

Topic: Strike Action

For additional information and support please contact the WeST HR Team on the above details.

Dear WeST Colleague

You will be aware from media coverage that teaching members of the National Education Union (NEU) have declared strike action. The government and union leaders are continuing to hold discussions with the aim of avoiding industrial action. However, as it stands, the first day of potential strike action is Wednesday 1st February with subsequent strike action on 2nd, 15th and 16th March. The strike is happening as a result of a national dispute between the union and the government over pay and funding, and not because of any issues at our Trust.

We will, though, be taking all necessary steps to ensure our schools remain open where possible. This may include a number of options short of closing schools and your Headteacher/Director will provide details of any relevant local arrangements over the coming days.

We will be working with our regional and local staff union representatives on this situation to seek assurances on the appropriate nature of any picketing arrangements such that staff, parents and children are able to enter and leave school sites in a peaceful manner.

WeST of course recognises and respects the right of our staff to participate in industrial action and would ask that all members of our community continue to treat each other with respect during this dispute.

Below is a selection of frequently asked questions, however if you have any further questions relating to the upcoming industrial action, please forward them to the WeST HR Team via email (hr@westst.org.uk) and this document will be updated accordingly.

Who has voted for industrial action?

Teaching Members of the NEU (National Education Union) in England and Wales have voted for strike action.

On what dates are the strikes?

The planned dates of industrial action which affect WeST are: Wednesday 1st February 2023, Thursday 2nd March 2023, Wednesday 15th March and Thursday 16th March 2023.

Who can strike?

Any member of the trade union that has voted for strike action as part of a legitimate ballot can strike; in this case NEU teaching staff.

Members of a trade union who have balloted for strike action but did not reach the threshold for strike action may not legitimately strike.

Other staff may choose to strike; however, circumstances will dictate whether they have extended protection to do so under the terms and conditions of their contract and/or will legally be protected from dismissal.

What notification of strike action does the union have to provide?

The trade union must state the categories, number and locations of those who they intend to induce to participate in strike action, in a notice of industrial action addressed to the employer. This has been received by WeST from the NEU.

Is it reasonable for WeST to ask staff in advance if they intend to take strike action?

Yes. The Trust, Schools and business units need to make contingency plans and to do so need to ascertain where the impact of the action will be. Staff have no obligation to inform their school/business unit/the Trust whether they intend to take strike action, however Headteachers and Directors will be making local arrangements to ask staff in advance if they intend to strike.

What is the expected notification of attendance on the day of the strikes?

All staff not participating in the strike are expected to attend work as normal. Unless notification/evidence has been provided to the contrary in accordance with relevant policies and procedures, staff who are not in attendance on strike days will assumed to be on strike.

What if I am sick on a strike day?

Sickness absence should be reported using normal local procedures and entitlement to sick pay remains unchanged. However, due to the exceptional circumstances, anyone reporting an absence due to sickness on strike day(s) will be required to provide medical certification. Where a GP or other qualified professional is unwilling or unable to provide certification at no cost (upon being requested to do so for exceptional reasons), the Trust will reimburse the cost of a private certificate upon production. A reasonable period will be allowed for staff to obtain the required certification and leaders are available to discuss any specific difficulties encountered by staff at return-to-work meetings.

Staff who are absent on account of sickness before industrial action starts will be assumed to be on sick leave, providing that the necessary medical certification is in place.

What happens if time off is required to look after dependants or to cover childcare?

The expectation, in the case of pre-planned and widely known strike days, is for staff to make every effort in advance to secure contingency plans for childcare should it be required. In the event this is not possible, or arrangements fall through, unpaid emergency time off for dependants may of course be granted. There is no contractual entitlement for paid time off beyond the provision to look after sick children.

Our headteacher's are available to discuss any specific difficulties and contingencies with individual staff if needed and will employ as much flexibility as possible to support them attending work as expected.

Holiday entitlement

Teachers are not entitled to take annual leave when the school is in session; this includes on strike days.

What are the pay deductions for taking industrial action and striking?

Staff are not entitled to be paid for any period during which they are on strike. Pay will be deducted as appropriate for all those recorded as striking, for teachers this will be at the rate of 1/365th of annual salary including any allowances.

Will continuous service dates be affected?

Continuous service dates will not be affected by taking strike action. However, continuous service is effectively suspended, which has the effect that the period of continuous service is postponed and does not include strike days. This has potential implications for statutory qualifying periods and calculation dates for e.g. unfair dismissal and redundancy rights, although for most employees the effect will be negligible, particularly in the case of a one-day strike.

Will my pension be affected?

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.

Please contact Teachers' Pensions for further advice.

<https://www.teacherspensions.co.uk/employers/advising-members/life-events/industrial-action.aspx>

What will happen to my PPA time if this is scheduled for a strike day?

There is no reimbursement for loss of PPA time through absence as a result of strike (i.e. the same rules as for sickness absence or leave of absence). In the event that non-striking teachers agree to cover for striking teachers and this impacts on their PPA, then this will be reimbursed.

Can a non-striking teacher be asked to cover for a striking teacher?

Headteachers can ask non-striking teachers to cover for striking colleagues. However, staff covered by the School Teachers' Pay and Conditions Document (STPCD) cannot be compelled to cover for other teachers who are striking. The exception are those teachers whose job is to provide cover during staff shortages i.e. Cover Teachers/Supervisors.

Can I be asked to set work for students in advance of a strike day?

Striking teachers cannot be compelled to set work for students to complete on the day of the strike. However, if classes are running as normal, some teachers may choose to set work.

Can support or other staff be deployed to cover for a striking teacher?

Regulations do not prevent schools from deploying suitable 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.

Can an employer use agency workers to cover the work of striking workers?

Previously employers were prevented through regulation from sourcing workers via this route. However, with effect from 21 July 2022 that regulation was repealed and so there is no longer a legal bar to using agency workers for such purposes.

What are the rules on picketing?

The Trusts expectations are that any picket lines will take place in accordance with the Code of Practice on picketing <https://www.gov.uk/government/publications/code-of-practice-picketing> which includes (but is not limited to):

- Advice that the number of people picketing should be restricted to 6 at any exit or entrance to or from a workplace
- Picket lines are for the purpose of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working.

Standards of behaviour should therefore be appropriate; staff, parents and children being allowed to cross without any intimidation or fear for their safety

- The requirement for the union organising or supporting a picket to appoint a picket supervisor and to inform the Headteacher who this person is. The role of a picket supervisor is to oversee matters and is able to liaise as needed with the Headteacher or the local police.
- Attendance on a picket line is limited to the picket's place of work

What about staff who are not directly involved in strike action but refuse to cross the picket line?

Such staff can normally be regarded as being on strike and treated accordingly. However, staff maybe willing to cross picket lines but are reluctant to do so for fear of their safety. In such circumstances, the Trust will try and ensure that staff are given every protection in crossing the picket line or, where practicable, is given the opportunity to work at another site in the Trust. If the Trust considers the employee has made every effort to cross the picket line but was unable to do so, then the Trust may decide not to treat their absence as industrial action.

What can the School/Trust do if pickets behave in an intimidating manner?

If pickets behave in an intimidating manner to the extent that it can no longer be considered as peaceful action, the picketing will be unlawful.

As a first step, the School/Trust will explain to pickets the potential consequences of their actions, as in many cases this will restore peaceful picketing. The conduct of the picket may also amount to a criminal offence, meaning the police will be involved and will have discretion to take what measures they may reasonably consider may be necessary to ensure that picketing is peaceful and orderly.