

# Industrial Action – Employee FAQ

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## 1. Ballots

### 1.1 I've heard that there's going to be a ballot for "industrial action" – what does that mean?

The union must inform the Council that it is intending to carry out a ballot. A ballot for industrial action means that union members are asked to vote on whether they want to take part in industrial action relating to an issue in dispute.

Industrial action can be a continuous strike (action takes place every day with no set end date), a discontinuous strike (one or more separate days of action) or action "short of a strike" such as an overtime ban.

### 1.2 If there is a "yes" vote what happens next?

The union must tell us the results of the ballot. If at least 50% of eligible union members voted, and that membership voted "yes" to industrial action, then the union must tell the Council what industrial action is proposed and give us 14 (or where agreed, seven) calendar days' notice of when it is planned.

## 2. Taking part / not taking part in Industrial Action

### 2.1 I don't feel I can afford to take part in the Industrial Action – do I have to?

If you wish to work, you are legally entitled to do so, even if you are a member of a trade union. The union cannot discipline you, expel you or take away your union benefits because you refuse to strike.

### 2.2 If I do strike, could the Council take disciplinary action against me?

If the strike is official (i.e., meets legal requirements) then no, the Council will not take disciplinary action against you if you take part in the strike. However, if you are involved in an incident that is considered to be misconduct, such as damage to property or the intimidation or harassment of other employees who do not wish to strike, then the Council would treat this as a serious disciplinary matter.

### 2.3 Do I have to tell my manager that I am going to strike?

No, but it would be helpful to let your manager know in advance that you intend to strike, especially if it would allow us to identify where there may be a risk to life and limb cover for critical services. However, the final decision is yours. Managers may ask you to indicate your intentions, but this will only be for emergency planning purposes.

### 2.4 What if I come under pressure from colleagues?

The decision to strike or not to strike is yours and you should be able to make it freely, without pressure from your colleagues. Any attempt to victimise, threaten, intimidate, or otherwise bully you into a certain way of acting should be drawn to the attention of your manager and the trades unions involved.

### 2.5 I did not participate in the strike but was verbally abused by a colleague for not participating in the strike – what can I do about this?

All employees have a right to expect to be treated with dignity and respect at work by colleagues, managers, and work contacts. There is no difference on a strike day. Initially you should report the matter to your line manager as the incident may constitute misconduct. Alternatively, you should consult the Council's Avoidance of Bullying and Harassment Policy. The Policy aims to address unfair treatment and provides a framework for employees to raise any concerns and have their concerns addressed.

### 2.6 I did participate in the strike, but now feel I am being treated unfairly by my manager / colleagues because I went on strike – what can I do about this?

As above, all employees have a right to expect to be treated with dignity and respect at work by colleagues, managers, and work contacts and you should not be victimised as a result of taking part in legitimate industrial action. You should consider raising the issue through the Council's Avoidance of Bullying and Harassment Policy.

## 3. Union / non-union member and Industrial Action

### 3.1 I'm a union member – do I have to take part in the strike?

You're under no obligation to strike – you can work on a strike day if you choose to.

### 3.2 Can members of other unions or non-union members take part in a strike?

Yes. If you choose not to cross the picket line, you will be treated as taking part in the Industrial Action as long as it is deemed to be official action.

This means that:

- members of a trade union are taking part in it; and
- the action is official industrial action taken by their trade union.

The law will treat you in the same way as it treats trade union members and if you choose to do this, the Council will not take disciplinary action against you if you take part in the strike.

## 4. Coming to work / working from home

### 4.1 If a strike is called, will I be able to come to work?

Yes. You are free to make up your own mind about whether to cross a workplace picket line and continue to work. You are legally entitled to work on a strike day if you wish to. The Council will make your workplace or a suitable alternative workplace available to you.

### 4.2 I intend to be at work on a strike day - what happens if my place of work is closed as a result of the strike?

If your normal place of work/ building has to close, your manager will advise you of an alternative Council building that you should report to for the day.

### 4.3 I may have difficulties travelling to work on the strike day, could I temporarily work from home?

If you're not participating in strike action you should go to your workplace and continue with your normal working arrangements.

### 4.4 I work from home but do not intend to take part in the strike, what should I do?

You should confirm with your manager that you are attending work, and continue with your normal workday.

# 5. Exemptions

## 5.1 What is an exemption?

The unions recognise there would be a danger to the “life and limb” of some vulnerable children and adults, or to others receiving certain Council services, if some Council employees were to strike. In these situations, the unions can grant exemptions from the strike action.

This means that the union will tell such members that they are not required to take industrial action. This means that they are exempt and expected to attend work and not participate in the strike.

## 5.2 What do I do if I am exempt?

If you’ve been granted as an exemption, you can work as normal on a strike day. As far as the unions are concerned, you will be treated as ‘not involved in the strike’.

You can carry out work you would normally do if an employee in your establishment was on holiday or off sick. You must not do the work of employees who are on strike.

