

FAQs during industrial action

What is industrial action?

Trade unions seek to attain improvements to their members' terms and conditions through collective bargaining and negotiation with employers. When talks between employers and your trade union break down and agreement cannot be reached industrial action is the last tool in your union's resources to encourage your employer to come back to the negotiating table and reconsider their position.

In what circumstances are we permitted to go on strike?

Although each employee will be in breach of their contract of employment, the union and its officials calling the action will be protected against legal action, providing the strike (or other form of industrial action) has been called in accordance with the law. This, briefly, means:

- the action is in relation to a work dispute
- a secret postal ballot has been held
- notice has been given to the employer
- there is a majority in favour of the action
- the ballot has been independently scrutinized (if more than 50 involved)
- lawful notice has been given of the industrial action.

Do I have a right to strike without being penalised?

It depends on whether the strike was a form of 'protected industrial action'. Although a strike, or other form of industrial action, is a breach of contract of employment, which would normally give the employer the right to terminate, dismissal would be unfair if the action was protected.

Action is protected where it has been called lawfully by UCU i.e. there had been a secret postal ballot, lawful notice given to the employer, a majority in favour, etc. Dismissal of employees engaged in protected industrial action is unfair:

- during the first 12 weeks of the lawful industrial action;
- if the employee stopped taking part in the industrial action during the 12 week period and is dismissed for taking part during that period;
- after 12 weeks from the start of the action, and where the employer has not reasonably attempted to use a procedure for settling the dispute.

If the employees are locked out (i.e. prevented from returning to work), this 12 week period will be extended further by one day for every day that the employee was locked out.

For these purposes, the date of dismissal will be either the day on which notice of dismissal was given, or the effective date of termination, whichever is sooner.

Can our employer refuse to pay us for when we were on strike?

Although refusal to pay wages counts as a deduction from wages, failure to pay when workers go on strike counts as a lawful deduction. Courts have taken the view in recent times that even where industrial action is only aimed at certain parts of the employers' business (such as an assessment boycott) the employer can still deduct up to 100% of pay for each day during which the action is ongoing.

Can I picket my employers' premises during a strike?

A picket line is where union members in dispute with their employer gather at or near their workplace. Picket lines are formed to make a strike action more effective and to raise the profile of the dispute. ACAS have produced a guide to lawful picketing.

The code states that the only two purposes for which picketing a workplace is lawful are:

- peacefully obtaining and communicating information: and
- peacefully persuading a person to work or not to work.

The law requires the union appoint a Picket Supervisor.

Should I let my manager know that I am taking industrial action before I do?

UCU will have advised your employer of the number and types of staff being called on to take part in lawful industrial action and notification has been given in line with statutory requirements. Our legal advice is that there is no requirement for members to notify their managers that they are taking part in industrial action



before it begins. If you are asked individually you should reply that you are not required to notify your line manager because your union has already met its statutory requirements to advise the employer of the number and type of staff called on to take action.

What about after a strike?

If you are asked by your line manager or similar person AFTER action has taken place whether you took part, you should answer honestly

Can the employer discipline me for taking part in a picket?

No, as long as you do not engage in intimidating or abusive behaviour. Picketing is a lawful activity so long as it is peaceful and orderly.

Losing a day's pay will cause me hardship – will UCU help?

In certain circumstances UCU will pay strike pay in the case of local disputes. The current guidelines are that this is only payable after members have taken three days or more of strike action.

Will my pension be affected if I take action?

It is important to bear in mind that the increases in pay won by UCU through taking industrial action over the years have boosted the final pensions of thousands of members including you. Without union intervention, pension benefits would all be lower today.

With most pension schemes, absence on a day's strike will not count towards pensionable service. The pay lost will reduce the average pay used in any calculation of benefits. It may be possible to buy back service lost, but in many instances the amount lost will be so small it is not worthwhile. It is usually in the last year of service that pensions are most affected and staff should seek further advice on this from UCU dependent upon which pension scheme they are members of.



What is 'industrial action short of strike action'?

As its name suggests, this action does not involve members withdrawing their labour. It can include a range of activities, including overtime bans, a work to rule and boycotts of certain employer activities such as student assessment.

Once a ballot has concluded how soon does the union need to take action?

Any action must commence within six months after the last day of voting. The union and the employer can agree a longer period up to nine months from the last day of voting.

How much of my salary can the employer deduct for taking strike action?

An employer is entitled to withhold payment for each day of strike action from those deemed to be on strike. UCU argues that this should be 1/365th of annual salary to take account of the nature of your work, although many employers deduct at 1/260th.

I have joined the union since the ballot. Can I take part in industrial action?

Members who have joined since the ballot are covered by the call for action and can take part.