



Q&A for MANAGERS AND SUPERVISORS JOB ACTION (STRIKE) BY UPTE

SEPT 2009

Important Questions and Answers about Strike Activity by UPTE

UC has been informed that UPTE, the union representing UC's Research and Technical employees throughout the University plans on conducting a one-day strike of research and technical employees at UC campuses and medical centers on September 24, 2009, which is the first day of classes on many campuses.

It is the University's position the UPTE strike itself is not lawful, and that there is not any basis for any employee to fail to perform normal duties and responsibilities on that day.

Below are answers to some important questions about your employees' rights and what managers may say/not say to employees:

Q. What will UC do if employees strike/do not work as assigned on September 24th?

- A.** Managers should advise employees in advance that if any employee does not report to work as assigned, the University will presume—absent medical certification—that her/his absence from work during a declared strike period is strike related. Any employee who is absent from work without authorization during a strike will not be paid for the absence.

Authorization for an absence from work (e.g., vacation leave) may or may not be granted, depending upon operational necessity and without regard to the employee's reason for the requested leave.

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

- A.** Non-striking employees 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 anyone who is a union member, has a right to refuse to participate in a work stoppage.

It is the University's position that the announced work stoppage by UPTE at this point is unlawful. According to HEERA, if a strike is illegal or unprotected under applicable law, an employee may face the possibility of disciplinary action for cause depending on the facts and circumstances.

Q. Do employees who pay union dues and are union members have a different obligation than non-members to support a strike called or supported by the union that represents them? Can the union member be penalized for not striking?

- A.** No employee is ever under any obligation to strike. Unions are legally prohibited from threatening or coercing members in other ways to keep them from coming to work. However, some unions have the right to levy fines against members, but not non-members, who choose to work during a legal strike, including a sympathy strike. A union member who does not want to participate in a strike may want to contact her/his local union representative to confirm that



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there will not be fines for not striking. The University will not deduct union fines from employees' paychecks.

Q. If an employee asks whether s/he can resign their membership from the union, how should I respond?

A. Under California law, if there is no contract in effect between the University and the employee organization, an employee in the bargaining unit for which there is no contract is free to resign his/her membership from the employee organization. However, the issue of union membership is also governed by the rules and bylaws of the employee organization. Employees should check with their union representatives regarding this issue, including the correct procedure for resigning union membership.

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, conducted only on public property (i.e., sidewalks), do not block access/egress to the facility, do not interfere with the normal course of business, and do not prohibit non-striking employees from working. The University will assist those employees who want to work by providing security or transportation across the picket lines.

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 campus/hospital Labor Relations office.

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 as on September 24 as a result of the UPTE strike, will the employee's pay and benefits continue?

A. Employees will not be paid for time not worked. The only exceptions to this are absences that are approved in advance by the employee's supervisor (e.g., scheduled vacation) or medical absence with proper certification. Benefits that are affected by the percentage of time worked during the month may be affected.

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 on their personal time, does not conflict with their agreed upon work duties, or violate established University policies.



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- Q. Can managers respond to questions asked by an employee about the strike or about the University's proposals?**
- A.** IF an employee asks a question, managers can respond to her/his questions with factual information and/or refer the employee to the At Your Service Web site:
http://atyourservice.ucop.edu/employees/policies_employee_labor_relations/labor_relations.html.
- Managers **should not** offer their support of either the University's or the Union's offer.
 - Managers **should not** make promises to employees for a lack of support for the strike or demonstrate support or opposition to the Union.
- Q. Can managers ask employees if they plan to work during the strike?**
- A.**
- Managers **may** ask employees if they plan to come to work on a particular day or days for the purposes of determining staffing needs.
 - Managers **should not** survey or communicate with employees concerning their intention to participate or not participate *in a strike*. Such communication could be found to violate employee rights under labor law. Employees should be referred to their union about specific questions regarding union membership, union activities and potential strike activity.
- Q. What actions can the University take if employees are absent during a declared strike period?**
- A.** The University will presume that—absent medical certification—absences from work during any declared strike period are strike related. Authorization for an absence from work (e.g., vacation leave) may or may not be given depending on operational necessity and without regard to the employee's reason for the requested leave. Employees who are absent from work without authorization during a strike will not be paid for the absence.
- Q. In preparation for an anticipated strike can the University make plans such as hiring temporary employees or temporarily assigning staff to different job duties or departments?**
- A.** The University may take reasonable and prudent actions to prepare for a strike such as hiring temporary employees or reassigning work. However, all plans should be made in consultation with your labor relations department. In general, all actions must be consistent with applicable contract provisions and firmly based on operational necessity.
- Q. What happens when contract negotiations remain unresolved?**
- Under the *Higher Education Employer-Employee Relations Act* ("HEERA"), the state law that governs the UC's labor contracts, when the university and a union are unable to reach agreement at the bargaining table, either party may declare that an impasse has occurred. The state then reviews the matter and decides whether or not to confirm the impasse. If impasse is confirmed, both parties must abide by certain procedures designed to resolve the impasse. Those procedures begin with mediation by a neutral state mediator. If that doesn't bring about a



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settlement, the state then appoints a neutral fact-finding panel, which issues a report with recommendations to guide the parties to a possible solution. Unless the parties agree to a longer period, the panel must submit its report privately to the parties within 30 days after the panel's appointment. Within 10 days after that, the panel may choose, but is not required, to make its report public. After the fact-finder's report is provided to the parties, they must consider the findings and recommendations in good faith.

UC and UPTE have been participating in negotiations for more than a year. At this point the University has requested that UPTE join in a mutual declaration of impasse.

Q. If there is any unanswered question, or an incident related to the strike who should I contact?

Call your UCSF LER representative, or call the main LER number at 415.476.3201.

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