## 5.3 What happens if I am exempt, but still decide to strike?

If you still decide to participate in the strike despite being exempt, then a day’s pay will be deducted.

# 6. Picketing

## 6.1 What is picketing?

Picketing is where workers involved in industrial action attend their own workplace to demonstrate support for their cause by communicating information or attempting peacefully to persuade others to support the strike by not working. Senior full-time trade union officials may form part of a picket line which is not at their own workplace.

## 6.2 What are the rules on picketing?

A picket line is the description given to those trade union members employed at the workplace or full-time representatives of the union involved who gather at or near their workplace to persuade others to support the strike by not working.

Picketing is protected by immunities in the same way as industrial action. In order to retain immunity from legal proceedings, picketing has to take place at or near the picket’s place of work and must be carried out peacefully, in accordance with the law, both in respect of persuading others not to work and obtaining or communicating information.

The Government’s Code of Practice on Picketing says: *“pickets and their organisers should ensure that in general terms the number of pickets does not exceed six at any entrance to a workplace; frequently a smaller number will be appropriate”*.

This figure is only advisory, but it is likely, where there are difficulties which result in a prosecution (e.g.,

for breach of the peace), that the courts will have regard to it.

A Picket Supervisor must be appointed by the Trade Union(s) involved in the industrial action. As an indirect form of industrial action, participating within any capacity at a picket line should be recorded as Industrial Action or unpaid trade union activity.

### **6.3 What happens if I choose not to cross a picket line?**

If you refuse to cross a picket line you will be on strike, and a day's pay will be deducted.

### **6.4 What should I do if I want to work, but am worried about crossing a picket line? What support is available to me?**

You have a right to cross a picket line if you want to work. Pickets may try to persuade you not to go to work, but you are under no obligation to talk to them. If you experience any kind of intimidation or abuse whilst passing through a picket line, try not to react and report it immediately to your line manager (who should then inform askHR).

## **7. Pay and Pension**

### **7.1 If I come to work, what pay will I receive? Is my pension affected?**

If you come to work, you will receive the same pay and benefits as you did before the strike.

### **7.2 If I strike, how is this recorded on the payroll system?**

If you take part in industrial action this will be recorded by your manager on iTrent and it will be classed an unpaid leave.

### **7.3 If I strike, what happens to my pay?**

Colleagues who take part in the industrial action will receive a deduction of pay for each working day they strike.

If you have been on strike and do not see any deductions made on your next payslip, please contact your manager to ensure it has been recorded correctly.

### **7.4 If I strike, what happens to my pension?**

Absence from work due to strike action is initially treated the same as any other unpaid, unauthorised absence in that the service will not count for pension purposes.

Thereafter the situation will depend on which pension scheme you belong to:

#### **Lothian Pension Fund**

As the absence is due to a "trade dispute" you can choose to pay pension contributions for the strike days. If you choose not to do this it could have implications for your pension, as the service will not count for pension purposes. However, a strike day will not breach your pension continuity. If you wish more detailed pensions advice or wish to access the form required to apply to pay your pension contributions for the strike day, you should contact Lothian Pension Fund. For more information and quotations on buy back please visit [LGPS 2015 APC Modellers](#).

## Scottish Public Pensions Agency (Teachers)

Any period of absence by a member due to industrial action is regarded as a non-reckonable period of membership for pension scheme purposes. A member does not receive pay during such periods and therefore pension contributions are not collected. The period will not be included in any calculation for benefit purposes. There is no provision to buy back service for strike days however the scheme does provide for members to purchase additional pension. The minimum value of purchase is £250. For further information contact the Scottish Public Pensions Agency.

### **7.5 I have submitted a formal notification of my intention to retire – if I strike, will it affect my pension?**

As part of our planning for Industrial Action, we will ask the trades unions to exempt people in these circumstances, so that you will be able to go through a picket line. The Trade Unions will inform you if you will be considered exempt.

However, if you do decide to strike, then pay for that day will be deducted from your earnings. Unless you opt to make up the contributions, the service will not count for pension purposes. That in turn could have an effect on your pension entitlements.

### **7.6 I'm a shift worker, and my working hours mean that I will finish one shift and start another on the strike day. If I'm on strike how will that affect my working time and my pay?**

The strike day is normally designated as the 24-hour period from midnight to midnight on the date notified as the strike day.

For shift workers, the "strike day" is the shift that **begins** on the date notified by the trade unions. You should finish the shift that starts on the day before, even if this means some of your working time will be on the strike day. If you are taking part in the strike day, you should not attend for the shift that begins on the strike day and this will mean that you will only be deducted one day's pay.

What you should not do is leave your workplace at midnight on the strike day and report for work again at midnight when the designated strike day ends as that would result in the loss of two day's pay.

Line managers will be informed of this arrangement, and it will be applied in all Council service areas.

