



THE LEGAL LANDSCAPE OF PUBLIC-SECTOR STRIKES

I. Introduction

In the private sector, federal labor law guarantees the right of employees to strike in support of bargaining demands or to protest an employer's labor unfair practice. But these protections do not extend to the public sector, where labor protections for employees vary from state to state. In the federal government and the vast majority of states, public-sector strike activity is prohibited, and those prohibitions tend to be enforced with serious penalties. In the states that do permit public-sector strikes, unions are often required to engage in lengthy dispute-resolution procedures and satisfy other requirements before they may lawfully strike. The different laws that apply to the two sectors also reflect the different economic consequences of strikes in the two sectors – private sector strikes inflict substantial economic costs on private sector employers, while public sector strikes disrupt public services and put political pressure on public-sector employers.

Given the different laws that apply to public sector strikes, it is important for NEA members and affiliates to understand in the risks of engaging in strike activity. As summarized below, activity that involves workers withholding their labor can be met with quick action by the courts, can cost educators their pay and potentially their professional licenses and jobs, can cost a union its exclusive representative status and/or ability to collect dues by payroll deduction, and could ultimately result in financially ruinous legal action. This stands in great contrast to the ability of our affiliates to engage in a broad spectrum of peaceful and legal actions that remain protected by the First Amendment.¹

II. Public Sector Strikes are Illegal in a Majority of States

Strikes are prohibited in 36 states and presumably would be found prohibited in 3 others that have not squarely addressed this issue. Many of those states have enacted laws expressly prohibiting strikes.² In others, courts have declared strikes unlawful under common law.³ In South Carolina, neither the legislature nor the judiciary has spoken to the issue, though the

¹ For more information on the ability to engage in peaceful and legal action, please see NEA's Legal Update entitled *The Right To Peacefully Assemble: Protest Guidance for NEA Leaders, Members, and Staff* (June 2025).

² Connecticut, Delaware, District of Columbia, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin.

³ Alabama, Arizona, Arkansas, Idaho, New Jersey.

state's attorney general has formally opined that a strike would be illegal. The legality of public-employee strikes remains undetermined in Utah and Wyoming.

In the remaining 12 states, where strikes are not unlawful per se, varying preconditions – some quite extensive – must be satisfied before employees may refuse to work. Employees and their representatives often must, for example, exhaust factfinding and mediation procedures and provide an employer with advanced notice of their intent to strike.⁴

III. States Generally Define “Strike” Broadly

Most states have adopted extremely broad definitions of what constitutes a strike. Generally, states consider any intentional withholding of labor – from full-blown strikes to temporary work stoppages, partial-day strikes, slowdowns, and discrete refusals of work – to be encompassed within a strike prohibition. For example, Delaware's statutory definition of the term is typically broad:

“Strike” means a public school employee's failure, in concerted action with others, to report for duty, or that employee's willful absence from that employee's position, or that employee's stoppage or deliberate slowing down of work, or that employee's withholding in whole or in part from the full, faithful and proper performance of that employee's duties of employment, or that employee's involvement in a concerted interruption of operations of a public school employer for the purpose of inducing, influencing or coercing a change in the conditions, compensation rights, privileges or obligations of public school employment; however, nothing shall limit or impair the right of any public school employee to lawfully express or communicate a complaint or opinion on any matter related to terms and conditions of employment.⁵

Some definitions go even further. Florida's strike prohibition includes any “picketing in furtherance of a work stoppage.”⁶ Kansas includes failing to report to work “at usual capability.”⁷ And South Dakota includes “in any manner interfering with the operation” of state or local government or public schools “for the purpose of coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment.”⁸ Other states have similarly broad definitions including Georgia, Indiana, Iowa, Maine, Michigan, Mississippi, New Mexico, New York, North Carolina, North Dakota, Tennessee, West Virginia, and Wisconsin.

IV. Strike Penalties

Employees and unions are subject to an array of penalties for engaging in an illegal strike. The following are examples collected from various states.

⁴ Alaska, California, Colorado, Hawaii, Illinois, Louisiana, Minnesota, Montana, Ohio, Oregon, Pennsylvania, Vermont.

⁵ Del. Code Ann. tit. 14, § 4002(r).

⁶ Fla. Stat. Ann. § 447.203.

⁷ Kan. Stat. Ann. § 75-4322.

⁸ S.D. Codified Laws § 3-18-9.

Employees

- No Pay for any day on strike.
- Fines, such as withholding an additional day's wages for each day on strike.
- Discipline up to and including discharge.
- Subjecting returning strikers to a new probationary period.
- Denying wage increases for one or more years.

Unions

- Temporary loss of payroll deduction.
- Temporary or permanent loss of certification as employees' exclusive representative.
- Criminal punishment of union leaders.

