

School Employee Walkouts in Arizona

Know Your Rights

What is a walkout?

In the employment context, a walkout is a type of job action employees engage in order to protest or to express disapproval, especially concerning their pay and other terms and conditions of employment. Typically, in a walkout, employees either collectively leave their place of work or don't show up to work and then withhold their labor from their employers for some period of time. As such, a walkout is basically another name for a labor strike.

Is it legal for teachers and other school employees to strike?

It is not entirely clear. No Arizona statute expressly addresses whether public school employees may or may not strike. There are two Arizona Attorney General Opinions (I80-039 and I71-12) that indicate that public school teachers may not strike. An opinion by the Arizona Attorney General is not binding on courts, but it is considered as persuasive authority. In *Communications Workers of America v. Arizona Board of Regents* (1972), the Arizona Court of Appeals noted in passing that public school employees (there, maintenance staff at NAU) do not have the right to strike. However, this statement by the Court of Appeals does not appear to have been necessary for reaching its conclusion that the Board of Regents could not be compelled (by picketing) to recognize or bargain with a union acting on behalf of its employees. As such, the legal significance of this statement is unclear.

What risks do school employees face if they decide to go out on strike?

There is a lot of uncertainty about what will happen to school employees who take part in the walkout, and the experience will likely vary from school to school and from district to district. Some districts have expressed their intention not to take a punitive approach toward employees who engage in a walkout. The length of the walkout will also be a factor. As a practical matter, the more school employees who take part in a walkout at a given site and statewide, the less likely it is that we'll see dismissals and other adverse actions taken against school employees, all other things being equal. This is especially true for teachers in light of the current shortage of certified teachers in Arizona. School districts may try to make use of third-party substitute teacher referral services in order to replace teachers in the short-term. School districts could also try to resort to filing court actions in order to stop any strike.

That said, it is possible that those engaging in the walkout may face loss of pay, discipline or dismissal, and some form of action against their certificates. Whether a teacher will be paid and receive benefits during the period he or she remains out of the classroom will depend on the type of leave he or she has available and uses to cover the days of any job action and the specific district's policies and rules governing the use and availability of such leave. While the same is generally true for hourly school staff, it is likely that hourly school staff will not be paid for any days during which a school may be closed due to a walkout.

As for job protection, teachers may generally only be disciplined or dismissed for cause. If a teacher walks out for a period of time and is unable to take leave to cover or excuse the days off, it could be taken by a school district to be job abandonment, which may result in dismissal for cause or be taken to be a resignation without seeking governing board approval. Either way, any job abandonment may be seen as unprofessional conduct warranting some form of a sanction by the State Board of Education. Again, this will depend on the duration of any walkout, whether a teacher has available leave to cover days missed, and the extent of participation in a walkout. As for classified staff, many education support staff are at-will employees, which means they may be dismissed for any reason or for no reason, as long as it is not for an illegal reason. The extent of classified members' rights depends on whether any contracts or district policies exist that provide some job protection or other rights.

If a school employee is engaged in a strike, will he or she receive unemployment?

Generally, if an individual is unemployed for a period of time because of a labor dispute, strike, or lockout, he or she will not be eligible for unemployment benefits during that time.

If a school employee is dismissed for engaging in a strike, will he or she forfeit ASRS retirement benefits?

Generally speaking, no. Unless a member of ASRS is convicted of committing a serious crime during the course of his or her employment, there will be no disqualification.

Will I receive Legal Assistance as a result of the actions I take?

Yes, if you are a member of AEA, you will be provided legal assistance with any employment matter that you face.