### **7.7 If I'm on strike on the day of action and I work overtime in the same week, how will it affect my overtime payment?**

Normal overtime rules will apply.

### **7.8 I'm pregnant – if I strike, will it affect my maternity leave / pay?**

As part of our planning for Industrial Action we will ask the trade unions to exempt women who are pregnant, so that you will be able to go through a picket line. The Trade Unions will inform you if you will be considered exempt.

However, you should be aware of the following information should you decide to strike when you have been exempted.

- You will lose a day's pay
- To be entitled to statutory maternity pay (SMP) a woman must have the necessary continuous service and have stopped work wholly or partly because of pregnancy.
- Periods spent on strike do not break continuity for the purposes of qualifying for statutory maternity pay and leave. However, the qualifying period will be reduced. A one-day strike will reduce the qualifying period by one week. In some cases, this may result in insufficient weeks to qualify for maternity benefits.

- Any days of strike action during the qualifying period will be removed from the calculation used to calculate SMP.
- If you are absent from work because of strike action at the start of your maternity leave, it is unlikely that you will be able to claim successfully that you were absent “because of pregnancy”. In such circumstances entitlement to SMP is delayed until you return to work.

## 8. Annual Leave

### 8.1 Can I request annual leave for the strike day?

#### Employees who are included in the Industrial action

Once the ballot outcome is known, and the date for strike action has been communicated to employees, no new requests for annual leave or flexi leave requests will be approved.

#### Employees not included in the industrial action group but who may be affected

Any requests will be considered in the normal way (i.e., on a case-by-case basis and subject to demands of the service).

For example, if industrial action is taken by teaching staff, this may result in annual leave requests from school staff who are not teachers, and parents who have children in schools affected by the action. These requests will be considered on a case-by-case basis and always subject to demands of the service.

### 8.2 I already had leave approved prior to the date for strike action being notified – will it still be honoured?

Yes, generally previously approved leave will be honoured.

## 9. Sick during Industrial Action / Doctor Appointments

### 9.1 I am on sick leave at present, will I be considered to be on strike if I am not at work on the strike day?

If you are on sick leave supported by a medical certificate before and after the strike day, then you will not be considered to be on strike during the strike day.

### 9.2 What happens if I fall sick on the strike day?

If you fall sick on strike day, you will be expected to comply with the Council’s sickness absence reporting procedures and a failure to do so may result in your pay being withheld. If you attend the picket line or take part in other activities of the strikers with a view to favouring their aims on the day of

your sickness absence you will be treated as being on strike and your pay will be deducted.

### 9.3 I plan to be at work on the strike day, but I have a doctor's appointment scheduled, what is the position?

We would ask that, where possible, you re-arrange any routine medical/ dental appointment to avoid it coinciding with the strike day. If, exceptionally, you require emergency medical treatment you should contact your manager as soon as possible to seek time off.

## 10. Care arrangements

### 10.1 What if my normal care arrangements for the strike day breakdown?

As the strike will have been publicised in advance, we would expect employees to put contingency arrangements in place. As such, family care provisions for a breakdown in normal childcare arrangements will not normally apply on that day except in exceptional circumstances, where approved.

## 11. Jury Service

### 11.1 I have been called for jury service on the strike day, what should I do?

You will be granted time off to attend jury service. The normal arrangements relating to jury service will apply. However, if you are not called to sit on the jury, you should return to work otherwise you will be deemed to be on strike.

## 12. Additional duties requests

### 11.1 What do I do if I do not strike, but I am asked to carry out some additional duties?

Legislation allows for the use of replacement workers if they are employees or workers of the Council.

The Council can ask you to cover the essential duties of another member of staff if it would be the usual practice for you to normally undertake those duties in periods of absence due to sickness or annual leave, and if it would normally fall within the scope of your role.

However, in some Business Continuity situations, e.g., in an emergency situation which arises on a strike day, you may be asked to cover the duties of a member of staff who is on strike where it would not normally fall within your role.

**This is not strikebreaking** but is action which is required to be undertaken to continue to provide the Council's essential activities during an incident or emergency.

## 13. Agency Workers

### **13.1 Will the Council bring in additional agency workers on a strike day to cover for striking workers?**

No – we will not seek the services of additional agency staff to cover the work of striking employees or to cover the work of staff moved elsewhere to cover the duties of a striking employee to maintain services.

### **13.2 I'm an existing agency worker who has been placed with the Council before the strike. Can I still come to work on the Strike Day?**

If you are an agency worker currently undertaking tasks under an existing agency arrangement and the arrangement extends into the strike day itself, then you can continue to carry out your normal duties during the strike day.

### **13.3 I'm an existing agency worker who has been placed with the Council before the strike. Can I participate in the strike?**

You should be aware as an Agency worker that to take strike or other industrial action would not lead to a breach of contract with the Council, but it may breach the contract that the agency has with the Council. Consequently, you should discuss this fully with your Agency.