



wildcat strike

A guide to self-organised
industrial action



WORKERS
RISE UP!

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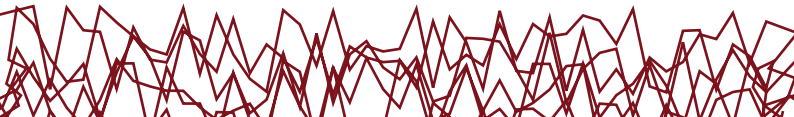
preface

In this brochure, we have compiled experiences with wildcat strikes — our own and those of fellow workers. We have also used the findings from subsequent court cases to provide you with a legal overview and strategic advice on how to change the German strike law.

Our brochure is intended to be useful for you if you currently want to or have to take industrial action at your workplace, if you want to break down barriers to industrial action in Germany in the long term, or if you are simply interested in wildcat strikes as a means of labour struggle.

The **first part** explains what wildcat strikes are and why we need them. The main focus is on the situation in Germany: why is it so difficult to do wildcat strikes here and what can we do about it?

The **second part** is a short guide to wildcat strikes. What steps come before a strike in labour struggle? What should you pay attention to during a wildcat strike? What consequences could you face and how can you deal with them?





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WILDCAT STRIKE – WHAT'S UP WITH THAT?

1. Strike – the most important means of struggle for workers

Striking is a collective stoppage of work in order to achieve a specific goal. The capitalist economy cannot function without our labour, which is why withdrawing our manpower through strikes is a particularly powerful means of struggle for us as workers. With strikes, we can enforce demands more effectively, as

»**Direct action**« Sometimes the desired conditions can be achieved directly by refusing to work, without waiting for decision-makers to make concessions. For example, if we all finish work a quarter of an hour earlier every day to catch our train, or we systematically boycott a certain activity that is part of our job because we don't want to do it. When we directly shape our working conditions in our favour — without going through the boss - this is called "direct action".

we can exert much more pressure than with a demonstration or petition. In the context of wage labour¹, strikes are aimed at getting the employer to improve our working conditions, e.g. pay us better, ensure better safety at work, grant us more days off or shorter working hours. Because profit is the employer's main interest, we can use the strike to force them to consider and fulfil our demands. As long as we are not working, the employer cannot make a profit; if they want to make a profit again, they have to fulfil our demands.

¹Strike is treated here as an instrument for dependent employees. These are workers who are employed by an employer under a labour contract and receive a monthly wage, regardless of whether they are trainees, mini-, midi- or full-time employees.

Striking is therefore our most important means of fighting for better working and living conditions in the capitalist system.

Unfortunately, the law in Germany is not on the side of the workers. Strikes are currently only considered lawful - and thus participants are only protected under labour law — if they meet very narrowly defined criteria.

2. Legal situation in Germany

Strikes in Germany are governed by common law, also known as case law. The following four criteria are therefore not derived from legislation, but from previous law cases and jurisdiction. This means that the German right to strike may as well change in the future, as soon as judges make different decisions.

To improve our chances of this happening, we need more labour law disputes relating to wildcat strikes to be heard in court.

»**Collective bargaining capacity**« Currently, a trade union must fulfill certain minimum requirements in order to be recognised as having collective bargaining capacity in court, and therefore in order to legally call for strikes. This includes the ability to assert itself against the employer, having an effective organisation, and the so-called 'social power'. The juridical requirements for social power are both obscure and fairly strict. There are a few qualifications of special importance, however, such as the number of members and successfully concluded collective agreements in the past. Because of the gray-area legal qualifications, some workers' associations are not recognized as trade unions with collective bargaining capacity, meaning they cannot call for strikes. However, if the law around wildcat strikes changed, that would be irrelevant, because workers' associations would not have to meet any specific requirements in order to call for or support such actions!

So far, the following case law applies:

- The strike must be supported by a trade union with **collective bargaining capacity ("Tariffähigkeit")**.
- The goals of the strike must be **governable by a collective agreement ("Tarifvertrag")**. This means that it must be within the employer's power to fulfil the demands.
- The strike must not violate the obligation to **maintain peace ("Friedenspflicht")** that comes from the collective agreement. After a union has signed a collective agreement, it is obliged to not strike against anything that is regulated in that contract as long as the collective agreement is applicable.
- The strike must be **proportionate**, i.e. it must not be obviously unsuitable, unnecessary or inappropriate to achieve the objective of the strike.

Strikes outside this narrowly defined framework have so far been considered illegal in Germany. German case law, including the obligation to keep the peace, goes back to an expert opinion

»**Problems of the peace obligation**« The peace obligation presents a problem for workers when in times of inflation prices rise too fast in relation to wages — while collective agreements are still valid that stipulate far-too-low wages. This is one of the reasons why workers in the automotive industry went on strike in 1973 without being supported by trade unions. If trade unions called for a strike in spite of their peace obligation, they would have had to reckon with claims for damages from the employers, potentially rendering such action costly and ineffective. However, with non-unionized strikes, it is difficult for companies to find someone against whom they can direct their claims, exemplifying why wildcat strikes can be a favourable strategy for workers, especially in regards to the peace obligation.

by the Nazi judge Hans Carl Nipperdey from 1952. It is designed to minimise the loss of working hours and thus the loss of profit for employers, thereby enormously weakening the position of workers.

