

Industrial Action

MANAGERS Q & A

Q1 - Can an employee be disciplined for taking part in the strike?

No. Under normal circumstances a breach of contract would result in disciplinary proceedings. However, it is generally inappropriate to bring disciplinary proceedings against employees because they took part in industrial action. However if the action is unofficial employees may be the subject of disciplinary action. Misconduct during the strike should be subject to the normal disciplinary procedure. For example, violence, intimidation, harassment or damage to property.

Q2 - Can non-union members take part in Industrial Action?

An employee may have protection against unfair dismissal if they take part in industrial action without being a member of a trade union. However, this is dependent on the circumstances in their particular workplace. Employees are advised to verify their employment protection with HR&OD prior to undertaking any industrial action.

Q3 - What happens if an employee who is not out on strike refuses to cross the picket line?

The Council could treat an employee not directly involved in the dispute who refuses to cross the picket line as taking part in the strike. However, the Council will do their utmost to ensure that workers who are willing to work are not prevented from crossing the picket, (for example through intimidation.) It may be necessary to provide sufficient safety measures to allow workers to cross a picket line, or to provide alternative means of entry into the workplace or provide alternative workplaces. If the council considers that a worker has done everything reasonable in

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the circumstances to come into work but was prevented by events outside their control, the Council may decide not to treat their absence as industrial action.

Q4 - What advice will the Council provide to employees wishing to cross the picket line?

Any employee wishing to cross the picket line might find these suggestions useful;

- Show willingness to communicate with the picketers.
- Explain in a polite manner that you have the legal right to report to work.
- Remain calm.
- Explain your situation to any picketers, who communicate with you, e.g. I'd like to exercise my right to come to work.

If an employee is not allowed through the picket line, or feels threatened at any time they are advised not use force in return. They should be prepared to pass on any information about any incidents which may occur.

Employees should telephone their line manager or another manager in their Service or location to notify that they are having problems crossing a picket line.

Q5 - Can an employee request annual leave on the day of strike?

No new requests for Annual/Flexi leave will be granted after date. Leave already approved will be honoured.

Q6 - How will payroll be advised about which employees took part in the strike?

The Service will be asked to complete documentation which will be sent directly from payroll. This must be completed carefully to ensure the correct pay is deducted. Employees must not complete unpaid special leave forms.

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Q7 - What happens if an employee calls in sick on the day of Industrial Action?

If an employee's sickness absence commences on the day of the industrial action they will be required to provide a GP certificate. This is not applicable for employees whose sick leave started prior to the industrial action date.

Q8 - What happens if the strike is for a short period e.g. One hour in duration?

The same procedures in terms of notification etc require to be followed. The Service will require to record the names of those who take part in the action for notification to payroll. The employees may be allowed to remain at their desks/work area while striking as long as they do not become disruptive. If they become disruptive it would not be unreasonable to ask them to go to a designated area e.g. Canteen or outside the building.

Q9 - What happens if the Council have to close the building?

If the council decides to close a particular workplace an employee who wishes to report for normal duties should be advised before the day of the strike to report to an alternative Council building that will open and contact their line manager (or appointed person) to confirm their presence. If the council cannot find alternative duties, as a last resort, the employee may be sent home on full pay. If an employee is required to work at an alternative workplace they will be reimbursed the cost of any additional travel costs. The employee will be required to complete a Travel & Expenses Claim Form.

Q10 - Do employees get credited normal hours for flexi-time purposes when on strike?

As a result of industrial action an employee (or the Service Administrator) should record 7.25 hours, or their normal working hours, for the day. However, this time cannot be taken into account in terms of the payment of overtime rates. The employee must have actually worked in excess of 37 hours in the same week to qualify for the overtime rate.

Q11 - Can an employee take Special Leave to care for their children?

Special leave (time off for dependants) cannot be taken in order to care for children in these circumstances. If alternative child care arrangements cannot be made, then an employee will be entitled to take unpaid leave. Applications for annual leave or flexi leave will be accepted until the date.

Q12 - Will participating in the strike action result in a break in service, regarding pension entitlements?

Strike action is not considered a break in service as regards pension entitlements. However, employees will not accrue pension benefits while on strike.

Local Government Pension Scheme members can 'buy back' pension accrual by taking an Additional Pension Contract (APC). To investigate this, employees must send a PEN11 application form to Payroll.

