

General Guidance: Rights and Responsibilities during strike action

What is a strike?

Strike action generally involves the complete or partial withdrawal of services for a defined period of time by union members. Striking workers are not entitled to any payment when the strike involves a complete withdrawal of services.

Unions have to give DHBs advance notice of the nature of any strike action, including who is participating and when it will commence and end.

Strike action that falls outside the actions described in formal, legally-valid notices given by a union to the DHBs will be unlawful and may result in disciplinary action.

Who can strike?

Only union-members whose union is bargaining with the DHB for a collective employment agreement that covers the work they perform can strike. They must also be subject to a valid strike notice – if no such notice has been issued then union-members cannot lawfully strike.

Employees who join the union after the time and date a valid strike notice is given cannot strike during the period specified in that strike notice.

Non-union members cannot strike for a collective agreement and may face disciplinary action if they do.

Bureau staff cannot strike if they are not DHB employees. They may however choose to decline to work on the days of the strike.

Can I hand out written material about the strike to patients in the DHB?

No. Although you have rights to freedom of expression, patients within the hospital are vulnerable and are there for the purpose of receiving healthcare. We owe legal obligations to them in respect of their care and subjecting patients to this type of activity would be inappropriate and potentially unethical.

Handing out written material to passers-by who are willing to accept it on public footpaths and walkways that are not on DHB property is acceptable. Please respect the public's views, and note that your actions are not to bring the DHB into disrepute.

Can a striking employee stay at the DHB during the strike?

If the nature of the strike involves employees completely withdrawing their services for a period of time, then they must leave the DHB's premises for the entire duration of the strike. The DHB premises are not public property. The right of employees to access and move around the DHB premises is granted in order to enable them to perform their duties. These same rights of access do not apply to striking workers, or other unauthorised people. Further, we are not able to take responsibility for the health and safety of people who are withdrawing their services, which includes not following instructions that may need to be given for this purpose.

Striking workers are therefore required to leave the DHB's premises for the duration of the strike – this includes common areas within the DHB's premises. The exceptions to this are where an employee legitimately and reasonably requires health treatment, or is visiting a friend or relative who is a patient at the DHB.

I intend striking – what if my shift starts before the strike starts?

If your shift starts before the strike starts, you should turn up to work, and perform your duties as usual, up until the commencement of the strike.

Provided that you are lawfully entitled to strike, once the strike commences you are expected to leave the DHB's property for its duration, unless there is immediate clinical reasons to delay leaving.

Once the strike ceases, you are required to return to work for the remainder of your shift. If you fail to return to work promptly after the strike has ended then you will not be paid for the time you are away, and you may face disciplinary action for being away from work without authorisation.

I intend striking – do I have to go back to work if my rostered shift finishes shortly after the strike ends?

If your shift finishes after the strike finishes, you should turn up to work, and perform your duties as usual, up until the end of the shift.

I intend striking – what if my shift starts at the same time or after the strike starts?

Provided that you are lawfully entitled to strike, you are not to enter the DHB's premises until the strike ends, in accordance with the union's formal notice.

Once the strike ceases, you are required to return to work the remainder of your shift. If you fail to return to work promptly after the strike has ended then you will not be paid for the time you are away, and you may face disciplinary action for being away from work without authorisation.

I'm a union member covered by the bargaining, but I don't want to strike – what can I do?

It is your personal choice to participate or not in any strike action. For our contingency planning purposes, if you are a union member covered by the bargaining that is the subject of a valid strike notice, we assume that you will be participating in the strike (and you will not be paid).

If you decide not to participate in a notified strike, you will need to let the DHB know that you are not on strike so that you will be paid your normal pay, and you can come to work.

If you do come to work, you should also perform your duties to the same high standard you usually do. Taking forms of strike action other than those specified in the union's formal strike notice is not allowed and is unlawful – you could face disciplinary action as a result.

If you want to support your fellow striking workers outside of your normal shifts in your own time, then you may do so in a lawful manner.

I'm not a union member – can I support the striking workers?

You are not legally entitled to take strike action in support of union members. Therefore during your shift you must continue to perform your duties to the best of your ability and for the benefit of the DHB and its patients. Any action that is inconsistent with this may result in disciplinary action against you.

The union intends picketing the DHB – what are my obligations?

Union members may participate in lawful picketing but this activity must occur outside of DHB grounds. Union members may not impede people from entering and leaving the DHB, which includes intimidating people or physically blocking their way, or otherwise acting unlawfully – people who do could face legal action, dismissal or even be arrested for such actions.

The union is responsible for ensuring the health and safety of picketing employees and for ensuring a safety plan is in place for designated picket areas.

What happens to patients and services during strike action?

Each DHB is legally responsible for maintaining certain life preserving services (which are defined by law) during any industrial action. Where a DHB cannot do so without the assistance of union members who will otherwise be on strike, the union(s) who are party to the particular collective bargaining are required to negotiate a "Life Preserving Services" ("LPS") agreement with the DHB that specifies the extent of assistance that will be provided.

DHBs will do all that they can to plan for the continuation of patient care, and the provision of life preserving services, during any industrial action, but in some cases, calling on LPS assistance may be unavoidable.

This means that some union members will be working under agreed LPS arrangements during strike action

What do I get paid if I provide LPS?

Payment for work is in accordance with the collective agreement you are covered by.