

## Industrial Action – updated 2023

*This guidance provides details of the practical arrangements that need to be put in place. Please contact Schools HR for additional advice and information.*

### 1) Write to all staff

A template letter for you to send to all staff has been provided. Please review and send as appropriate. The purpose of the letter is to ask about staff's intentions regarding strike action and advise all staff the implications of taking strike action.

Please be aware that staff are not obliged to inform you as to whether or not they will participate in Industrial action. If they do not give an answer you must assume they will be on strike.

|  |
|--|
| <b>SCHOOL ACTION: do this as soon as early as possible in order to be able to carry out step 2, the school assessment.</b> |
|--|

### 2) Who is able to take part legally in strike action?

Only members of the trade union covered by the ballot for strike action are legally able to take part in strike action.

Secondary action is unlawful and, therefore, we strongly recommend that all non-striking staff, be required to report for work as normal. If you choose not to require them to do so, they should be instructed to undertake other appropriate work at home.

Where an employee who has not been balloted for strike action takes part in strike action, the school should treat their absence in the same way as any other striking member of staff and make the appropriate deductions to their pay.

### 3) Carry out a school assessment based on staff feedback

Headteachers and Chairs of Governors should consider the information provided by staff and the impact this may have on the school.

Please be mindful that this information may change on the day of the actual strike and you should also consider this as a potential area of risk.

Headteachers and Chairs should assess whether it is viable for the school to remain open, partially open for groups of children or certain classes or close for the day.

Please note that **closure of the school or the exclusion of some pupils on the day of the strike is a last resort**. This will be necessary where it is believed that the health and safety of pupils and/or staff will be compromised, or the operational difficulties caused by the strike, are insurmountable.

In circumstances where you feel that closure of the school is unavoidable you may wish to consider whether **other “non-striking” staff** should report in to work. Whilst you can reasonably direct your staff to undertake additional duties, you should have a discussion with them to see if they would volunteer to undertake these additional duties, but be mindful they may not feel comfortable to do so and refuse. We are aware that the other teacher and support staff unions are advising their members not to undertake cover for striking colleagues.

Headteachers and Chairs of Governors should also consider whether any additional provision needs to be put in place.

Depending on the above, please consider what may be needed regarding:

- Vulnerable pupils (e.g. statemented children)
- Children of Critical Workers
- Pupils undertaking public exams or other formal assessments
- School catering arrangements
- Remote learning arrangements.

For further guidance, please refer to the following DfE document:

<https://www.gov.uk/government/publications/handling-strike-action-in-schools>

**SCHOOL ACTION:** Please liaise with School Improvement, who will be able to advise and provide guidance to schools in carrying out the school assessment.

#### 4) Working arrangements

The Council expects Schools to take reasonable steps to establish who is working, and not working on the day of the strike, even if the school is closed.

If a teacher is not on strike, they should continue to carry out valid contractual tasks, even if the school is closed. Valid contractual asks will vary case-by-case, but Schools should assume that marking, lesson planning and other necessary administration is a legitimate ask of teachers not taking strike action. It would be reasonable to expect teachers not on strike to be contactable throughout the working day, including by responding to emails.

#### 5) Payroll

Please liaise with your payroll provider to inform them of the proposed strike action and establish what information they will need from you on the day.

**SCHOOL ACTION:** contact your payroll provider as soon as possible to confirm the arrangements.

#### 6) Letter to parents

Parents must be notified, as soon as possible of the closure of the school, or the exclusion of certain pupils, so that they may make alternative arrangements for their care. A template letter for you to send to all parents has been provided. Please review and send as appropriate.

**SCHOOL ACTION:** send out parents' letter in a timely way, so that parents can make appropriate arrangements as soon as possible.

#### 7) On the day of the strike

Review the arrangements that are due to be implemented, based on the actual number of teaching staff taking part in strike action. Ensure there is a contingency plan in place in the event that these arrangements prove impractical

#### 8) Complete and return the Form – Actual Effect of Strike Action

The Council requires information on the impact of industrial action on its schools, please complete and return the form, even if there is a NIL return, on the day of strike by no later than 10.30am.

**SCHOOL ACTION:** send the form on the strike day by 10.30am.

Email: [schoolshr@southwark.gov.uk](mailto:schoolshr@southwark.gov.uk)

## 9) Payroll

It is important you liaise with your payroll provider after the day of the proposed strike, you will need to confirm who has been absent from work in order that the appropriate deductions can be made. Your payroll should be able to inform you of how you need to provide this information and the timelines they need you to meet.