The PEN11 form together with guidance on completing it, including how to obtain the cost of the APC, is available from the Pension Fund website at:

www.nespf.org.uk/Members/lgp_library.asp or may be requested;

By phone: 01224 264264

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By e-mail: pensions@nespf.org.uk

By post: North East Scotland Pension Fund, Corporate Governance, Business Hub 16, 3rd Floor – West, Marischal College, Broad Street, Aberdeen, AB10 1AB

The form may be sent to Payroll -

Via AskHR: <https://abshire.cherwellondemand.com/CherwellPortal/askhrv2#0>

By post: Payroll Section, Aberdeenshire Council, Woodhill House, Westburn Road, Aberdeen AB16 5GB

The Pension Fund will make arrangements with Payroll for deduction of the cost of the APC from the employee's pay. The Council will not contribute to the cost of buying back the "lost" pension.

Please note that

- If the employee does not return to work after the strike period they will not be eligible to take an Additional Pension Contract – it is necessary to be an active member of LGPS.
- The Pension Fund will determine whether payment can be made as a regular amount over a period of time one or whether it must be made as a one-off lump sum.
- The Pension Fund may require the employee to provide a report from a registered medical practitioner prior to agreeing the APC – this would be at the employee's own expense.

Q13 - Can an employee work from home on the day of the strike?

This will depend on circumstances and will be at the discretion of the line manager. It is expected that this will only be granted to employees who are already permitted to work from home.

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Q14 - Can the McCrone Time and Place arrangement be used for teachers who are not taking industrial action?

No, this arrangement will be suspended on the day of the industrial action.

Q15 - Can a new TU Member participate in industrial action if they joined the TU after the ballot?

Yes and this will not affect the outcome of the ballot result.

Q16 - Are supply employees paid for the day of the strike?

They will be paid only if they were already contracted to work on that particular day and are unable to come into work due to a school closure.

Q17 - Can we use an agency worker to cover for the workers taking industrial action?

It is unlawful for an employment business to supply temporary workers to take the place of other workers taking part in lawful industrial action. We are allowed to use employees from other parts of the Council, or to use existing agency workers, provided that the work that that person is doing is not then covered by an agency worker. If we have a current employee (or employees) who can be otherwise deployed to do the work that might be the best option. We can outsource the affected functions to another contractor. We can also insist on compliance with the terms and conditions of the contracts of employment of those involved - we would need to do this for all the employees in the unit, not just those participating in the industrial action (or else we will be seen as victimising them).

Q18 - Can employees take TOIL on the strike day?

A request for TOIL should be considered in the same respect as annual or flexi leave (as detailed in the industrial action guidance.)

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Q19 - What is the exemption rule for the strike regarding retirement date officials versus possible early intentions?

This exemption only applies for those who are in their last year of service before their official retirement date, not if they are considering taking early retirement. (This exemption does not apply to teachers).

Q20 - If formal Council Committee Meetings are due to be held but the committee officer is participating in the strike can other staff be approached to assist with duties such as minute taking for example?

Employees can be approached to help in other areas, however they must not feel pressurised into more work than they are contracted to do.

Q21 - Can an employee be dismissed for participating in official strike action?

Employees taking part in official strike action are legally protected. Unfair dismissal can be claimed if:

- It takes place within 12 weeks of the employee commencing industrial action.
- It occurs after the 12 weeks but the employee had returned to work before the end of the 12 weeks.
- It occurs after this period and the employer has NOT taken all reasonable steps to resolve the dispute.

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Q22 - Will employees, who are not union members, who want to work as normal, but cannot fulfil their duties due to schools being closed to children, be paid as normal?

Yes if they are scheduled to work on that day, employees will require to be notified what arrangements or reporting requirements will be applicable on the day of the Industrial Action.

Q23 - What Exemptions & Emergency Cover arrangements will be put in place?

The exemptions and emergency categories have been nominated by SMT and a formal request made to the relevant Trade Unions for approval. Once these responses have been received appropriate guidance will be issued by Service Directors.

Q24 - Key holders – what happens if they are on strike? Who will be responsible for opening and closing of buildings if the usual person is on strike? What about alarm/security codes – are employees on strike expected to pass these to others?

The decision will be made by SMT and therefore Directors/Heads of Service will advise appropriate employees.

Q25 - Who will decide when a building is to be closed and how will employees/public/service users be advised?

This decision will be made by SMT and thereafter Directors/Head of Service will also advise how this information will be communicated.

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Q26 - Will Council in-house training courses still take place?

HR&OD will advise on this. It will depend on whether the relevant trainers are to attend work and/or if exemptions are granted by the relevant Trade Unions.

Q27 - What are the rules on picketing?

Picketing is an indirect form of industrial action that is protected by immunities in the same way as industrial action. In order to retain immunity from legal proceedings, pickets must:

- Be peacefully obtaining or communicating information.
- Be peacefully persuading any person not to work.
- Be picketing at home or near the place of work.
- Not involve unlawful threats or assault or harassment.
- Not to commit any other unlawful act, such as nuisance, trespass or obstruction.
- Secondary picketing is also unlawful

Q28 - Is there a limit to the number of pickets allowed?