In many other countries, the right to strike is treated as an individual human right; after all, it is about self-determination over our time and creative energy. However, Germany has some of the most restrictive law on strike action compared to any other European country. As a result, there are significantly fewer strikes on average in Germany than in many other countries. Between 2012 and 2021, there were only 18 strike days per 1,000 employees per year in Germany, while in Spain and Finland there were more than twice as many (48 strike days) and in France and Belgium there were over 90 strike days!²

According to Article 6 (4) of the **European Social Charter**, workers have the right to take collective action - including the right to strike - in the event of conflicts of interest. However, due to the current case law in Germany, these fundamental interests are essentially illegalized, so that a non-unionized, i.e. wildcat strike is only possible with great risk.

"For years, the relevant European supervisory bodies have declared that the ban on all strikes that are not based on collective agreements and are not called or taken over by trade unions is a violation of the European Social Charter. For years, these monitoring bodies have been calling on Germany to adapt the German right to strike to these European standards - so far in vain, although Germany has committed to complying with this charter."

Benedikt Hopmann,
attorney for the striking Gorillas workers, 2021

²Source: de.statista.com/statistik/daten/studie/384248/umfrage/jaehrlich-durchstreiks-ausgefallene-arbeitstage-nach-laendern

3. Wildcat Strike

3.1 what is a wildcat strike?

A strike can contradict the four above-mentioned legal criteria of German case law at various points. A wildcat strike is not called for by a structure recognized as a trade union and therefore contradicts the first criterion.

In this legal framework, a **political strike** would contradict the second criterion: It makes demands that cannot be regulated in a collective agreement because they do not lie in the power of a single employer. For example, a feminist strike can aim for a fair distribution of reproductive labour across society as a whole, or a climate strike can demand compliance with the 1.5 degree limit. However, no individual boss from a particular company can actualize this.

»**Criminality**« Wildcat strikes (just like political strikes) are not illegal! They are just not protected by German strike law, which would release you from your primary contractual obligation during the strike - namely to make your labour power available to your boss. Partaking in a wildcat strike could therefore potentially result in dismissal (which can be challenged as discussed later), but it is not a criminal offense!

3.2 why wildcat strike?

3.2.1 unionized strike action is not always an option

Trade unions in Germany are highly institutionalized and bureaucratic organisations. Their high demands on workers pose enormous hurdles for people who find themselves in particularly precarious living and working situations.

For example, migrant and poor workers in Germany are often trapped in poorly paid, strenuous, and insecure jobs. Sometimes

trade unions do not feel responsible. They hide behind bureaucratic demands and language barriers and are then no real help for workers' industrial action.

Large trade unions might not consider it worthwhile to invest time and effort to stand up for workers who are likely to be dismissed within their probationary period anyway. The workers for whom unionization is hardest in Germany are the very ones for whom a rapid improvement in working conditions is the most needed. That's why we need wildcat strikes as leverage against employers!

"The trade unions are currently too institutionalized for our living conditions. There is hardly any real contact between the employees and them. I am a member of two different trade unions. And as a precarious worker, I'm expected to organize the workplace myself and pay "membership fees" into the union's coffers. That's what Ver.di is asking us to do: to get the necessary 50 % of employees to join Ver.di. How are we supposed to organize in such workplaces if we have no protection?"

Duygu Kaya,

took part in a wildcat strike at the delivery service Gorillas in 2021

If you find yourself in a work situation where you urgently need to put pressure on your employer to improve your working situation, you should of course try to get help from a trade union. Trade unions can advise and support you, and it is legally and financially safer to take industrial action with a union. For example, you will also receive strike money — unfortunately, your employer does not have to pay you for the time you are on strike.

But if you can't get the support you need from your union and have to take your industrial action into your own hands, then this brochure is for you! It should help you to organize and follow through with your industrial action — including a wildcat strike.

»**Church employees**« Wildcat strikes can also be an option for workers who are not officially allowed to strike, when trade unions refuse to support their strike due to this reason. This was the case for church employees for a long time. Churches in Germany have a special role under labour law, which is criticized by many lawyers. According to the prevailing legal opinion, something called "the third way" applies to church workers: Their working conditions are negotiated in an internal church body in which employees are included. Strikes are therefore considered forbidden in church organizations. However, the Federal Labour Court relaxed this regulation in 2012 and affirmed the possibility for employees to fight for better working conditions. Church employees in Germany can therefore legally strike with a trade union nowadays, at least under certain conditions.

3.2.2 The path to reforming the German right to strike

The over-exploitation of particularly vulnerable workers is systematic and serves the interests of capital. The control and repression of workers' most important means of power — the strike — is a key part of this system of exploitation.

"There is a quote from a landmark ruling from 1980 by the Federal Labour Court that I really like: "Without strikes, collective bargaining would be nothing more than collective begging". This makes clear how important strikes are. In our case, as precarious workers who cannot be protected by trade unions, it's not even about the collective agreements, but about bare survival. Without our right to strike without a union, our work is nothing more than modern slavery legalized by case law."

Duygu Kaya

In order to strengthen workers' power, strikes must be equally possible and safe for all workers, whether with or without a union. Only then can we all use our power through labour withdrawal to improve our working and living conditions.

