lines but are reluctant to do so for fear of their safety. In such circumstances, the employer should try and ensure that the employee is given every protection in crossing the picket line, or where practicable, is given the opportunity to work at another establishment.</p> <p>If the employer considers the employee has made every effort to cross the picket line but was unable to do so, then the employer may decide not to treat their absence as industrial action.</p> <p>If for whatever reason an employee does not feel able to cross a picket line, it is important that employees know in advance who they should contact within their employing setting to request further advice.</p>



Question	Answer
<p>24. Is there any action we can take if people take sickness/leave on strike days?</p>	<p>Employees should be advised that any sickness absence taken on a designated “strike day” will have to be supported by a medical certificate from day one of the absence.</p> <p>Schools/Trusts should reimburse the individual for the cost of obtaining the certificate.</p> <p>Any commitments that have already been made to grant leave on strike day should be honoured (though this would be unusual in a school).</p> <p>No new requests for leave should be agreed except in the most exceptional circumstances. Settings may also wish to consider whether leave should be granted on the day prior to action taking place.</p>
<p>25. What if an employee is due to attend a course on strike day?</p>	<p>A non-striking employee can be called back to carry out their normal duties if required. An employee who fails to attend a course on strike day should be treated just the same as if they had failed to report for duty at the school.</p>
<p>26. Can employees work at home during the strike action?</p>	<p>Only if agreed beforehand with the CEO or Headteacher as applicable.</p> <p>If you can be sure that you have sufficient cover on the day of the strike, employees can work at home. However, where there may not be enough cover, employees should be asked to attend their setting if they are working on the day of the strike.</p> <p>Working at home on a strike day is usually discouraged as having employees report to work allows for accurate reporting of those taking action and those not.</p>
<p>27. Do Early Years ratios still have to be adhered to on strike days?</p>	<p>Yes. The Statutory Framework for Early Years Foundation Stage sets out what schools need to do to ensure that children in nursery and reception classes are safe, adequately supervised and their needs met. Schools are free to provide activities</p>

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	<p>flexibly on strike days as long as there are sufficient members of suitable qualified staff present.</p> <p>For nursery provision in maintained schools (children aged 3 and over) there must be one member of staff for every 13 children. At least one member of staff must be a school teacher<sup>2</sup> and one other member of staff must have a Level 3 qualification.</p> <p>Where there is provision for 2-year-old children there must be at least one member of staff for every four children. One staff member must have a level 3 qualification and at least half of the other staff members must have a level 2 qualification.</p>
<p>28. Do we have to maintain class sizes in infant classes on strike days?</p>	<p>Yes. Infant class size legislation limits the size of infant classes to 30 pupils per schoolteacher. This applies to reception and other classes where the majority of the children will reach age 5, 6 or 7 in that school year 3.</p> <p>The infant class size limit does not apply to activities normally carried out in larger groups, for example assemblies, sports and other structured or unstructured activities that the school may choose to provide on strike days.</p>
<p>29. Do I have to ensure the curriculum is delivered on a strike day?</p>	<p>There is no legal requirement to teach the curriculum on strike days.</p> <p>Maintained schools must ensure that they cover the programme of study for each national curriculum subject by the end of the relevant key stage.</p> <p>Maintained schools and non-maintained special schools are required to meet for at least 380 half day sessions per year but there is no statutory definition of 'meet' and no requirement to teach the national curriculum on each day of the school year.</p> <p>There is no legal requirement for academies or free schools to teach the national curriculum, although they are required to teach a broad and balanced</p>

Question	Answer
	curriculum during the course of the year.
30. Will Ofsted undertake inspections on a day of strike action?	<p>As with any other disruption to a school (such as severe weather), on a strike day Ofsted inspectors will take a view as to whether there is sufficient activity taking place to enable it to conduct an inspection of the school.</p> <p>Where there is not, the inspection is likely to be deferred. Where there is, inspectors will assess the education that is taking place at the point of inspection, along with all other evidence about the school and its performance, to arrive at a balanced judgement about the performance of the school.</p>
31. What happens if strike action coincides with public examinations?	<p>In the event of industrial action during public examinations, the headteacher of a school or principal of an academy retains a formal role as 'head of centre' and is accountable for the conduct of the examinations and provision of facilities in their centre.</p> <p>It is recommended that centres should remain open for examinations and examination candidates where possible, even if the school is closed or restricting attendance. Schools are encouraged to review contingency plans well in advance of each exam or assessment series.</p>
32. Can a non-union member of staff take unpaid leave on the strike day in support of their union colleagues?	No.
33. Can employees who are not union members take part in strike action?	No, but employees can refuse or feel unable to cross a picket line.
34. Is there any planned action short of strike?	No, this was a feature of the ballot by some unions but was not included by NEU.
35. What about school meals and other services?	Settings should keep their school meals, transport providers and their crossing patrol informed of

