

## STRIKE FAQs

### **What is a strike?**

A strike is an organized stoppage or slowdown of work by employees to compel an employer to meet the employees' demands; a strike is sometimes referred to as a "walkout."

### **What does it mean to strike in a state, such as Colorado, that does not have a collective bargaining law applicable to school districts and their employees?**

Even though Colorado does not have a collective bargaining law that applies to public employers, such as school districts, the Colorado Supreme Court has held that public employees, such as teachers, have a "qualified" – not an absolute – right to strike. Before public employees may strike, they must inform the Director of the Colorado Department of Labor, through their bargaining representative, of their intent to do so. From there, the Director may assert jurisdiction (i.e. take control) over the dispute and order the parties to attempt to reach a resolution. The Director may also choose *not* to assert jurisdiction. If the Director declines to assert jurisdiction, or if he/she asserts, but later relinquishes, jurisdiction, the employees are free to engage in a lawful strike.

### **If we go out on strike, can a court order us back to work?**

Yes, and DPS would likely ask a judge to do just that. The court could order teachers back to work if it determined that the strike represents a threat to public health or safety, or that it presents an imminent threat of irreparable injury. In most other states, courts have not viewed public school teacher strikes as posing such threats. This is a battle that would be waged in court, and the striking teachers and SSPs would be represented by CEA attorneys.

### **Could I lose my job if I strike?**

It depends, but it is unlikely because DCTA will not call a strike until they are certain that the overwhelming number of their bargaining unit members believe a strike has become necessary and that they intend to support it. In Denver, this means that thousands of teachers will be banding together. While there is no such thing as a "risk-free" strike, we can minimize risk on an individual level by presenting a united front.

The law provides special protection to teachers, making it less likely that a teacher would be fired for participating in a strike. Under a state law commonly referred to as TECDA, if a school board wishes to terminate a teacher's employment, it must prove one or more statutory reasons for dismissal, such as "neglect of duty" or "insubordination." Teachers have a due process right to a hearing to challenge the school board's dismissal allegations. Considering the time, energy, and expense involved in taking a teacher dismissal case to trial, it is highly unlikely that the school board would attempt to terminate the contracts of all teachers who strike.

If you are fired (or demoted, reduced in pay, etc.), and you suspect there is a connection to your support of the strike, it is crucial that you are able to **prove** that connection, which means you'll need to **document** and **save** emails, letters, conversations, etc. showing that you were fired (or demoted, reduced in pay, etc.) **because you supported the strike**. Make sure to store your documentation in a safe place, where it cannot be accessed by DPS administration, and where it can be accessed by you, even if you lose all access to DPS information technology.

If you feel that your termination was based on your support for the strike, bring documentation to your local union officials. Your local union officials, in turn, will contact CEA Legal to analyze the strength of your case.

**I'm a probationary teacher – am I more vulnerable?**

It depends. Just like nonprobationary teachers, if the school board wishes to terminate a probationary teacher during the contract year, it must prove one or more statutory reasons for dismissal. The probationary teacher, like his/her nonprobationary colleagues, is entitled to a hearing to challenge the board's assertions.

Probationary teachers are subject to nonrenewal at the end of the contract year for any reason (or no reason) at all. One exception to this general rule would arise in the event that a probationary teacher was nonrenewed **because** he/she participated in a lawful strike. Again, proof of a causal connection is critical. A probationary teacher who suspects he/she might be nonrenewed because of his/her support for the strike should maintain documentation of emails, letters, conversations, etc. that prove a connection between the strike and the nonrenewal.

If you feel that your nonrenewal was based on your support for the strike, bring documentation to your UD. They will then contact CEA Legal to analyze the strength of your case.

**I'm an at-will employee – what about me?**

Generally, an "at-will" employment relationship can be terminated at any time by the employee or the employer. In many innovation schools, at-will teachers are not afforded the same TECDA protections previously discussed in these FAQs. However, the employment contract and/or applicable innovation plan can provide some protection. For example, some contracts and innovation plans provide that a teacher employed on an at-will basis can only be terminated during the term of the contract for "just cause." Others offer terminated at-will employees a post-termination appeal, where the employee can challenge DPS's basis for the termination. It is important to carefully read the terms of your contract and innovation plan (if your school is subject to an innovation plan).

Like probationary teachers subject to nonrenewal at the end of a contract year, at-will or annual contract employees can be let go upon completion of their contract for virtually any reason. However, it is illegal to end the employment relationship **because** the employee participated in a lawful strike. Again, proof of a causal connection is critical, and an at-will employee who suspects he/she was let go because of his/her support for a strike should maintain documentation of emails, letters, conversations, etc. that prove a connection between the strike and the DPS's refusal to extend an employment offer for the following school year.