"The right to strike is a human right. An improvement can only be achieved through strike action. This applies to both non-organised and political strikes. The Gorillas employees have taken an important first step. Now it is up to the courts to protect their courageous actions and adapt the backward German right to strike to the European Social Charter."

Benedikt Hopmann

Every wildcat strike is a step towards the right to strike! If a person is warned or dismissed by their employer as a result of a wildcat strike, they can take legal action against it before the labour court. Each of these legal disputes offers an opportunity to change German case law and thus the German right to strike. We can argue in court, for example, that the wildcat strike is in line with European law and was therefore lawful. The more often this happens, the more pressure will be exerted on the relevant judges to revisit the issue instead of continuing to refer to the outdated, unjust case law from the 1950s. In principle, judges have the opportunity to rule in the worker's favour and thus create a precedent that changes German case law.

Even when judges rule against workers, and confirm a dismissal or warning - thus perpetuating the illegalization of wildcat strikes - there is a pathways open to challenge this. At this point at the very latest, you should seek help from a sympathetic labour rights lawyer.

The first step in challenging the decision after a ruling against a wildcat strike action is to lodge an appeal with the Regional Labour court. If you lose this case, the Regional Labour court can allow an appeal to the Federal Labour Court, or you can lodge a complaint yourself against the non-admission of the appeal with the Federal Labour Court. In the next step an appeal to the Federal Constitutional Court is possible. A lawsuit with the European Court of Human Rights should also be considered. If the dismissal or warning due to a non-unionized strike is

classified as unlawful in any of the court hearings, this will lead the way for future cases in German labour courts. The higher the instance this decision is reached in, the better the resulting legal protection for wildcat strikes. Dismissals due to wildcat strike action wouldn't stand in court anymore. Our final legal success will be the German Federal Constitutional Court legalizing non-unionized strikes.

The struggle for expanding the right to strike in court is legally very tricky, which is why we talk a lot about legal subtleties in this brochure. The sole purpose of this is to point out potential legal pitfalls that would make it too easy for German labour courts to wipe your concerns off the table.

If the legal path is not an option or not a priority for you, you can ignore all our legal advice.

Organizing, industrial action and (wildcat) strikes do not only depend on good preparation and strategic planning, but also on spontaneous moments. This brochure's focus on fighting for the legality of your strike in court can stand in the way of this spontaneity. In the end, you set your own priorities and fight your battles accordingly!



WORKERS ON STRIKE

@BKIEZ warehouse
OUR DEMANDS

- 1 Fair payment FOR ALL WORKERS
- 2 Considerate Scheduling
- 3 Safer working equipment
- 4 Stop understaffing
- 5 Consult the workers about

WORKERS UNITED WILL NEVER BE D

@BKIEZ Ware
UNSERE

Bea
here

HOW to: wildcat strike

Are your wages and working conditions lousy? Do you want to change something? Industrial action is coming up and strikes are the only option?

Here is a brief overview of the steps involved in industrial action: organizing colleagues, drawing up demands, and developing and implementing an escalation strategy. And finally: wildcat strikes. How do you do that? What do you have to watch out for? What can happen and how do you deal with it? Who can support you?

We have put together a number of tips that can help you to build up support and enforce your demands — while at the same time minimizing your legal risks.

»**Legal strategy**« Wildcat strikes can sometimes result in dismissals. However, these kinds of dismissals can be challenged in labour court, with the protection against dismissal. This legal route is more likely to be successful when there are less aspects of the strike being challenged in court at the same time. In other words, if the strike fulfills as many lawful criteria of German law as possible, the resulting dismissals have a higher chance of being successfully challenged. Aside from who is calling for the strike, which is already a criterion that is not met with wildcat strikes, these criteria are: demands that can be regulated in collective agreements, proportionality, and compliance with the collective agreement's peace obligation, if there is one.

4. Before the strike

4.1 organizing

The strategy of talking to colleagues in the workplace (or neighbours in the building, or students at school, etc.) and building shared actions to fight for common goals is called organizing. This is a long and dedicated process, but it is also fun and can be quite successful.

It feels pretty shitty to be alone with all the frustration, anger and urgent need for change. But, there is a good chance that you are not actually alone and that others are experiencing similar problems at work as you are! Ask your colleagues how they are doing, what bothers them, what they would like to change and how they think all of you can achieve this. Putting pressure on your employer together with other workers can help the feeling of isolation, and can also reduce the inherent risks for everyone. In this way, solidarity is the best tool against repression. So talk to your colleagues! This is the first step towards turning them into trusted allies in the industrial action. Get organised!

Of course, it's not that easy to organise a militant workforce in your own company. But it is possible, and it is happening. It is worth researching whether grassroots trade unions or other initiatives offer organising workshops in your area.

Once you've found colleagues who are keen to turn the workplace upside down with you, it's best to set up a committed workers group and exchange ideas regularly. Share your knowledge with each other. Find a suitable means of communication to keep in touch between your meetings, e.g. email, pads, messenger, servers, encrypted text channels. Together you can find out how your company is structured and who the decision-makers are. Which colleagues do you know and from which departments? Who can you motivate to take industrial action? Who would be good at getting other people on board? Also talk about who in the

company is more anti-industrial action - and don't let them in on everything. Also keep an eye on what the management is doing, and if they are on to you.

