

**PRIVILEGED AND CONFIDENTIAL
IN FURTHERANCE OF COLLECTIVE BARGAINING**

General Strike FAQs

Q. Can managers ask employees if they plan to strike?

- A. Managers should not survey or even attempt to communicate with employees concerning their intention to participate or not participate in a strike. You can only ask whether or not they are planning to be at work on specific dates. Asking employees about their intention to strike could be found to violate employee rights under labor law. If your department is concerned about having sufficient staffing levels available on strike days, please contact Employee & Labor Relations for specific polling instructions prior to surveying your staff regarding the potential strike. Only where ELR believes that employees are essential to “health and safety” will they authorize a department to engage in strike polling, which may also be subject to additional legal requirements. For this reason, it is suggested the local ELR office consult with Systemwide Labor Relations regarding authorization of strike polling.

Q. Can managers respond to questions asked by employees about the strike?

- A. Yes. If an employee asks a question, managers can respond to his/her questions. However, employees should be referred to their union about specific questions regarding union membership, union activities and potential strike activity.

Q. If an employee comes to work during a strike, what pay, and benefits will s/he receive?

- A. Employees who come to work will receive their normal compensation and benefits.

Q. If the employee doesn't come to work because of a strike, will the employee's pay continue?

- A. If any employee does not report to work as assigned, UC will presume (absent prior authorization or medical certification) that her/his work absence during a strike period is strike related. Employees will have their pay docked for absences during a strike unless the employee is on authorized leave or is taking vacation that was approved by department management prior to the strike. Please notify your direct reports in advance of a strike that sick leave may not be used on the strike day unless employees submit documentation from a healthcare provider verifying, they were medically unable to work on the day in question. If an employee calls in sick on the day of the strike, the supervisor should remind the employee s/he will need to provide medical certification confirming illness on that day. Requests for medical documentation cannot be made after the employee returns to work. (Note: Approved family medical leave absences remain in effect and additional documentation should not be requested.)

As is always the case, authorization for an absence from work (e.g., vacation leave or compensatory time) may or may not be granted, depending on operational necessity and without regard to the employee's reason for the requested leave.

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Q. When a strike is called, or supported by a union, are employees represented by those unions unable to come to work?

A. Employees who decide not to participate in the strike are free to come to work. The law protects the right of all employees to cross a picket line. Under the labor laws, employees are free to make up their own minds about crossing a picket line and continuing to work. Any employee, including a union member, has a right to refuse to participate in a work stoppage.

Q. What can an employee do if s/he wants to work, but is being confronted by picketers or striking employees and blocked from entering the work site?

A. Pickets are lawful so long as they are peaceful, do not block access for other employees, do not interfere with the normal course of University business, and do not prohibit non-striking employees from working. In addition, non-striking employees should avoid confrontations and need not respond to any comments that picketers may direct at them. Non-striking employees should not invite or engage in any exchanges, which might inflame the situation. If an employee feels s/he is being harassed or prevented from working by picketers or striking employees, the employee should notify his/her supervisor or contact Employee & Labor Relations. Alternate access can be offered to the employee should any exist.

Q. Can an employee engage in picketing or protesting on her/his own time?

A. UC has a long tradition of respecting the civil expression of individual views, and individual employees are free to express their rights so long as such participation is during non-work time, does not conflict with their agreed upon work duties, or violate established University policies.

Q. May policy-covered employees (99's) engage in sympathy strikes, walk off the job, or refuse to work during the AFSCME / UPTE strikes?

A. Yes. Strikes, including sympathy strikes, are protected under HEERA. Unrepresented employees are not subject to any no-strikes provisions, so absent a risk to public health and safety, they are free to engage in sympathy strikes. We do not have to pay them for time spent striking, but they should not be disciplined.

Q. May a manager or supervisor (99) encourage other policy-covered employees (99's) to engage in a sympathy strike, walk off the job, or refuse to work supporting AFSCME /UPTE?

A. Managerial employees, defined in HEERA as “any employee having significant responsibilities for formulating or administering policies and programs,” are not covered by HEERA, so there is no *labor law* reason why a manager cannot be prohibited from

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this type of conduct. It's possible that restrictions on speech of this kind may be prohibited by the First Amendment, given that strikes are a matter of public concern. Supervisory, as opposed to managerial, employees do have protected rights under HEERA, and PERB would likely find a protected right to encourage other employees to engage in a sympathy strike.

Q. Similarly, may a policy-covered employee (99) encourage other policy-covered employees (99's) to engage in a sympathy strike, walk off the job, or refuse to work supporting AFSCME / UPTE?

- A. Yes, policy-covered employees have a protected right to engage in advocacy in connection with sympathy strikes, including encouraging other employees

The UAW – ASE CBA contains the following provision:

“Under this section, individual ASEs retain rights of free expression including their right to engage in activities in sympathy with other UC unions or bargaining units who are striking at the work location of the ASE. When ASEs exercise these rights and do not meet the expectation that they comply with the terms of their appointment, at the discretion of the University they may not be paid for work they do not perform and may be subject to discipline and dismissal.”

https://ucnet.universityofcalifornia.edu/wp-content/uploads/labor/bargaining-units/bx/docs/bx_20-no-strikes_2022-2025.pdf

Q. Does this provision enable individual ASEs to refuse to perform their job duties in support of UPTE / AFSCME?

- A. This language does not give ASEs the protected right to engage in sympathy strikes in violation of the BX contract's No Strikes Article, which explicitly bars sympathy strikes. If an ASE engaged in a sympathy strike, it would be unprotected and the student could appropriately be disciplined (as the quoted language also contemplates.)

Q. Does this provision also enable individual ASEs to encourage other ASEs to refuse to perform their job duties in support of UPTE / AFSCME?

- A. ASEs are free to encourage other ASEs to refuse to perform job duties, but any who actually withhold labor in sympathy with the AFSCME/UPTE strikes would be acting in violation of the No Strikes Article and would be subject to discipline.