

Frequently Asked Questions about actions and strikes

Why is industrial action being proposed?

The negotiation teams have had a clear message from the Ministry that the previous offers were the best offer they could make at the time given their financial parameters. Members have decided that the offers did not sufficiently address their needs or the needs of their ākongā. Industrial action may be one of the tools needed to pressure the government to agree to the offer we want. A strike is the strongest action union members can take together in support of their collective agreement claims. A strike crystallises, for our communities and for decision makers, that we are absolutely serious about the need for change. The improvements that were made in the third offer to primary teachers were the direct result of teachers taking industrial action. So strike action has been successful in the past to put pressure on the government and the Ministry to make an improved offer. This has particularly been the case when members gain the understanding and support of parents for the action.

What is a strike?

A “strike” is defined very broadly in the Employment Relations Act. The statutory test requires two main elements for a strike:

- a. you need an action that in some way reduces the employees’ work performance (or stops work completely)
- b. That action must be the result of some sort of common understanding or collective agreement amongst the employees.

The action could be a complete or partial work stoppage, it could be through some reduction in the employees’ normal performance of their duties or through some sort of breach of their employment agreement. Refusing or failing to accept work that you would ordinarily do would also be covered and so would any reduction in your normal output or your normal rate of work.

- c. Members have suggested several actions such as not teaching certain age groups, only teaching from 10am - 2pm, not writing reports etc. As these would involve reducing the normal performance of teacher duties, they would meet the legislative definition of a strike.

Since the definition of “strike” is so broad, it is fairly difficult to engage in any kind of impactful industrial action that would not be considered a “strike” under the Employment Relations Act.

Where a strike action (or industrial action) relates to the bargaining of a Collective Agreement, it is subject to a secret ballot vote by the members who are covered by this respective Collective Agreement.

What is the process for going on strike?

If the majority of members covered by a collective agreement vote NO on an offer to settle a collective agreement, the National Executive of NZEI Te Riu Roa may decide whether to hold a secret ballot for a strike by all members covered by this collective agreement.

The majority of members who vote in the strike ballot must vote in favour of the strike action for the strike to be able to lawfully proceed.

If members vote to strike, we will notify the relevant employers of this outcome in line with the legislative requirements.

Can I be fired if I go on strike?

No. Strike action is a right you have as an employee under the law.

You cannot be penalised for taking industrial action.

Is going on strike legal?

Yes. So long as the legal requirements for a lawful strike are met, it is lawful for you to go on strike. Please note that you cannot 'sympathy-strike' for a collective agreement that you are not yourself covered by.

However, as members negotiating your collective agreement at the moment, you are allowed to strike.

Will I be paid if a strike goes ahead?

Generally, no. Employers do not have to pay you while you are on strike. In order to be able to withhold pay, the Secretary for Education (who essentially takes on the role of your employer) can suspend striking school teachers for the duration of the strike. On the previous strike day of 16 March, this power was exercised - which is why teachers lost one day of pay. This was consistent with the approach taken by the Secretary in previous years. For some low-level industrial actions that technically fall within the statutory definition of a strike, but that fall well short of a complete work stoppage, it may be less likely (but not impossible) that the Secretary for Education would choose to exercise her power to suspend teachers and dock pay. However, the general position is that going on strike carries some risk of a pay deduction.

Do all members have to go on strike?

The success of any strike depends on the conviction and commitment of members.

It is the result of a democratic decision taken by secret ballot, and so if the majority support the strike, it binds all members of the collective agreement.

If you are a member who voted against going on strike, you will nevertheless be covered by the strike notice and the expectation is that you will be on strike.

What might the employers do if we strike?

The employers may 'lockout' employees who have voted to strike. This is an 'employer's strike'. They may do this by:

- closing, suspending, or discontinuing their business (or part of it), or
- breaking some or part of the Collective Agreement, or
- not giving employees their usual work, or
- suspending employees.

To be a lockout, this action must be done to try to make their employees (or to help another employer make their employees) accept terms of employment or comply with their demands.

However, there has never been a successful lockout in the education sector.

Suspension of striking employees

In order to not pay employees who are on strike, the employer may suspend striking employees.

The suspension lasts until the end of the strike (unless the employer stops it earlier), but it doesn't break the employee's service. A suspended employee keeps being a party to the strike.

Employers can also suspend non-striking employees until the strike ends, if the work they normally do is not available because of the strike. The employer doesn't have to pay them while they're suspended but their service is continuous.

In the school sector, union members covered by the strike action are by default deemed to take part in the strike unless the school has advised the Public Service Commissioner that the employee did not take part in the strike. The Ministry of Education will provide schools with further information about this.

What about non-members?

If you are not a member of NZEI Te Riu Roa you are not on strike and must continue at work.

NZEI Te Riu Roa welcomes new members, and we encourage you to talk to your colleagues about joining us. You can join NZEI TRR at this link: <https://www.nzeiteriuroa.org.nz/join>

What if I am part-time, and the strike is outside my working days or hours?

This means you will not have to sacrifice a day of pay as you are technically not on strike. You can still join any collective action occurring on strike day, and your participation will build the power of that action.

My employer is trying to talk to me about strikes, what should I do?

Your employer, or a representative of your employer should not be trying to talk to you about strikes, or any other element of the collective bargaining, as this may fall outside of good faith.

If your employer attempts to discuss this with you, you should advise them that you do not wish to discuss the matter, refer them directly to the NZEI Te Riu Roa hotline and let your field officer know!

Can NZEI Te Riu Roa support me if a strike will cause my whānau hardship?

NZEI Te Riu Roa is an incorporated society so cannot legally make payments to members. Some branches and worksites will consider how they can support members in hardship.

What about tamariki?

Teachers have strong support from communities for more investment in education – we continue to need the support of parents and whānau!

Strike action is likely to cause some inconvenience to whānau and communities, as well as the employers. Members should not take this decision lightly and must continue to work with families to ensure their ongoing support and understanding.

Our goals should be that families and tamariki feel they can support and participate in collective action alongside teachers, because teachers' working conditions are children's learning conditions.

We will design some activities to help involve communities, and we already have some resources to help you discuss strikes with whānau.

Do support staff get paid if teachers are on strike?

Yes, if they normally work on that day. A strike by teachers and principals would not affect support staff so they should be paid even if the school is closed. If it is not and they are required to work, they should also be paid. They should not however do the work of a striking teacher member.

Can I vote for strike action if I voted for latest Collective Agreement offer?

Yes. The vote on strike action is separate from the previous ratification vote. There may be good reasons for some members to decide that they may as well support the strike action now even if they would have preferred to settle on the terms of the previous offer. For better or for worse, the previous offer to settle the Collective Agreement has been rejected by a majority of members. This means that the offer is now off the table. Some members who voted in favour of the offer may thus pragmatically decide that, in light of the offer being off the table, their best chance in ensuring that the next offer is not worse than the last one is to vote for strike action. But again, this is a decision members must make for themselves.