With a stable group, you can begin to plan industrial action, including strikes, and inform your colleagues about it. Don't lecture people. Invite them to be curious. Let them ask the questions. Listen.

4.2 demands

When preparing for industrial action with your colleagues, you should first agree on what exactly you want to fight for. To determine your demands, we suggest the following steps:

Step 1: Find out what your colleagues want.

Start by collecting all the ideas and wishes for improving your working situation that you know about or that are important to you.

Step 2: Prioritize your collection of changes.

Which ones are relevant for most of your colleagues? Which are particularly urgent? The more of you who find the changes personally important, the more motivation and stamina you will have in the industrial action. In the end, you should agree on the desired changes as a group. These will be your demands.

Step 3: Make your demands known. Allow room for negotiation.

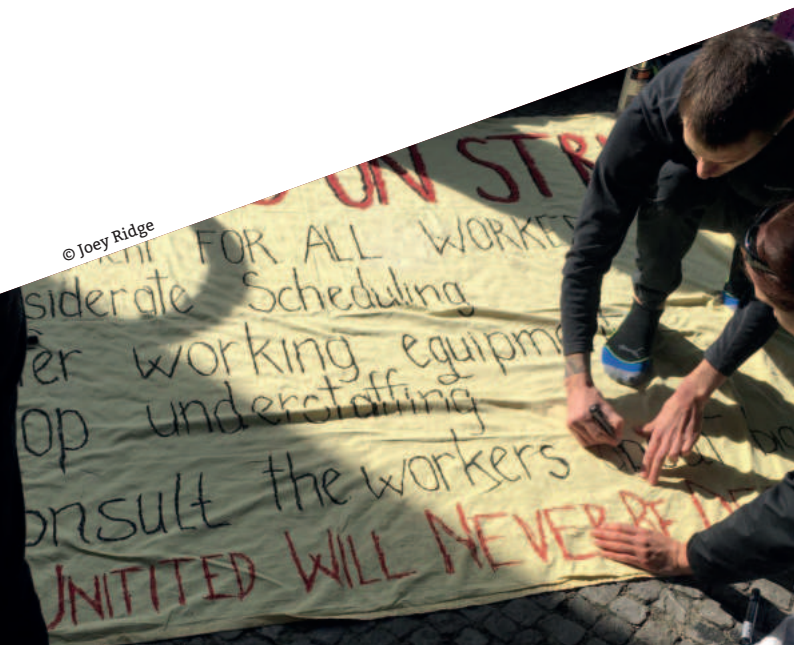
This can mean demanding more pay from your boss than the minimum you want to receive in the end, so you have negotiation space. Or you can include items in your list of demands that you would be prepared to give up completely in a negotiation, if necessary.

Step 4: If you want to take legal action after a wildcat strike, you should also avoid some pitfalls that make it very easy for the courts to dismiss your case.

- The decision on which demands you end up settling on must be made democratically. Don't forget to document this democratic decision-making process - more on this under 4.4 'Documentation' and 4.5 'Democratic decision-making'.
- It must be possible to regulate your demands by collective agreement. Fortunately, collective agreements can regulate pretty much everything that employers can implement. You therefore have a relatively large amount of leeway; you just have to make sure that your demands do not include anything that your employer cannot influence or fulfill in principle. For example, they cannot abolish patriarchy, but they can abolish the gender pay gap in the company. Incidentally, you don't have to aim to actually regulate your demands in a collective agreement in the end.
- If there is currently a valid collective agreement in your company, you should make sure that your demands do not reopen any points that are already covered in this collective agreement - otherwise you will be in breach of the peace obligation.
- The demands — at least those which you ultimately want to strike for officially — must not include anything to which you are already legally entitled (e.g. minimum wage, punctual payment of wages, continued payment of wages in the event of illness, compliance with occupational health and safety laws, etc.). In these cases, suing your employer would be considered to be the "milder mean" of action. Since strikes are only permissible under current case law if all milder means have been exhausted, you would automatically delegitimize your strike from a legal perspective if you went on strike for this type of demand.
- It is worth having your demands checked again by sympathetic labour lawyers. If the demands change as a result, you should vote on the new demands again and document this process of change.

»**Extra-judicial demands**« If you have demands that cannot be regulated by collective agreements, there are still ways to include them unofficially in the industrial action. Example: If a colleague has been fired and you want the dismissal to be cancelled, this is not a permissible strike objective, but a case for the courts. Instead, you can strike for better protection against dismissal for all employees, but verbally demand the withdrawal of the specific dismissal in negotiations with the boss, and then simply end the industrial action as soon as your colleague gets their job back.

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4.3 Escalation strategy

Once you have agreed on demands, the next step is to think about how you can enforce them. Strikes are your strongest tactic, but by no means your only, and never your first means. You can, for example, collect signatures for the demands in your company, confront your bosses together, go to the press, organize a rally in front of your company, and so on.

Strategically, it makes sense to start with milder means that exert less pressure and also cause you less effort and risk. If your bosses do not respond to your demands via milder means, you can gradually increase the pressure. Ideally, you should plan the next escalation steps in advance, and announce them. This is called an escalation strategy.

