



OFFICE OF THE SYSTEMWIDE EXECUTIVE DIRECTOR  
LABOR RELATIONS

OFFICE OF THE PRESIDENT  
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**PRIVILEGED AND CONFIDENTIAL  
IN FURTHERANCE OF COLLECTIVE BARGAINING**

**TO:** APPROPRIATE MANAGERS AND SUPERVISORS (INCLUDING  
PRINCIPAL INVESTIGATORS)

**FROM:** OFFICE OF THE PRESIDENT, LABOR RELATIONS

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**CC:** SYSTEMWIDE HUMAN RESOURCES  
SYSTEMWIDE ACADEMIC PERSONNEL AND PROGRAMS  
UC LEGAL

**DATE:** October 25, 2022

**SUBJECT:** FAQs and Guidelines re Potential Job Action by UAW Bargaining Units

**OVERVIEW**

In consultation with Academic Personnel and Programs and UC Legal, OPLR is providing this memorandum which provides general answers to commonly asked questions concerning the University's rights and obligations, as well as employee rights, in connection with protected concerted activity such as strikes and work stoppages.

## **FAQS AND GUIDANCE**

### **1. Can UAW legally strike at this time?**

It depends. The lawfulness of a strike may depend on the object, or purpose, of the strike, on its timing, or on the conduct of the strikers.

Here, there are four UAW bargaining units at issue. Of those four, three are currently covered by collective-bargaining agreements which contain “No Strike” provisions, prohibiting those units from striking. Those agreements expire on October 31, 2022. When those agreements expire, the strike prohibitions contained in them will also expire and the bargaining units will be able to strike. One bargaining unit (the Graduate Student Researcher unit) is not covered by any collective-bargaining agreement because the University is negotiating its first contract with the UAW to cover that unit. Thus, that particular bargaining-unit may potentially lawfully strike at this time as discussed below.

On one hand, strike that violates a “no strike” provision of an applicable contract is not protected activity and would be unlawful, and those striking employees (“wildcat strikers”) can ordinarily be subject to discipline up to and including discharge. Likewise, an economic strike prior to exhausting impasse procedures under applicable state law could deem a strike unlawful. On the other hand, however, where a pre-impasse strike is substantially motivated by one or more unfair labor practices allegedly committed by the employer, the strike may be protected and therefore lawful even though the striking union did not exhaust applicable impasse procedures.

All strike-line conduct must be lawful in order to be protected.

At this time, UAW plans to take a strike vote ending November 2 with a possible strike on November 14 and several days thereafter. We will keep the campus community informed as more information becomes available.

### **2. What is not protected/lawful work stoppage activity?**

Examples of unlawful, unprotected concerted activity include sick outs, refusal to perform selected duties, working “to rule” or quiet quitting if it constitutes a slowdown, and/or intermittent work stoppages.

### **3. Can other employees participate in a strike called by UAW?**

Generally, represented employees covered by other CBAs cannot strike while non-managerial/supervisory, policy covered employees can engage in certain lawful strike activities. More specifically, those employees may not lawfully participate in a strike called by UAW if they are covered by an applicable collective bargaining agreement that contains a “No Strike” provision. Most of the UC’s represented employees are covered by active collective-bargaining agreements with valid “No Strike” provisions.

Employees in other bargaining-units who engage in strike activity in breach of a “No Strike” provision in their applicable collective-bargaining agreement may be subject to discipline, up to and including termination following normal campus processes. Where a campus believes that the union is “promoting, organizing or supporting” such activities, then this information should be reported to OPLR, who will advise on the options for appropriately responding.

**Note:** The following medical centers are currently in separate negotiations with the Committee of Interns and Residents (“CIR”) for contracts covering six different bargaining-units of resident physicians: UCD, UCSF, UCSF Fresno, UCLA, UCR, and UCI. At least two of these bargaining-units are not covered by an active “No Strike” provision and could potentially join a UAW strike.

On the other hand, unrepresented non-managerial employees also have a protected right to honor a picket line and/or engage in a sympathy strike. However, their strike line conduct must be lawful to remain protected as well.

