

Industrial Action

A beginners guide

Introduction

Under New Zealand employment law there are two types of industrial action, strikes and lockouts.

Strikes – A strike is where a group of union member employees stop work or reduce normal performance of their work for a period of time in order to achieve their negotiating goals.

Lockouts – A lockout is when an employer closes the business, or suspends employees, in order to compel them to accept terms of employment.

This document covers frequently asked questions that employees may need to know about strikes.

What are strikes?

There are two types of strikes that can take place, either a full strike or a partial strike. A full strike means that the employees walk off the job completely. A partial strike is where employees refuse to do some parts of their work or ‘go slow’.

When can an employee legally strike?

Under the Employment Relations Act, Strikes are an action only available to unions and union members.

Strikes are legal only if they are used as part of bargaining for a collective employment agreement, or if they are on health and safety grounds.

A strike can be used as part of bargaining for a new collective agreement if-

- The previous collective agreement has already expired, and
- Bargaining has been going on for 40 days or more, and
- A simple majority of the employees have voted in favour of the strike in a secret ballot.

Healthcare is considered an ‘essential service’ under the Employment Relations Act.

Therefore, in a hospital setting, 28 days notice must be given by the union to the employer and government before conducting a strike or lockout.

Once strike notice is given, does this mean the strike will definitely go ahead?

It is possible that the union and the employers may reach a settlement and the strike may be averted. That might happen because the employers recognise that they cannot carry the risk of a strike and agree to union demands or because the union recognises that its members do not support its position and reduces its demands. Or there may be some give and take on both sides, and a position found that allows a “win-win” situation for both parties.

What if I'm not a member of the union?

Only union members can strike, and if you are not a member then you are required to work as normal. You are not required to do extra or unusual duties, although you can choose to do so if you wish. If you support the unions position and want to join in the strike, then you would need to join the union.

What if I don't want to strike?

Even if you are a union member, you don't have to strike. But if a strike is going ahead it is because the union held a strike ballot, and if you voted to strike then you have indicated your intention. You might want to consider carefully before renegeing on that. However, each individual union member is free to decide on the day whether or not to turn up to work -- but see "Picketing" and "Lobbying" below.

What is picketing, and how can it affect me?

It is a common union tactic during a strike that its striking members try to persuade other workers to join their strike. If others turn up to work, then the impact of the strike is weakened. A common tactic is for striking workers to form a picket line outside the place of work. Striking workers may then try to prevent others from crossing the line in to work and may be openly critical of non-striking workers and their decision to not take part in the strike.

If you are a union member, you may be asked by the union to join a picket line. If you turn up to work, you may have to cross a picket line. Feelings run high during strike action and opinions expressed can often have a negative impact on working relationships. Whatever your personal opinion regarding strike action, try to remember that your colleagues on the opposing side also have honest and strongly-held views that they too have a right to express.

What is "lobbying" in connection with the strike?

Feelings may be running high, and people may try to persuade others of their view. If committed strikers believe you may not join the strike, they may try to persuade you. If those who do not want to strike advise the union of their feelings, they may come under such pressure from their friends. However, if enough people advise the union of their intention not to strike, then the union may be convinced that the strike will fail, and it may call off the strike to avoid a public failure. Discuss the situation with your colleagues. If you find others of like mind (either "for" or "against" striking), you can offer each other support.

What about the employers?

The employers are not allowed to lobby their workers. However, if an employee approaches an employer then she or he will be able to discuss the situation with you. It may be that you don't want to join the strike, either because you do not agree with it or because as a non-union member you cannot join it, but you are concerned about the arrangements for work during that period. You may be able to make arrangements with the employer representative for transport to work to get you through any possible picket with minimal discomfort.

Can I just call in sick?

Yes, that's possible, but you should only contemplate it if you are ill. You would be well advised to have a medical certificate to support your "sickness". Employers will be rightly sceptical of those who claim sick pay during strike action. Union members may be unhappy

that you collected sick pay while they were demonstrating their commitment to the union by forgoing pay.

Do you get paid while you are on strike?

No, you do not get paid by your employer while you are on strike. Some unions set up funds to try to provide some support to strikers.

If the strike is a partial strike your employer can reduce your pay, unless the strike is lawful on safety or health grounds. The amount the employer can reduce your pay is specified in the Employment Relations Amendment Act 2014, and follows a four step formula. Another option open to the employer if you are planning a partial strike is to suspend you. If you are suspended, you will be suspended from all duties without pay for the duration of the strike.

Is it ethical for doctors to strike?

That question is hotly debated. It is any worker's right to withdraw labour. Doctors have the same rights and needs for good conditions of work. An exhausted doctor is not a good doctor. However, doctors have a duty of care to their patients. You could argue that the patients are not "your" patients, but the DHB's patients, and it is "their" responsibility to make arrangements for their care. However, it wouldn't be worth threatening to strike if it weren't clear that withdrawing labour could have serious consequences.

The NZMA Code of Ethics states:

It is recognised that certain extreme circumstances may lead to consideration of industrial action by doctors. Such action may compromise care to individual patients, which is contrary to one of the ethical principles, so a decision to take industrial action must be based on a reasonable expectation that the desired outcome will result in improved patient care and safety. A doctor's primary duty is to their patient, but the secondary duty to all other patients may mean that action has to be considered. In the case of industrial action, doctors should take care to minimise any detrimental effect on patient care. Services to preserve life and prevent permanent disability must always be provided. Self interest alone, by individuals or the profession, is not an ethical basis on which to take action.

In the final analysis, you will have to decide for yourself what you think is right, and do it.

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Need more help?

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