For example, you write a letter to your bosses in which you announce that your next step will be to go to the press. If they don't respond to your demands, you must make good on your threat. This is the only way they will learn to take you seriously, and will strengthen your negotiating position. At the same time, make it clear to your bosses that they have the option of simply doing what you want them to do at any time - then the whole spook will be over immediately! Be prepared for the fact that the strike is not the last step in your industrial action, but that you should also prepare for the aftermath (see chapter 5.7 'Outcome').

In order to be able to argue in court later that your wildcat strike should be legally recognized as a strike, you must prove that you negotiated with your bosses before your strike, or at least wanted to negotiate. At every step of the escalation strategy, ask your bosses to negotiate with you or offer you a counter-proposal, and set a deadline. If they let this deadline pass, the next step in the escalation strategy will follow.

The specific steps of the escalation strategy depend on your company. You need to research the company's pressure points: How

does it make a profit? What threatens its ability to make a profit? Which suppliers or financiers is it dependent on? Is it dependent on a certain image?

Public relations can be an escalation step in itself, for example, because it puts the boss under pressure. Damaging a company's image can be very bad for business, depending on the company. But it also generally draws the attention of people who are on your side and who can then support you in your industrial action. For example, you can set up social media channels and contact the local and sympathetic press.

Group dynamics tips:

- Meet regularly to plan and evaluate your industrial action. Keep these meetings as short as possible, even if there is always a lot to discuss.
- Distribute upcoming tasks to as many different people as possible. This will help you to build mutual commitment and become/remain active. Don't let eager people burn out.
- Don't get hung up on making a complete master plan with all eventualities — but be about one step ahead of the other side.
- Even if there are vehement and mutually exclusive opinions on the escalation strategy, in the end you have to make a decision and share responsibility for it. Work profitably with the advantages of your decision and work collectively to balance out the disadvantages.
- Talk openly and pragmatically about the different realities of life in the group: who has what resources, who is exposed to what risks? What strategy and distribution of tasks can you find that does justice to this?

- Consistently discuss with each other the political dimensions of your struggle, this will make it easier for you to reach a consensus and make you more resilient.
- Be very clear with colleagues about how self-organization works and what it means. Avoid misunderstandings that lead to expectations of "service" from your side.
- Check in with each other. The feeling of abandonment exhausts people.
- Focus on successful things and take the time to celebrate successes and experiences that have strengthened you!

4.4 documentation

In order to argue your case in court, you must document that you unsuccessfully negotiated your demands before the strike. You should also document the strike itself well. Organize witnesses and collect documents, for example the paper with your demands that you handed over to your boss. Also keep your shift schedules, sick notes, screenshots of communication with management, etc. It is generally advisable to take certain communicative steps in writing, as this makes them easier to prove later. It also helps to keep a journal of events at work - before, during and after industrial actions. Just don't inadvertently snitch on someone by naming them directly. Be discreet.

4.5 democratic decision-making

The democratic decision-making of the workers on strike is also important for a later court hearing about your wildcat strike. German labour law is fundamentally based on Article 9 (3) of the Basic Law, which guarantees everyone the right to "form associations for the protection and promotion of working and economic condi-

tions". An association is not defined in more detail here; workers can therefore also form associations for this purpose that are not trade unions. This means that, in case of doubt, you must convince the court that you (the striking colleagues) are such an association (for example, a so-called "ad hoc coalition"). This requires, among other things, that a "democratic decision-making process" takes place among you. This means that you organize votes that include all workers who want to take part in the strike.

You should vote on the following points:

- your demands
- that you negotiate
- who the negotiators should be
- that you will strike (if the negotiations fail)

You must also document the vote in detail. At best (from a legal point of view) you should not do this anonymously, i.e. you should write minutes with the names and signatures of those present so that you can prove the democratic decision-making process afterwards in a legally secure manner. Of course, this doesn't have to be your priority. Perhaps your anonymity is more important to you. You can also sign the minutes first and consider later how you really want to deal with them in court. According to case law, there are actually no requirements at all regarding the form of democratic decision-making. In the Gorillas case, however, the Regional Labour court criticized the fact that it was unclear whether people were added to WhatsApp groups with or without their consent. In fact, this was not unclear in the case of the organized workers at Gorillas - the colleagues had made sure that people were only added to the WhatsApp groups with their consent, but the Regional Labour court simply ignored this. It also specifically demanded a vote on the demands, the negotiating committee and the strike: it had to be possible to vote yes, no or abstain, and it had to be clear what was being voted on. It is advisable to follow these details as long as the prevailing opinion still declares the non-unionized strike to be unlawful.

If there are works council members who are on your side, they can organize the documentation of the votes well, and communicate the results to the employer, because works council members have special protection against dismissal.

4.6 negotiations

It is important for the legal process to have offered negotiations to the employer before the strike. According to the wording of Article 6 (4) of the European Social Charter, the aim of strikes is to "ensure the effective exercise of the right to collective bargaining". The employer must have been notified of a negotiator, by you. This can also be an external third party, or more than one person. It is important that these person(s) are presented as "mediators" — especially if they are one or more people from the workforce. It is best to include the relevant person(s) in this role in your minutes as well. If the negotiations fail, you can go on strike.

