

Managing Industrial Action – Headteachers' Guide

1. Introduction

- 1.1 This guide has been developed to provide headteachers with essential information about the steps that need to be taken in the event of an industrial action.
- 1.2 The processes outlined in this guide might seem daunting, but this overview is to help headteachers minimise the impact of industrial action and maintain business continuity.
- 1.3 This guidance is applicable to all council employees including staff employed in schools, and agency workers.

2. What is industrial action

- 2.1 Industrial action occurs when trade union members are unable to resolve a dispute with their employers through negotiations. Industrial action can take the form of striking, picketing or action short of a strike, such as refusing to work overtime.
- 2.2 In order to call for industrial actions, trade unions must have majority support from their members through a properly organised postal vote, known as 'ballot'. Before conducting a ballot, the unions must determine the members affected by the dispute should be asked to participate in industrial action.

The unions are required to inform all eligible voting members and the employer of the ballot results, normally on the same day that the trade union gets the result of the ballot.

3. Who can participate in industrial action

- 3.1 Those eligible to participate in industrial action are employees who are members of a trade union that has conducted lawful ballots and provided notification to the employer. Non-union workers for the same employer can also participate in a lawfully organised strike, without the risk of action being taken against them (e.g., dismissal).
- 3.2 It is important to note that workers or employees who are members of other unions which have not balloted can be subject to legal action by their employer (e.g., dismissal) if they participate in a strike.

4. Picketing

- 4.1 Picketing during industrial action must be supervised by a union official or member who is knowledgeable about the statutory Code of Practice on Picketing.

- Picketers must:
 - be peacefully obtaining or communicating information
 - be peacefully persuading any person not to work or turn back from crossing the picket line
 - be picketing at or near their place of work - flying pickets are unlawful
 - Not commit any other unlawful act, such as nuisance, trespass or obstruction.

4.2 The Code of Practice on Picketing contains advice on picketing including a suggestion that the number of those picketing should be restricted to six at any exit or entrance from a workplace.

4.3 Employees who refuse to cross a picket line maybe considered on strike, potentially resulting in pay deduction.

5. Pay

5.1 Employees participating in strike actions are not eligible for payment during the period of the strike. Time when employees are striking can also be excluded from employees' total pensionable service.

6. Ballot Notice

6.1 All employees who are expected to engage in industrial action must be included in the voting process.

6.2 The trade unions are required to notify LB Harrow at least seven days prior to holding a ballot for industrial action. This notice should include details about the employee categories, their workplaces, the number of employees involved.

6.3 If the ballot is successful, the trade union has 6 months to take action. The unions must give at least 14 days' notice before beginning any industrial action and the notice must:

- describe the employees who will take part in the action (as accurately as is reasonably practicable).
- state whether the action will be continuous (i.e., for a defined or open period of time covering more than one day) or discontinuous (i.e., a series of single or multi-day strikes with normal working in between strikes)
- where it is to be continuous, the date on which it will start must be specified.
- where it is to be discontinuous, the intended dates on which it will occur must be given.

7. Contingency planning in response to the threat of industrial action

7.1 Impact

- In the event of an industrial action, the impact should be assessed in the same manner as emergency planning to prepare contingency plans and safeguard services.
- Headteachers can inquire about the employees' intentions to participate but this needs to be done in a respectful and non-confrontational manner to foster good working relationship.
- Employees need to be informed that their participation in strike actions will not negatively affect them.
- Headteachers should also understand that employees are not obliged to disclose their participation plans.
- As of 10 August 2023, employers are no longer permitted to use agency workers to cover staff participating in strike action.

7.2 Exemption

- Headteachers are required to identify essential services that require an exemption. The unions may be open to assisting in maintaining these essential services by encouraging members in certain sectors to abstain from participating.

7.3 Resource Allocation

- Headteachers are responsible in ensuring sufficient resources are available to carry out essential work during the strike.

7.4 Redistributing duties of striking staff to non-striking staff

- Headteachers should carefully and considerately assign crucial tasks to non-striking team members and provide support where required.
- Job redistribution to different employee groups or volunteers (for instance, managers) might necessitate additional training, particularly regarding health and safety. Reasonable work assignment can be requested from staff so long it is in line with their job description and contract of employment.

7.5 Health and Safety

- Even during a dispute, the School maintains its legal responsibilities relating to health and safety. Health and Safety regulations are not being put on hold during strike, meaning the School has a legal obligation to provide a safe and healthy workplace for all employees.
- If a decision is made to shut down the school, arrangement must be made for employees who choose not to participate in the strike. Pre-arranged alternative work arrangements may be possible.
- Any essential work or service that fulfils statutory duty must be carefully considered and contingency plans put in place.

8. Annual leave

- 8.1 If an employee has scheduled annual leave, it should be assumed that they are on annual leave and not on strike, unless there is evidence to suggest otherwise.
- 8.2 Where annual leave has been authorised in advance of the industrial action, it should be granted having regard to the needs of the service and normal pay will apply. However, any unauthorised absences should be regarded as "absence on strike".
- 8.3 Headteachers should encourage employees who do not participate in the action to work as usual. There may also be a need for temporary changes to be made to flexible working arrangements such as working from home, however headteachers need to consider the potential impact on any affected employees who are not participating in industrial action.

9. Sickness payment during industrial action

- 9.1 Employees should take steps to submit a fit note to cover any sickness absence that overlaps with strike days, even for a single day of absence. The School will reimburse employees for reasonable fees charged by their GP upon receipt of an invoice". Otherwise, their absence will be treated as participation in a strike, in terms of pay. They must also follow the school's sickness procedure and call their workplace as usual.

10. Continuity of employment

- 10.1 Strike days do not count as working days for calculating qualifying periods of employment, e.g., for, pension, unfair dismissal claims.

11. Record Keeping

- 10.1 Headteachers must keep a careful record of staff that are participating in industrial action and provide information, along with the impact on the service to the Director of Education 9:30am daily. Schools that have a HR SLA with the LA must also copy HR4schools@harrow.gov.uk .
- 10.2 The reporting process is detailed in Appendix A. This information is necessary for the Council to promptly provide updates on the number of staff participating and the services affected to relevant stakeholders such as the national employers, members, London Council etc.
- 10.3 Additionally, the School will need to make appropriate deductions from the contractual pay of employees involved in industrial action. Headteachers should ensure the availability of up-to-date data and inform payroll so that correct deductions can be made.
- 10.4 Headteachers should ensure that all reporting processes are conducted in a GDPR- compliant way and that personal data is shared confidentially and on a "need-to-know" basis only.

Further resources

- LGA Industrial Action guides
- Industrial action guide | Local Government Association -
- <https://www.local.gov.uk/our-support/workforce-and-hr-support/employment-relations/employment-law-topics-and-e-guides-0>
- Industrial Action FAQs | Local Government Association -
- <https://www.local.gov.uk/our-support/workforce-and-hr-support/employment-relations/employment-relations-faqs/industrial>

Form to be sent to Director of Education by 9:30am each day of the strike action
(Schools that have a HR SLA with the LA must copy HR4schools@harrow.gov.uk)

Name of Headteacher: _____

Name of School_____

[illegible]

Form to be sent to the School Payroll Provider after each strike day/period

Name of Headteacher: _____

Name of School_____

[illegible]