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## Schools: Guide to withholding wages

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**Schools looking to make changes – either as a result of educational reforms or in order to maximise efficiency – will inevitably face an increase in the tendency for trade unions to take, or at least threaten, industrial action, as they look to protect the interests of their members.**

As a result, staff members represented by unions may be encouraged to strike or take action short of a strike, such as 'working to rule'.

This guide provides an overview of working to rule and the actions the school can take in response, such as rejecting part-performance by an employee and withholding wages, as well as when these can be applied.



## What is working to rule?

Working to rule is industrial action, which consists of a general withdrawal of goodwill and working strictly to contract hours.

## What action can an employer take in response to staff working to rule?

A strike can be very costly, both in terms of the immediate financial impact and the reputation of the school. However, unless the industrial action is unlawful – if, for example, a properly organised ballot of union members has not been carried out – an employer will not be able to stop it from taking place. The school will not be able to compel employees to attend work or perform their employment contracts beyond the basic contractually-agreed level.

In many cases, the key to resolving such disputes will be negotiation; however, where talks are at an impasse, schools may need to consider other options. Depending on the facts, an employer faced with staff working to rule might be in a position to take the view that staff are effectively only part-performing their contracts of employment.

In a 1987 case, the House of Lords decided that where an employee, as part of a programme of industrial action, is not prepared to perform all of his obligations under his contract of employment in full, the employer has the right to suspend the employee without pay until they are ready and willing to perform their contractual obligations in full (*Miles v Wakefield Metropolitan District Council*).

# Withholding wages

In a more recent case (*British Telecommunications plc v Ticehurst & Another*), the Court of Appeal took this approach further.

Alison Ticehurst and Michael Thompson brought claims against BT, as the company had withheld their wages. BT had refused to pay them for certain days in April 1990 because they had not proved that they were willing to perform their obligations in full under their contracts of employment.

In this case, union members had taken action short of a strike, consisting of a general withdrawal of goodwill, working strictly to contract hours and refusing to take on any new temporary advancements. The union later intensified the industrial action, with union members voting in February 1990 in favour of taking strike action in addition to the continued withdrawal of goodwill.

Immediately after the end of a two-day strike, Alison Ticehurst and Michael Thompson sought to return to work. BT asked them to sign an undertaking to work in accordance with their contracts of employment (that is to say, to agree to work fully, without any working to rule and without any withdrawal of goodwill). They refused to sign the undertaking and were asked to leave the premises.

Initially, a County Court Judge found that as both individuals had been ready and willing to work, they should have been paid their wages for the days they were suspended by BT. However, the Court of Appeal found for BT – it allowed BT's appeal and held that BT was entitled to refuse to allow the claimants to return to work until they had indicated a clear intention to comply with all their express and implied contractual obligations of employment.

Significantly, the Court of Appeal found that it was necessary to imply a term into all contracts of employment that employees had to perform their duties in such a way as to serve the employer faithfully. This is particularly pertinent where managers are concerned, since they are responsible for supervising colleagues and, in turn, are expected to exercise their judgment and discretion faithfully, in the interests of their employers.

It follows that the participation by employees in industrial action constituting a withdrawal of goodwill must be in breach of that implied term.

## Conclusion

The BT case is of importance to schools because it indicates that they can, following industrial action, require employees to promise to comply with their employment contracts. Any employees who refuse to offer such a promise may then be suspended without pay until they are prepared to honour their contracts in full.

## Call Palmers Solicitors for advice

At Palmers Solicitors, we have the expertise required to advise schools facing industrial action on the options available to them to resolve the dispute as quickly and effectively as possible.

We also have significant experience of preparing contracts of employment, and can advise schools on drafting undertakings to ensure that employees comply with all the terms contained within their contracts. For tailored advice on the law surrounding industrial action, or any other employment law matter, please contact us.



# Palmerslaw

## Basildon

19 Town Square,  
Basildon,  
Essex, SS14 1BD

☎ 01268 240000

## Rayleigh

105 High Street,  
Rayleigh,  
Essex, SS6 7QA

☎ 01268 988488

## South Woodham Ferrers

Prospect House, 1/3 Brickfields Road,  
South Woodham Ferrers,  
Chelmsford, Essex, CM3 5XB

☎ 01245 322111

## Thurrock

Ascension Chambers,  
Fleming Road, Chafford Hundred,  
Grays, Essex, RM16 6HH

☎ 01375 484444

## Commercial Hub

Suite 1A, Phoenix House,  
Christopher Martin Road,  
Basildon, Essex, SS14 3EZ

☎ 01268 240000

[www.palmerslaw.co.uk](http://www.palmerslaw.co.uk) [enquiries@palmerslaw.co.uk](mailto:enquiries@palmerslaw.co.uk)



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