

Strike Action

This guidance considers key issues that need to be addressed when preparing for a strike and what action needs to be taken on the day of the strike, including the collation of statistical information. Consideration is also given to advising on situations that may arise as a result of the strike.

The Law and Trade Disputes section provides an outline of what action can be taken legally and the FAQs address some of the most common issues that have previously been asked.

Notifications from Trade unions are usually provided to BCC as the employer, however, should you receive a notification from a Trade Union in relation to industrial action, you should inform the Director Children and Families at BCC and your HR provider.

Pre-planning - Required actions

Consideration will need to be given to systems to deal with the following:

Service delivery

Identify (where possible) who is likely to take part in the dispute to organise service delivery. It is reasonable to ask employees if they will be taking action, as you need to plan to continue delivering due to the strike. However, there is no obligation on the employee to respond and no pressure or persuasion must be exerted to try to get them to answer.

Reminding staff

Employees need to be aware that if they take part in strike action, their pay will be deducted for the day(s) they are on strike and that any sickness absence which starts on the day of the strike action will require a medical certificate ('fit note') from day one. See 'On the day of the Strike Action'.

Leave of absence

If an employee has already pre-arranged leave, then they are normally deemed to be on leave and not on strike. Any requests for leave with effect from the date that the Local Authority is informed of the strike day should normally be refused unless there are exceptional circumstances for example if there is a family bereavement.

Contingency plans

Contingency plans should be made to ensure the provision of services where possible. You may be able to achieve this by reallocating the work normally carried out by staff taking part in the dispute. You will need to be mindful of having the minimum staffing levels to keep the school open and operating safely.

Agency workers

If you currently have agency workers within your school, you can continue to use their services during the strike.

Key holders on strike

You need to make arrangements for access to buildings where key holders to buildings may be on strike. If there is no other person available to perform this task you need to put in place alternative provisions and send out communications as appropriate.

Health and safety

Ensure that you have adequate health & safety arrangements in place for example you will need to check if your fire marshals and first aiders are planning to go on strike and make any necessary contingency arrangements.

Individual service or care

Where there is the provision of personal services to pupils particularly where there may be challenging behaviour, for example Teaching Assistants in certain classes, and it is known that key individuals will not be present, appropriate support should be provided where possible.

Catering/cleaning provision

Where catering or cleaning staff take action, a decision will have to be made as to whether a reduced service can be offered or not (i.e. a sandwich provision/limited hot meal for lunch; hygiene areas only to be cleaned – toilets/showers). This can be discussed either with the Catering/Cleaning supervisor on site, or, if necessary, your relevant Services Area Manager.

Contact network

Ensure communication networks are set up so that your employees can contact you if necessary.

Possible exemptions

Birmingham may agree an exemptions list with trade unions; however this will not always be agreed. At a local level it is possible that non-union staff can be used to provide appropriate support and cover where vulnerable service users may be at risk. If that proves not to be the case, exemptions may be considered on a case-by-case basis. A head teacher who feels that a case can be made on these grounds should contact their HR provider as soon as possible.

Schools closure

It is a head teacher's responsibility to determine whether a service can be offered on any day of industrial action. Staff are expected to attend work even in those circumstances where a decision must be taken to close the school to children. Head teachers may wish to contact School Management Support to discuss the situation further if it appears that strike action may bring into question the advisability of opening the school to pupils.

It will be important to consider Health and Safety issues in making any decision such as:

- whether school crossing patrols are available or can be covered
- whether an adequate level of hygiene can be maintained
- whether pupil discipline can be maintained
- whether adequate school/establishment evacuation procedures can be maintained
- whether sufficient catering facilities can be provided or if pupils can be asked to provide their own lunchtime food.

Staff who refuse to undertake duties performed by striking colleagues may be viewed as having refused a reasonable request. However, unless staff volunteer to undertake additional duties pressing the point is likely to lead to further problems and we are therefore advising that no action is taken against the staff who refuse to cover a colleague's duties.

Notification of closures

It is essential that head teachers notify closures (whether in whole or in part) by email to the School and Governor Support Team as soon as possible and in any event no later than midday on the last working day before the action. Their email address for this purpose is: school.support@birmingham.gov.uk

The day of industrial action

Required action - Process for reporting on the day of the strike

An effective communication strategy is an essential component in managing an industrial dispute.