**Even if the Board doesn't fire me, can it retaliate against me in other ways?**

If and when a settlement is reached, bringing the strike to an end, DCTA will insist that it include a **no reprisals** clause, assuring that no one who has supported the strike will be punished in any way.

If you feel you are being retaliated against because of your support for the strike, keep documentation, as described above. Bring that documentation to your UD, who will help you determine next steps.

**Could participating in the strike reflect negatively upon me in my performance evaluation?**

Linking your performance evaluation to your support for the strike would be considered a form of reprisal, which would violate the no-reprisals clause of any settlement that is reached. If you feel your performance evaluation reflects your support for the strike—not your job performance—keep supporting documentation, as described above. Bring that documentation to your UD, who will help you determine next steps.

**I'm near retirement. Could I lose my retirement benefits if I participate in a strike?**

No. You can't lose your vested retirement benefits which you are entitled to collect in accordance with the plan. Your retirement benefits (i.e. your monthly benefit based on PERA calculations) *could* be affected by the time spent out on strike as a result of your loss of pay during the strike.

**What will happen with my insurance benefits if we go out on strike?**

Your premium is paid a month in advance, so if the strike lasts less than a month, you will see no change to your insurance benefits. If the strike extends beyond one month, the school board will be required by federal law (COBRA) to offer you the opportunity to continue your insurance coverage at your own expense.

**If I'm on an approved medical leave when we walk out, how will the strike affect me?**

It depends. First, you should determine whether your leave is approved by the District pursuant to the Family and Medical Leave Act (FMLA). The easiest way to do this is to refer to the paperwork you submitted during the leave application/approval process. Next, determine whether you are being paid while on leave. The FMLA does not guarantee paid leave, but many employers allow or require employees on FMLA leave to use paid leave (i.e. sick, personal, vacation) during their leave period. If you are using paid leave time, you must follow DPS policies regarding the use of leave time. You must also comply with any provisions set forth in your leave of absence paperwork. If you have questions about the terms of your leave, or are concerned that the provisions interfere with your ability to participate in the strike, contact your UD.

Your participation should be consistent with your application for medical leave. For example, if you took leave to recover from knee surgery, you might volunteer to participate in a letter writing campaign, while leaving others to walk picket lines.

Whether you are on paid or unpaid leave during your FMLA period, it is illegal for DPS to interfere with your right to take FMLA leave, or to retaliate against you for doing so.

**Will I lose pay for each day we're out on strike?**

Yes, DPS can withhold pay during a strike. However, if and when the strike is settled, it is possible for the Associations to negotiate "make-up" days, with make-up pay to match.

**Can I receive unemployment benefits to make up for earnings I lose while on strike?**

No. If the Department of Labor determines that your lost wages are due to a strike, you are ineligible to receive unemployment compensation benefits for that period. However, if DPS initiates an “offensive lockout,” you are eligible for unemployment benefits to offset your lost wages during the lockout.

**What if DPS locks us out?**

DPS cannot lock employees out until the Director of the Department of Labor declines or relinquishes jurisdiction over the labor dispute. In other words, DPS must follow the same rules preceding a lockout as the employees must follow before they may strike.

**What if the DPS hires “scabs” (and while we’re on the subject, what is a scab)?**

“Scab” is a term used to describe someone who works under conditions contrary to a union contract, especially one who crosses a picket line to replace a union worker during a strike. DPS is permitted to hire temporary replacement workers during a strike, but as a practical matter, it would be exceedingly difficult to locate and hire enough qualified individuals to replace all of DPS’ teachers. Keep in mind that any temporary replacement workers are just that—temporary. DPS cannot permanently give your job to a replacement worker in response to a lawful strike.

**Can negotiations take place during a strike?**

Yes. The parties can meet during a strike to continue negotiations. In fact, the purpose of a strike is to expedite negotiations and reach a successful and mutually-satisfactory settlement.

**If I choose not to strike, will I be harassed by the union?**

No. A strike is a collective effort, but one that calls upon each individual to make a personal decision whether or not to support it. This decision cannot be made in a vacuum; one must consider moral, political, and financial implications when deciding whether—and how—to support a strike. For example, are you the main “breadwinner” in your family? Do you, or any of your dependents, have major medical expenses on the horizon? To what lengths are you willing, and able, to go in an effort to demand respect from Denver Public Schools? What happens if we don’t demand respect from the DPS?

As you weigh this important decision, please remember that there is strength in numbers, and that we all benefit from a strong, fair contract. By “crossing the picket line,” you undermine the efforts of your colleagues to create favorable working conditions, both now and for future generations of DPS teachers.