There is no legal obligation to announce or threaten a strike in advance, so there is no notice period. You can therefore decide for yourselves whether you want to inform the management of the start and end of the strike. It is perfectly sufficient if the employer's side learns of the strike call, for example, by distributing the strike notice in the company or through the media.

Acting as a group Bosses often try to identify and target "ring-leaders" in order to repress the workers and dissuade people from continuing to organize. You can try to resist this by not using names in internal publications where possible, choosing external people as negotiators, or having works council members with protection against dismissal act as spokespersons. It is always a good idea not to let just one person speak in direct confrontation with management, but to spread this responsibility among many people. This is more threatening for the employer on the one hand and less threatening for individual workers on the other. It makes it harder to identify a ring-

leader, which reduces the risk for the workers who are challenging the working conditions and acting for all.

5. Strike

5.1 what do strike days look like?

On strike days, it makes sense and is common practice to meet in front of the workplace and set up a picket there. Make your strike visible with banners, posters, vests, etc. This way you can generate attention for your cause and also persuade your colleagues (who are not yet on strike) to join in. It also stresses out the management. You can just hang out at the picket line as well, exchange ideas and encourage each other, have a good time eating and drinking together.

It can also be fun and empowering to register and hold an additional strike rally or strike demonstration to get your demands across loudly and powerfully. Colleagues can express their displeasure in speeches or spontaneously via an open microphone. And you will feel solidarity from other people. In the exhaustion that a labour dispute often entails, this kind of action does you good.

What the strike days should look like in the end is entirely up to you. However, in professions where life and death are at stake, emergency care should be guaranteed, for example by taking turns within the team or by only part of the workforce going on strike. The other colleagues can express their solidarity for instance by wearing small symbols on their clothing or saying hello.

5.2 Planning and call

Strike action is the most powerful tool in your escalation strategy if all milder means have failed and negotiations with the employer break down. Think about when is a strategically good

time to strike, for example on days when the employer expects a high profit.

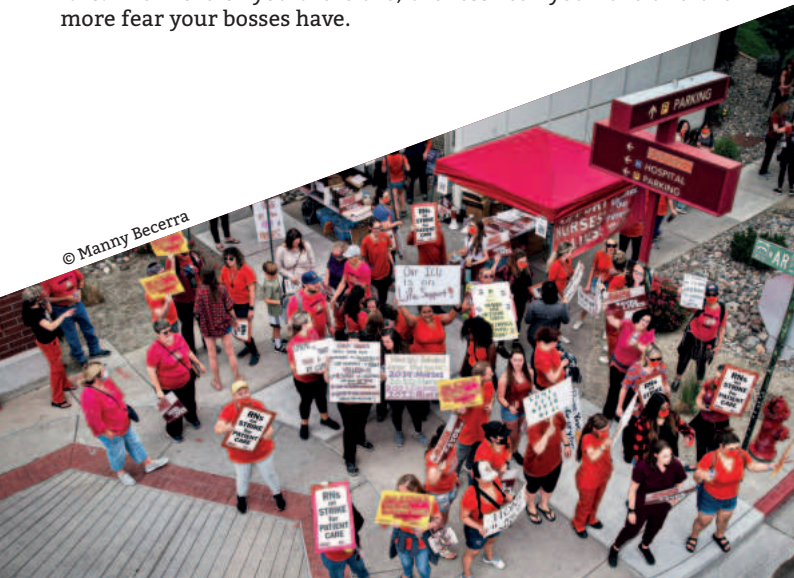
Once you have decided on a day and time, communicate the strike call via your internal communication channels and social media, distribute flyers in the company and put up posters. Try to convince as many colleagues as possible to strike with you, ideally in the weeks leading up to the strike.

Please note: Works council members are not allowed to call a wildcat strike, as they are subject to the obligation to keep the peace (74 para. 2 sentence 1 BetrVG).

5.3 number of workers on strike

In principle, of course, the more of your colleagues who are on strike with you, the better. The bigger it is, the stronger and safer it is. The more of you there are, the less fear you have and the more fear your bosses have.

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In the case law of recent decades, however, it has become established as a criterion that at least a "larger number" of workers must be involved in a strike for the strike to be recognized as such (i.e. as a collective work stoppage). A "larger number" can be defined as such (in accordance with Section 17 (1) of the Dismissal Protection Act):

- for companies with fewer than 20 workers: at least 1/3 of the workers
- for companies with 20 - 60 workers: at least 10, at best half
- for companies with 60 - 500 workers: more than 10, but at least 10 percent
- for companies with more than 500 workers: at least 5 percent

5.4 duration of the strike

You must decide whether the strike should initially only last one day as a warning strike or whether you want to strike for longer to build up a lot of pressure.

The strike can last as long or as short as you want and are able to. There is no minimum or maximum duration that is required.

5.5 Allocation of tasks

Agree in advance which tasks are to be carried out:

- Who will take care of infrastructure such as food, drinks, technology, etc.?
- Who will register the rally or demonstration?
- Who will write and give speeches?
- Who will paint banners?
- Who can provide spontaneous sign or banner making materials?

- Who will take care of outreach to solidarity groups and other groups of workers?
- Who will invite representatives of the press?

To make sure that there is capacity for every task despite the excitement of a strike, and to ensure that your message gets across as smoothly as possible, decide certain roles ahead of time:

- Who will be the press spokesperson for the event and will give interviews?
- Who will approach previously unorganised colleagues, do the organizing work and collect their contact details?