You can also ask your payroll to confirm to each individual member of staff who has been on strike alerting them to the missing period as result of the strike action and the amount of pensionable pay that has been lost.

**SCHOOL ACTION:** please liaise with your payroll provider.

## **ADVICE REGARDING OTHER CONSIDERATIONS**

### 10) Picket lines

Staff refusing to cross 'picket lines' where they have not been balloted should be regarded as taking unofficial industrial action. Where it is known that non-attendance is in support of the action, the advice is that pay should be deducted. Occasionally, however, employees may be willing to cross picket lines but are reluctant to do so for fear of their safety. In such circumstances, arrangements should be made to ensure that they are given every protection to cross the picket line. Where it is considered that the teacher has made every effort to cross the picket line but was unable to do so, then the Governing Body may decide not to treat his or her absence as industrial action.

### 11) Staff unable to attend work due to childcare issues

Staff may have children in schools where strike action is taking place and there will be no provision for them on the day, so their children will be at home. They should, in the first instance, explore alternative childcare options. If they are not able to obtain alternative options then their absence would be regarded as **unpaid** leave taken under section 57 of the Employment Rights Act 1996 – Time off for Dependents.

## **PAY AND PENSIONS**

Days when employees are on strike do not count towards their total length of service, which will impact statutory redundancy pay and pensions.

### **TEACHERS**

#### **12) Pay deduction**

Teachers who go on strike on the full day would have a deduction based on the full 'lost' day (which in the case of a teacher on Burgundy Book terms would be 1/365 of a full-time salary).

#### **LGA Advice**

##### **Deduction of pay for part time teachers**

Q: If the teacher works part-time, what would the appropriate deduction be?

A1: In the first instance, it is important to say that if there are contractual provisions that refer to other local arrangements those would take priority. In the absence of such contractual provisions the general principle is that if an employee does not work, being in breach of their contract, they do not get paid for work they did not do. It is therefore about establishing how much that should be.

A2: The Burgundy Book provides specific provisions in relation to deductions. Our interpretation would be to adopt the same principle for part-time teachers, applying the Burgundy Book provisions, based on 1/365.

A3: The paragraph of the Burgundy Book that applies is 3.2 In addition to the provisions of Sections 4, 5 and 6, where authorised unpaid leave of absence or unauthorised absence (e.g. strike action) occurs deductions of salary shall be calculated at a daily or part-daily rate based on the day's salary being 1/365th of a year for each day of the period of absence.

A4: The reference to daily or part-daily rate covers unpaid leave that lasts for a whole day or part day. However, it could also be interpreted as covering daily or part-daily working pattern.

A5: The Court of Appeal case that found that teachers must have the 1/365 calculation applied did not make any specific reference to part-time working (Smith v Kent County Council [2004] EWHC 412). However, we believe as with any other employees, it should be interpreted in the context of a pro-rata approach for part-timers reflecting the principle in this case that the deduction relates to the amount of hours not worked.

A6: Therefore, in our view a part-time teacher whose working pattern is for example four half days and one full day a week who went on strike on the full day would have a deduction based on the full 'lost' day (which in the case of a teacher on Burgundy Book terms would be 1/365 of a full-time salary).

#### **EXAMPLE:**

Teacher's FTE pay = £36,500

1/365th = £100

Teacher works Monday to Thursday half days and Friday full day

If they go on strike on any of Monday to Thursday they are deducted £50 if they go on strike on Friday it is £100.

### **13) Payroll deductions**

Notify your payroll provider to administer the deductions for the strike action

Please also request that payroll update the pension records appropriately as part of their monthly contribution reconciliation (MCR).

### **14) Pensions**

Notify Southwark Teachers' Pensions Team of the teachers who have taken strike action.

[SouthwarkTeachersPensions@southwark.gov.uk](mailto:SouthwarkTeachersPensions@southwark.gov.uk)

NOTE: teachers are NOT able to restore any pensionable service lost.

### **SUPPORT STAFF**

#### **15) Pay deductions**

Staff taking part industrial action will be subject to a deduction of one day's pay and pension contributions at the rate of 1/5<sup>th</sup> of the weekly salary.

#### **16) Impact on pensions – LGPS**

Any absence due to industrial action is not reckonable service and does not count as pensionable service.

Support staff may elect to restore their pensionable service lost by choosing to pay extra contributions.

Notify Southwark Pensions Team of the support staff who have taken part in strike action.

[lbspensions@southwark.gov.uk](mailto:lbspensions@southwark.gov.uk)