



## **FAQ NZMA Advisory on Strike Action scheduled for 3 September 2020**

### *1. Who can participate in the strike?*

Only NZNO union members can strike but you should assume that all NZNO union members will be striking. Non-union members should be at work unless they are not rostered to work on that day. Please note that this strike action involves all employees who are NZNO members and covered under the PHC MECA: Administration staff, medical receptionists, enrolled and registered nurses, midwives.

### *2. Some of our staff who are not union members want to go on strike to support their colleagues. Can they do this?*

No. The Employment Relations Act provides that participation in a strike is lawful if the strike is lawful under the Act, and it relates to bargaining for a collective agreement that will bind each of the employees concerned. Participation is unlawful if that is not the case, or if it occurs when the collective agreement is still in force (unless bargaining has been initiated at least 40 days earlier), if the employee hasn't complied with the notice requirements, or it relates to something else, like a PG. This means that non-union members are not covered by the collective bargaining in question, so therefore they can't strike.

However, this does not stop doctors or other non-union members taking other action if they wish to express support. They could perhaps stand beside, but separate from strikers on the picket line to express their views (provided they are employees, they are on leave or have their employer's agreement to do so, as otherwise they could be considered to be on strike). Alternatively, they could express their views in other ways such as writing supportive letters to the Ministry, media interviews, signing petitions, putting up posters, talking to their MPs, holding a protest and so on. Picketing is generally regarded as part of a strike, and can be subject to injunctions to stop picketing when it is not lawful, so any non-union staff wanting to do this might be best to be in a separate group alongside and advise anyone who asks that they are protesting about the lack of funding for the industry or similar but are not picketing.

### *3. Do NZNO members who are on strike get paid?*

No. Union members who are on strike do not get paid for the hours they are on strike and rostered to work between 8am and 4pm.

### *4. Some of our employees work outside the hours of the strike Do they have to come to work for those additional hours?*

Yes. The strike is from 8am until 4pm, so if an employee is rostered to work before 8am or after 4pm they will need to attend work for those hours and be paid for those hours, unless the employer and employee have agreed on another arrangement, such as the employee taking leave or unpaid leave. This needs to be borne in mind when rostering.

*5. What do we do if we want to arrange cover for employees who are on strike?*

If you intend to cover the striking workers with other staff, there are some rules you need to be aware of as follows:

- Existing employees may agree to work in place of striking workers (eg: a non-member could come in on their day off) but they cannot be required to do so, and may well say they would prefer not to.
- Casuals who already work for the employer on a regular basis can be asked if they want to work, if they are not NZNO members, but again they cannot be required to do so.
- You cannot employ new staff (such as agency staff) to cover a strike UNLESS there are reasonable grounds for believing it is necessary for the work to be performed for reasons of safety or health, and if that applies, they can only do work necessary for safety or health.

*6. One of our employees who is a union member has already applied for and been approved for annual leave that day? Can they strike?*

Technically they won't be on strike if they are on annual leave, but of course they could then go and join the picket line if they chose to.

*7. Since we received the strike notice, one of our employees has applied for annual leave. Do we have to grant that annual leave?*

No. Most employers don't grant annual leave during a strike time as they normally need all the cover they can (from the people who wouldn't be on strike) and there's generally a view that if people want to strike then they don't get paid. However, there is no technical reason why you couldn't choose to let them take annual leave if they apply for it. What they then do during their annual leave is up to them.

Any employees who are on annual leave are not counted as being on strike and that impacts the numbers that are on strike (employers must report any strike including the numbers) – see details in (10) below. However, if the employee wants to apply for leave, and the employer wants to grant it, both parties are entitled to do so if they wish.

*8. Can casual employees strike?*

Yes. All members of the NZNO who are covered by the PHC MECA are entitled to strike.

*9. One of our employees who is a union member does not want to strike. Do they have to?*

No. Union members are entitled to strike, but it is personal choice whether they participate in the strike or not. If an employee decides not to strike, they need to let you, as the employer, know.

*10. We understand that under Schedule 1B of the Employment Relations Act, employers must provide for patient safety by ensuring that life preserving services (LPS) are available. Does that apply to our practice?*

The issue here is not whether the practice claims that they provide LPS but whether those provisions can be invoked under the Act. To do so, employees must be employed by a DHB or a business providing services to DHBs. Therefore, where the contract for services lies is the critical question – are there services you provide that are by way of a direct contract with your DHB and not via your PHO?

We are however exploring the option of a patient safety protocol with the NZNO that would allow, in some circumstances, the employer to seek agreement from the union that staff remain at work where patient safety is clearly at risk and cannot be managed any other way. We will advise further in due course.

*11. Is there anything that our practice, as the employer, must do?*

Yes. The employer of the employees participating in the strike must complete the Record of Strike form and send it to the Ministry of Business, Innovation and Employment *within one month after the strike ends*. The form can be found [here](#).