**4. Are bargaining unit members allowed to report for work if UAW calls a lawful strike?**

Yes. All employees, whether they decide to participate in a lawful strike or not, are free to come to work. The law protects the right of all employees to decide whether or not to cross a picket line. All employees, including represented employees, have a right to refrain from participating in a work stoppage. Employees who choose to cross a picket line to work may not engage in any type of “slow down” as a form of protest while working. Slowdowns are not lawful.

**5. Can a non-striking employee participate in picketing or protest activity during their non-working, personal time?**

Yes, provided that the employee’s participation is lawful, during non-working time, and in non-working areas. Unlawful non-protected concerted activity should be clearly distinguished from lawful free speech activities and other forms of protected expression regarding a bargaining dispute, such as informational picketing. Activities are lawful provided that they (a) comply with campus policies regarding the appropriate time, place and manner for public speeches and rallies and (b) do not interfere with operations or the University’s teaching and research mission. The University has a long tradition of respecting freedom of speech and expression.

**6. What types of picketing are lawful?**

*Lawful Picketing* – In general, striking employees may picket at entrances to the campus, provided they do not obstruct entrances or exits and do not threaten violence. They may also picket in other campus locations in accordance with the campus’ time, place and manner policy.

*Unlawful Picketing* – Mass picketing which obstructs entrances or exits with the effect of deterring people who are not engaging in concerted activities from entering or leaving or which is accompanied by threats or acts of violence (other than minor, isolated instances) is unlawful and thus prohibited.

**7. May the University “monitor,” record, or document employees’ lawful striking activity?**

The University can monitor its operations and premises to ensure the safety and security of persons and property as well as monitor classroom and other educational activities for academic continuity.

The University may also ensure that entrances and exits are free from blockages and that there are no threats to safety or security posed to its employees, staff, visitors, and others in the campus community.

However, absent monitoring to ensure safety, security, access, and academic continuity, it is generally impermissible to monitor employees' lawful strike activity. The University may document instances and reports of unlawful activity or activity that could pose a risk to the safety and security of persons, property, and/or operations (such as a slowdown).

**8. What types of strike conduct would be unlawful?**

Strikers who engage in serious misconduct in the course of a strike may be subject to discipline up to and including discharge. Serious misconduct has been held to include, among other things, violence and threats of violence. The U.S. Supreme Court has ruled that a "sitdown" strike, when employees simply stay in the plant and refuse to work, thus depriving the owner of property, is not protected by the law. Other examples of serious misconduct are:

- Strikers physically blocking persons from entering or leaving a struck facility/campus.
- Strikers threatening violence against non-striking employees.
- Strikers attacking management representatives.

Misconduct should be immediately reported to your campus Labor Relations office, and any potential disciplinary action should be done in consultation with Labor Relations. If there is any violence or threat of violence or breach of peace (e.g., blocking right of way, intimidation), the campus Police Department and/or any management witnesses should follow normal campus procedures to protect public safety.

**9. Should managers and supervisors, including principal investigators and department chairs, meet with striking employees to hear their concerns and try to resolve them?**

No. Generally, it is impermissible to "deal directly" with represented employees concerning their terms and conditions of employment. However, management may meet with the union to address concerns and resolve disputes, including measures to end the strike and return to work. At the University, this should be coordinated through OP Labor Relations. Likewise, management should refrain from increasing wages, stipends, benefits, or terms and conditions of employment for the striking employees. Such changes must be negotiated with the union.

**10. If employees can strike in protest of certain alleged unfair labor practices ("ULP"), what constitutes a ULP?**

Types of conduct to avoid because it could constitute a ULP include threatening employees or discriminating against employees because they participated in protected activities including a lawful strike; bad faith bargaining; refusing to bargain over terms and conditions of employment; and unilaterally changing terms and conditions of employment that must be bargained; and dealing directly with the UAW unit members concerning their terms and conditions of employment.