The following items should be appropriately recorded, and support requested where necessary:

- absence due to striking
- absence due to annual leave, sickness, or school closures
- impact on services and any problems you are encountering
- picket line issues e.g. how many picketing, any concerns
- emerging, foreseeable issues

Responsibility to attend work

It is the default position that all employees who are not on strike on the day(s) for which a strike has been called are expected to attend work. Staff who are not on strike are expected

to attend school even in those circumstances where a decision must be taken to close the school to children.

Employees who are not on strike but who have children in schools which are closed due to strike action are expected to make alternative childcare arrangements, especially when the closure is known in advance. However, where this has not proved possible, unpaid leave may be granted by the head teacher.

Sickness

If an employee is absent before the strike due to sickness, you can assume, unless there is contrary evidence that they remain on sick leave during the action, as long as the necessary medical certificate ('fit note') is provided.

If an employee reports in sick on the day of the action, their sickness must be covered by a medical 'fit note' even if it is for one day only. The schools will reimburse employees for the cost of the medical 'fit note' if a receipt is provided.

If an employee who has reported in sick is seen on the picket line a decision needs to be taken as to whether their attendance on the picket line is harming their recovery. Where an employee is guilty of conduct prejudicial to their recovery, their sickness allowance could be suspended.

Industrial action: The legal position

Breach of contract

Strike action is a breach of contract. This applies to any employee who takes strike action and does not attend work.

Pay deductions

Case law has established the following principles:

- an employee taking strike action has no entitlement to pay during the periods in which the action occurs
- where pay deductions are made, these should at all times be reasonable (i.e. a reasonable reflection of the work lost/damages caused)

Pay deductions made as a response to employees taking part in strike action or industrial action are excluded from the unlawful deduction of wages provisions.

Picketing

Information and guidance relating to pickets can be found in the Code of Practice: [Code of practice: picketing - GOV.UK](#)

For those taking part, to retain immunity from legal proceedings, the picketing must be in contemplation or furtherance of a trade dispute and consist only of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working.

If employees have more than one place of work, they can picket the premises from which they work, or from where their work is administered.

The relevant Trade Union must appoint a union official or other member of the union who is “familiar” with the statutory Code of Practice on picketing to supervise the picket they will be known as “the picket supervisor”. While picketing takes place, the supervisor must be present or be readily contactable by the Trade Union or the police and be able to attend at short notice.

TU officials can picket at any place of work provided that they are:

- accompanying members of their Trade Union who are picketing lawfully at or near their own place of work; and
- personally representing those members

Refusal to cross the picket line

Employees are expected to cross the picket line if they are not involved in the industrial action. In situations where an employee is willing to cross picket lines but are reluctant to do so for fear of their safety, you need to put in place assistance to help them cross the picket line, e.g., meet and escort them onto the premises. It would be ideal if there is a contact number for employees who require assistance in crossing the picket line. If this is not feasible, ascertain if it is practicable to give the opportunity to work at another establishment. Only in exceptional cases would an employee be entitled to say that they felt intimidated and therefore unable to cross the picket line.

If an employee not involved in the industrial action refuses to cross the picket line and does not contact their manager, they will have a salary deduction for that day.

Maximum number of pickets and mass picketing

There are guidelines of no more than six pickets at the entrance or exit of a workplace. Mass picketing by the workplace is likely to fall outside the immunities because it is unlikely to be conducted peacefully and may involve employees who are not picketing at their place of work.

If you do encounter problems at picket lines, you need to contact the Director Children and Families at BCC and your HR provider.

Secondary picketing

It is illegal to picket other companies whose employees are not in dispute with the Council. This is called secondary picketing. This could happen, for example, where a picket tries to

persuade a lorry driver employed by another company, not to cross the picket line and deliver goods to be supplied to the Council premises. Such an act would be regarded as unlawful inducement.

Joint entrances with other employers

Where an entrance or exit is used jointly by the workers of more than one employer, the workers who are not involved in the dispute to which a picket relates should not be interfered with by picketing activities. Particular care should be taken to ensure that picketing does not involve calls for a breach, or interference with the performance, of contracts by employees of the other employers(s) who are not involved in the dispute.

The law and trade disputes

Trade unions are afforded limited immunity from liability for their actions in organising industrial action if they comply with a series of legal requirements, including:

- that the action must be official and taken in contemplation or furtherance of a trade dispute
- it must be between workers and their current (or former) employer
- must not involve secondary action
- must be wholly or mainly related to a list of specified matters, such as the terms and conditions of employment or dismissals (including redundancies)

If a trade union does not attract immunity because it has not followed the statutory requirements for taking part in industrial action, employers can apply to the courts to prevent the action starting or continuing and to seek damages for loss.