Beyond penalties that are imposed by statutes, engaging in strikes can result in contempt fines imposed by courts. When a union threatens or undertakes a strike that is allegedly unlawful, public employers will seek legal intervention, asking their labor board or local state court, depending on procedures set forth in state law, to declare the strike illegal and order the union to end the strike. This process typically occurs very quickly, with courts often issuing temporary restraining orders the same day as the employer seeks relief and ordering the union to end the strike the following day. If the union fails to comply, the employer can ask the court to impose contempt sanctions for each day that the strike continues, which can amount to tens of thousands of dollars each day.

Beyond penalties imposed by state law, and contempt sanctions imposed by the courts, recently unions have confronted a new threat arising from strike activity: lawsuits. In 2024 and 2025 alone, public sector unions, including NEA affiliates, have been named as defendants in a half dozen class action lawsuits seeking tens of millions of dollars in damages. These suits, orchestrated by right-wing organizations and filed on behalf of small groups of parents in districts where school was shut down to strike activity, are of questionable merit, with courts dismissing several on short order that are now pending on appeal.⁹ Regardless, defending against the claims raised in such cases, even those in which we are successful, can be expensive and resource-intensive.

V. Contextualizing the Red-for-Ed Movement

Looming over any discussion over the legality of public-sectors strikes is the success of the Red-for-Ed movement that swept the country in 2018. It is important to recognize, however, that the convergence of factors that made Red-for-Ed such a success was unique. Consider:

⁹ See *Donahue v. Beverly Teachers Ass'n* (Mass. Super. Ct., filed June 26, 2025) (pending); *Kessem v. Chicago Teachers Union* (Ill. Cir. Ct. filed Feb. 16, 2024) (dismissed, appeals pending); *Asher-Dotan v. Newton Teachers Ass'n* (Mass. Super. Ct. filed Feb. 20, 2024) (pending); *Stovall v. KY 120 United-AFT* (Ky. Cir. Ct. filed Feb. 27, 2024) (dismissed, appeal pending); *Johnson v. Portland Ass'n of Teachers* (Ore. Public Employee Labor Relations Bd., filed Apr. 18, 2024) (dismissed, appeal pending); *Li v. Rutgers Univ. AAUP* (N.J. Super. Ct. filed Mar. 15, 2024) (dismissed, appeal pending).

- In West Virginia, 20,000 educators walked out in 2018 after the legislature followed up years of meager wage increases that left the state as 48th in the nation in teacher pay by passing a law providing only a 2% increase. The situation was so dire that when the educators walked out throughout the state, not one of West Virginia's 55 school districts sought to enjoin the strike, and instead chose to close their schools during what was ultimately a nine-day strike. Although successful, the strike prompted the West Virginia legislature, in 2021, to not only ban public-sector strikes, but to retaliate against unions and their members by prohibiting employers from allowing unions to collect dues by payroll deduction.
- In Oklahoma, educators went out of work for nine days to protest the fact that their state had the lowest average teacher salaries in the country, driving teachers to leave the state in droves for opportunities in neighboring states. They did so with the support of the Oklahoma City School District, which closed schools and encouraged educators to spend their days protesting at the state capitol.
- In Arizona, 50,000 educators walked off the job for six days after a statewide poll showed that they overwhelmingly supported doing so to protest the governor's failure to implement wage increases for support staff and to take steps to fund future increases for teachers. In conjunction with the poll, 30 district school boards publicly supported that decision.
- In Kentucky educators statewide engaged in a one-day demonstration to protest a law that weakened the state pension system for public employees, leading districts across the state to close schools. Afterward, although the governor directed the Kentucky Labor Cabinet to investigate the walkouts, and it was determined that many educators engaged in an illegal strike, the governor ultimately chose not to impose penalties while suggesting that he would not be so generous for future violations.

These and other Red-for-Ed actions serve as an inspired movement in which educators came together and demonstrated the power of collective action, bolstered by public support, even in the face of state laws making these actions, in some instances, likely illegal. However, it must also be recognized that the Red for Ed movement, which was largely successful due to the overwhelming support of educators statewide, and in many cases school district employers, cannot be easily replicated. Years of inadequate education funding, leading to historically low educator salaries, had a galvanizing force during Red-for Ed that led to high worker participation and broad employer and public support. The circumstances today are different. Public education itself is under assault, the federal government is seeking to undermine at every turn the legitimacy of what is taught in schools, and many state governments are doing the same. In this climate, it cannot be assumed that employers will, once again, support strike activity, or that right-wing groups will not continue to pursue resource-draining lawsuits.

VI. Conclusion

Although NEA's affiliates and members are free to engage in any number of concerted actions to seek to improve wages and working conditions, to advance racial, social, and labor justice, and fight back against federal, state, and local government policies that harm educators,

public schools, and students, we must remain aware of the dire penalties we may incur for engaging in arguably illegal strike activity. Absent the existence of the type of exceptional circumstances that led to the Red-for-Ed movement, the harms of engaging in illegal strike activity rather than peaceful, lawful concerted activity, may far outweigh any potential gains.