**11. How should managers and supervisors respond if a represented employee talks about the strike, their personal strike plans, or goes out on strike?**

In response to a question about the strike or a discussion about a represented employee's strike plans, employees should: (1) affirm that represented employees have rights to participate in lawful strike activity; (2) encourage employees to remain informed about current bargaining proposals; and (3) direct represented employees to their union for further information.

If represented employees, including graduate students, ask for more information or for Management's opinion about bargaining, Management should explain that while they support and care about their students and academic employees and believe in a fair contract for both parties, because the parties are actively bargaining these agreements, they cannot talk more about the process at this time.

PIs and other managers are encouraged to be prepared for these conversations as they could happen while talking with graduate students and other covered UAW employees in the coming weeks.

It is critical that employees understand what to say and what not say during these conversations because it is unlawful to discourage or retaliate against employees because they have engaged in lawful strike activity. This is true even if the employee's absence will cause disruption to the academic or research work of the institution.

In order to mitigate disruption, management is encouraged to begin academic and research continuity planning – understanding that a strike may occur around November 14 and/or several days thereafter.

**12. What is retaliation?**

Retaliation against a represented employee includes any adverse action against an employee based on their participation in lawful strike activities – this includes treating represented employees negatively, giving them the “cold shoulder,” discouraging participation in a strike, increasing their workload in anticipation of a strike, or changing the terms and conditions of their employment because of the strike. While retaliation is prohibited, management can and should engage in meaningful continuity planning to mitigate disruption should a strike occur.

**13. What are some types of permissible things management can do in response to a strike?**

See the chart at the end of this document.

**14. Can UAW penalize its members for not striking?**

This depends on the UAW's by-laws and applicable state law.

**15. If an employee asks whether they can resign from the union, how should I respond?**

All questions regarding union membership should be referred to the employee's union.

## GUIDELINES FOR SUPERVISORS/MANAGERS (INCLUDING PRINCIPAL INVESTIGATORS)

| Permissible Actions   | Impermissible Actions to Avoid   |
|---|--|
| <ul style="list-style-type: none"> <li>• Do take lawful steps to ensure safety and security at University campuses and properties. Report misconduct or threats to safety and security.</li> <br/> <li>• Do take lawful steps to ensure unobstructed entrances and exits.</li> <br/> <li>• Do take lawful steps to ensure continuity of operations. Do plan for potential disruption of ongoing research as a result of a strike. Plans for the preservation of experimental materials and the like must be carefully prepared.</li> <br/> <li>• Do refer employees to their union if they have questions regarding union membership, union activities, and potential strike activity.</li> <br/> <li>• Do plan for supporting student academic progress, including alternate methods of instructional delivery and educational continuity.</li> <br/> <li>• Do stay in close contact with your local Labor Relations and Academic Personnel offices and promptly report threats to safety and security, violence, or other misconduct or dangerous circumstances.</li> </ul> | <ul style="list-style-type: none"> <li>• Do not photograph, video, or generally “monitor” employees striking activity for reasons unrelated to ensuring safety, security, and access. This includes refraining from monitoring or perusing employees’ social media.</li> <br/> <li>• Do not survey or communicate with employees, including Senate Faculty, Unit 18 faculty, UAW unit members, and other employees, regarding their intention to participate in or support a strike. Such communication can be found to violate employee rights.</li> <br/> <li>• Do not make statements to employees intended to elicit a response concerning their union activity or union sympathies.</li> <br/> <li>• Avoid tweets and comments on social media (encouraging or discouraging employees’ protected activities, including strike activity) which purport to be official statements on behalf of the University and.</li> <br/> <li>• Do not ask employees about their protected activities, their union sympathies nor the protected activities/union sympathies of others. Protected activity includes strikes and protests concerning terms and conditions of employment or bargaining.</li> <br/> <li>• Do not discipline, discharge, reprimand, or otherwise take adverse action against employees for protected activity, including lawful strike activity.</li> <br/> <li>• Do not deal directly, solicit grievances, or make promises to employees, including Senate and Unit 18 faculty and student employees, based on their participation/non-participation in, or support/non-support, for a strike.</li> </ul> |