The BIS Code of practice on picketing contains advice on picketing, including suggestion that the number of pickets be restricted to 6 at any particular location. The code is not legally enforceable but provides general guidance and good practice. It can be downloaded from the department of Business, Innovation and Skills website <https://www.gov.uk/government/organisations/department-for-business-innovation-skills>

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Q29 - Can pickets try to prevent non-authority employees crossing the picket line?

It is lawful for a picket to try and persuade workers of another employer to break their contract of employment. For example by persuading a delivery driver or contract worker not to cross a picket line.

Q30 - Can employees who are working on a strike day work through their lunch break and leave early?

Employees working on a strike day are expected to work their normal contracted hours/ work pattern.

Q31 - If a pregnant employee wishes to undertake industrial action how would this affect their maternity pay?

Pregnant employees are normally exempt from strike action if they have informed their employer of their pregnancy.

Q32 - What is the position of an employee who is on long term sick leave when industrial action takes place?

Normal absence procedures would apply in this case; however for an employee who **commences** sickness absence on the day of the industrial action alternative procedures will apply.

Q33 - What are the implications for part-time employees whose working days do not fall on the day of the industrial action?

There are no implications for part-time employees in this scenario they should continue to work their normal working pattern.

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Q34 - Can peripatetic music instructors work from home on the day of the industrial action?

No the McCrone Agreement in relation to working “any time any place” is suspended on the day of the industrial action. They must report to a school base as directed by the Service.

Q35 - When does a line manager ask the question to employees if they are intending to take industrial action or not?

At least a week before the industrial action date, however please note that employees are not obligated to provide this answer.

Q36 - Can an employee who does not wish to take industrial action but is a member of a trade union be thrown out of the union?

This would be a matter for the trade union.

Q37 - Can an employee take their children to work on the day of the industrial action if there is no childcare available?

No, this would not be permitted; a parent would require to submit an application for unpaid leave in this instance.

Q38 - Would taking industrial action result in a break in service for an employee who is working on a fixed term contract?

No, industrial action would not result in a break of service.

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Q39 - If an employee is not taking industrial action but their place of work is closed would we be expected to pay the difference in travel costs for the employee attending an alternative work location?

Yes Aberdeenshire Council would pay expenses which are greater than the employee's normal commute. The employee will be reimbursed by completing the Travel and Expenses Claim form.

Q40 - Do school escorts have to report to school on the day of the industrial action?

No, they would not be required to report to their school and would be paid as normal.

Q41 - Do school crossing patrollers have to report to school on the day of the industrial action?

Yes school crossing patrollers would be required to report to school to note their attendance and then they can return home. If they have noted their attendance they will be paid as normal. If they have been notified that their school base is not open then they should remain at home and will be paid as normal.

Q42 - Will caretakers who would normally cover school lets get paid on the day of the industrial action?

Yes, provided that they would normally work on the day of the industrial action (an established work pattern) they can claim for the hours they normal work. If the establishment is open they should report to work as normal, otherwise it will be deemed they have taken industrial action and pay will be deducted.

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Q43 - How will schools/workplaces record which employees have attended?

Arrangements must be put in place to ensure that an attendance record is made of all those employees who have reported to work on the day of the industrial action. This is in order that the subsequent request for information from payroll of the names of those who had taken industrial action can be accurately completed.

Q44 - Would an employee who took industrial action and then is called out still meet the criteria for overtime?

No this employee must still meet the normal overtime criteria an employee will not be credited any hours for undertaking industrial action.

Q45 - Do employees need to complete an unpaid special leave form if they take industrial action?

Employees **must not** complete special leave forms. Payroll will issue a separate form to Services to identify those employees who have undertaken industrial action.

Q46 - What pay will be deducted for an employee who has undertaken industrial action?

An employee will have the normal number of hours that they would have worked on that day deducted from their salary.

Q47 - What can pickets say to employees trying to enter their workplace?

The law allows pickets to seek to explain their case to those entering or leaving the picketed premises, and/or to ask them not to enter or leave the premises where the dispute is taking place. This may be done by speaking to people, or it may involve

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the distribution of leaflets or the carrying of banners or placards putting the pickets' case. In all cases, however, any such activity must be carried out peacefully

Q48 - What should an employee do if they feel they have been subject to abuse or threatening behaviour whilst attempting to cross a picket line?

Any activities undertaken by pickets must be carried out peacefully. Any employee who feels that this has not been the case and has been subject to abusive language for example must report the matter immediately to their line manager or another manager at the location.

Managers should immediately contact HR&OD for advice if this is brought to their attention.

Q49 - Does an employee who does not work in a school get paid time off to look after their children if the school is closed due to industrial action?

No a request will have to be made by employees to take either annual leave, flexi leave or unpaid leave.