Question	Answer
	expectations about the impact of the strike on the school if some or all pupils are told not to attend.
36. Can I cancel supplier visits on the day of the strike action?	Yes, anything which involves visitors coming to the site of a setting that can be postponed to another day should be reviewed where it would help to minimise disruption.
37. What if a member of my staff, teaching, or support, has a child in another school that is closed?	<p>All employees should do their best to make alternative childcare arrangements. Only where alternative arrangements are not possible should emergency family leave be considered. This is usually limited to up to 5 days per annum in any one leave year.</p> <p>Leaders can reasonably ask an employee what attempts have been made to arrange childcare.</p>
38. Will teachers be paid when they are on strike?	<p>No. Employees are not entitled to be paid for any period during which they are on strike. Statutory protection against any deduction of wages does not apply in relation to strikes or other industrial action.</p> <p>The calculation of pay deductions for unauthorised absence is not determined by the Secretary of State, but it is important that schools act fairly and proportionately when making pay deductions.</p> <p>Employers should have a clear process in place for collecting data on staff absences; this information can then be verified and forwarded promptly to those responsible for the school's payroll.</p>
39. At what rate will pay be deducted if employees go on strike?	<p>An employee taking strike action has no entitlement to pay during the periods in which the action occurs. As strike action is a breach of contract the employer is entitled to reasonable damages.</p> <p>A High Court judgment in 2004 determined that a day's pay for a teacher undertaking strike action is 1/365<sup>th</sup> of their annual salary.</p>

Question	Answer
	Any deduction is made in lieu of damages for their breach of contract. Under no circumstances should deductions be viewed as a “penalty “for taking industrial action.
40. Are there circumstances where some teachers may be impacted more significantly negatively if they strike?	<p>Potentially yes. Employees in their last year of service who are in the pension scheme; pregnant women who have notified their employer of maternity leave dates; and employees whose state benefits may be affected if they take part in strike action.</p> <p>Naturally, the impact on any employee that undertakes action on all four planned strike days will not be insignificant. March with 3/31 days being unpaid could have a notable impact on pay for the month (9.677%). This will be for individual employees to consider and plan for accordingly.</p>
41. If a teacher was due to have PPA time on a day that they went on strike, do I have to give them more time to replace this?	No. The requirement is to provide for timetabled protected time for this purpose. Their refusal to provide work on that day does not mean that it was not scheduled.
42. What process do I follow to deduct an employee’s pay when I use Serco as my payroll provider?	<p>Schools that use SERCO payroll should:</p> <ul style="list-style-type: none"> <li>• Record the absence on remote timesheets</li> <li>• Enter the code EO1.</li> <li>• Highlight the individual on the timesheet and choose 'Create a payment'</li> <li>• The create payment screen opens, with the date of payment as the last working day of the month - Change date to date of strike.</li> <li>• Click on the arrow to the right-hand side of the field type - Choose 'Strike - Teachers Schools'</li> <li>• Click on the 'Units' Field</li> <li>• Enter the percentage of the day the Teacher would normally work on the strike day</li> <li>• Click on 'Save'</li> </ul> <p>The timesheet displays with the new entry in the payments grid on the right-hand side, as this wage type is a 'minus' it will not pay but deduct the percentage.</p>

Question	Answer
	<p>Pay will usually be deducted in the month following strike action or action short of strike, where it has not been refused by the employer, for which hours are being deducted.</p>
<p>43. Can an employee buy back the relevant pension entitlement if he/she takes strike action?</p>	<p>If employees are away from work for a day or more due to industrial action the period will not count for pension purposes.</p> <p>For staff in the teachers' pension scheme, there is no provision to buy back pension contributions for any period of strike action.</p>
<p>44. How should I record pupil absence?</p>	<p>If a school has to restrict attendance by telling some pupils not to attend school on a strike day, the <b>Y</b> code should be used for pupils who told not to attend. Pupils who are required to attend should be marked in the normal way.</p> <p>If a pupil is required to attend school on a strike day but does not, then they must be recorded as absent. The <b>Y</b> code does not count towards the pupil or school's absence record.</p>
<p>45. Will we have to record whether the school needs to close?</p>	<p>The DfE have indicated that data will be collected however details have not yet been shared.</p> <p>You may be asked to record whether your school needs to close, wholly or partially. Assuming this is the case we will add details to this FAQ including the email address to notify and any mechanism to record this information.</p> <p>The information usually recorded is as follows:</p> <ul style="list-style-type: none"> <li>• Whether the school is closed wholly or partially</li> <li>• If partially, which groups of pupils are affected</li> <li>• The number of employees who are on strike</li> </ul> <p>Where captured, the information is NOT released to national or local press before the first day of strike</p>

Question	Answer
	action.
46. Will other unions join the industrial action?	NAHT and NASUWT have indicated that they may seek to re-ballot their members. However, currently the position is that they did not meet the required turnout, despite positive support from those that did vote, and therefore their members are not able to strike.

Further advice is available for schools that subscribe to the HR Services full, or core offers:  
 by phone: 01438 544463  
 by email: [hrrservices@hertsforlearning.co.uk](mailto:hrrservices@hertsforlearning.co.uk)