Also discuss whether or not you want to talk to management on the day of the strike. If so, agree on who will talk to them, and certain talking points and exit strategies from the conversation in case your opponents become unpleasant or distract from the topic. It is worth practising this in role plays beforehand.

Distribute strike shifts so there is always someone on the picket line and people can rest in between.

5.6 Ban on picket lines

Unfortunately, employees who want to work cannot be prevented from doing so by law.

The classic "picket lines", in which workers on strike form chains to prevent strikebreakers from working, naturally have massive advantages: In a factory, for example, the economic damage is immensely higher if nobody can produce anything at all.

However, if it is important to you that the strike can be legally enforced — to protect you under labour law or to come closer to legalising wildcat strikes — then it is better to form an opening so that people can get to the entrances.

5.7. outcome

In many cases it is not so easy to find an elegant end to the strike.

If all your demands are met, you stop striking. Celebrate what you have achieved! Continue to meet regularly as a workers group. You need to keep an eye on whether the improvements you have fought for are really being implemented in the long term and put pressure on the boss if they are not.

Talk with and organize more and more colleagues. Also make sure to involve newly hired colleagues. As a workforce, you should be as well and as permanently organized as possible. That way, you'll be prepared for all the other crap your bosses come up with and you'll gain more power in the company.

It can happen that your employer tries to get rid of militant workers by firing them, and thus intimidating the rest of the workforce. For helpful tips on how to deal with losing your job, see chapter 6. In the event of dismissals or warnings, you can take legal action before a labour court. Use your well-documented industrial action to declare war on the entire lacking German right to strike!

If you are completely ignored, you can increase the pressure further, through longer strikes. Find out how the loss of profits are being cushioned and whether you can cause even more damage. Pay a personal visit to the management with many people. Look for allies outside of the company who are annoying your employer — with phone calls, emails, unannounced visits and occupations, bad online reviews, anonymized obstructions to operations, etc.

If, despite all your efforts, the bosses simply wait out the situation without taking any action, you need to consider whether you want to continue the industrial action.

It may be the case that you have not been able to change anything material, but you now have at least built a very high level of organisation, and have been brought together by shared struggle. This is a win in itself, and sweetens your day-to-day work. It is a good prerequisite for everything that the future holds. Definitely keep this up and expand your organizing! Try and organize further, building on new momentum, waiting for the right moment.

If you don't want to continue working for your employer after all the frustration, one option could be to set up your own collective business in the same sector. Of course, this is also possible if you have been fired or made redundant.

More likely than the complete fulfilment of all demands or complete ignorance, is that your bosses will try to silence and appease you with the following pacification strategies:

1. Your demands will be partially met, but important points will remain unresolved.
2. You get vague promises, but the bosses delay implementation and hide behind alleged short-term constraints or delays.
3. Attempts are made to divide you or incite conflict. Only one or two colleagues are dismissed.

Prepare strategically for these possibilities, because they can be very challenging for your workers group. Often the needs and proposals are divided into "fight on" and "wait and see" or "take what we can get".

It's wise to agree on a minimum goal in advance that you don't want to fall short of. Keep working with concrete deadlines and threats if your boss tries to use delaying tactics. In any case, stick together on a personal level, support each other and consciously do things to lift the group spirit.

6. Risks and countermeasures

6.1 dismissals

Workers participating in wildcat strikes run the risk of dismissal. Refusal to work, for example, can be considered grounds for dismissal. It is possible to appeal against almost any dismissal, as there are many legal pitfalls that make a dismissal contestable. For example, dismissal without prior warning can be contested.

Important: An action for protection against dismissal must be filed with the competent labour court within three weeks of receipt of the dismissal (usually by mail). Seek legal advice for this. To get legal support going, it is important that you share contacts to good lawyers and advice centres, if you have any.

If people are dismissed, try to keep the connection alive so that you can react together to the further course of your conflict and collectively deal with the consequences of your industrial action. At best, you should help each other out, for example by setting up a pot of money to financially support colleagues who are having a particularly hard time.

6.2 warnings

In principle, a warning letter is required before a dismissal after the end of the probationary period. An objection can be lodged against warnings, with a counterstatement and the demand that the warning be removed from the personnel file. A warning may seem annoying, but it is not as bad as you might think. So you don't need to worry too much about a warning letter.

Fun Fact: Warning letters lose their legal effect at some point. That's good for us as individuals, of course. For the political endeavour to change the German law though, it is rather impractical, because it may take longer for the individual legal cases to get to the highest court than the warning lasts.

6.3 Psychological pressure and threats

Your working environment can be stressful enough without a strike, and if you rebel against the boss, you are likely to face some sort of consequence. Bosses often react with psychological violence: they devalue our work, insult us as a people, and try to belittle us. They want to make us feel that we don't deserve improvements or that we are too powerless to implement them

Don't be intimidated by this devaluation and hostility. This is class warfare from above and nothing but manipulation, it has nothing to do with you personally. Encourage and support each other when you realise that it affects you. Be appreciative of each other, encourage each other and fuel your anger together, directing it upwards. Be proud of yourselves for standing up against injustice and standing up for each other, and for those who cannot.

6.4 claims for damages

One advantage of wildcat strikes is the lack of clear liability. In the case of union-organised strikes, the union can theoretically be held liable. This is more difficult in the case of wildcat strikes.

Targeted acts of sabotage such as damage to property or the occupation of workplaces are more likely to result in claims for damages than other industrial action, so think carefully about whether you want to take such a risk, and take care. However, in many cases the employer will find it difficult to quantify the damage precisely, which makes it more difficult for them to claim compensation.

Sometimes employment contracts stipulate that a contractual penalty must be paid in the event of an "unlawful" refusal to work. If you have such a clause in your employment contract, you should clarify before a wildcat strike, preferably with legal counsel, how you can collectively cushion such contractual penalties and whether a strike is still worthwhile for you.

6.5 residence and work permit

If you are dismissed, this could potentially affect your residence or work permit. Whether and what this means for you depends on the type of residence permit you have. It is therefore advisable to inform yourself well in advance and possibly seek legal advice in order to be able to properly assess the risks in your specific situation. As a general rule for many non-German citizen residents, you have six months to find new paid work after you have been given notice of termination. The supplementary sheet of your residence permit also states whether or not the new job must be authorised by the immigration authority and the employment agency:

- in the case of "Gainful employment permitted" and "Employment (unrestricted) permitted", a new job can be started after a termination or cancellation without renewed approval from the authorities.
- in the case of "Employment only with the permission of the immigration authority", "Employment permitted as [...] at [...]", a new job must first be applied for and approved by the relevant authorities.
- for some residence permits, such as the Blue Card, approval by the authorities is no longer necessary if you have been employed for two years, or if the residence permit has been in place for three years.

6.6 social benefits

There are social benefits in Germany, i.e. financial support that you can apply for if you have lost your job due to a strike. However, there are a few hurdles: not everyone is legally entitled to them, and even if you are entitled to them, they are sometimes hard to access, and could potentially affect future residency claims. It is best to seek advice and get help (see 'Contacts and Resources').

Here is some information in advance:

You are entitled to ALG1, which is 60 - 67 % of your net salary, if you have been employed for more than 12 months. If the company does not simply let your contract expire, but terminates your contract due to your behaviour, you will be given a 12-week suspension period by the employment agency. However, you will be entitled to a citizen's allowance ("Bürgergeld") during the suspension period if you do not have enough money to live on. It is important to note that receiving citizen's allowance can sometimes affect eligibility for permanent residency.

If you are not entitled to ALG1 at all, as a German citizen you are entitled to citizen's allowance anyway. If you do not have a German passport but are an EU citizen, you will most likely be entitled for at least 6 months, possibly even indefinitely. For other nationalities, your eligibility depends on your residence permit. It varies from residence permit to residence permit whether or not you can receive citizen's allowance.

6.7 what can particularly vulnerable colleagues do?

If the risks of a wildcat strike are particularly threatening to your current life situation, you can have a doctor put you on sick leave for the time of the strike. This allows you to build up material pressure without officially taking part in the strike.

Please note: Workers are not allowed to behave "contrary to recovery" when on sick leave. If you are seen on strike when you should actually be in bed due to your diagnosis, this can lead to a warning or even dismissal. Think of a diagnosis that fits with being outside.



Labour struggle is class struggle

Strikes are a central means of struggle to improve our situation as workers under capitalism, to strengthen our position and to defend ourselves against exploitation. However, because strikes in Germany are far too demanding, this important tool is rarely used. That is why we need to adopt the instrument of wild-cat strikes - especially for moments when the legally regulated methods of recognised trade unions are unable to change our situation satisfactorily. Another important step on the way to a more comprehensive right to strike is the legalisation of political demonstration strikes aimed at changing laws or government action.

Of course, the effectiveness of our means is not primarily dependent on how legal they are or that we are legally protected against unpleasant consequences. Our success is based on how much pressure we can build up on the other side and how much power we can bring to bear to protect ourselves from their attacks. However, many people are less willing to participate in something that exposes them to an increased risk of repression. In addition, it is too often the case that collective strength is ground down in the mills of individual disadvantages and collective struggles fray into isolated unfair dismissal claims and protracted court disputes. German strike law therefore needs to change fundamentally so that we can fight and win collectively more easily.

In the society that we as anarchists have in mind in the long term, we will manage production and reproduction ourselves. Everyone should only contribute as much labour as they can and receive the resources they need to survive and be happy.

We must find ways to abolish capitalism and, in the meantime, wring a better life out of it for us workers!

We are dependent on ourselves and each other for this a better life: Let's organize ourselves at our workplace and in all other places where our lives take place and are determined by others. Let's fight for better working conditions, let's initiate wildcat strikes! We need to try out different methods of struggle, inspire and care for each other and learn from past experiences, difficulties and successes. Let's practise how to resist exploitation and defend ourselves in solidarity against repression!

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**ALWAYS BE
STRIKING**

Contacts and resources

The feminist working group 8 March of the anarcho-syndicalist trade union FAU Berlin has researched and worked on the topic of wildcat strikes. If needed and interested, they can put you in touch with people who have already gone on wildcat strikes and try to support and network you. Get in touch (even if you want to be such a contact yourself) at: faub-ag8m@fau.org

The lawyer Benedikt Hopmann deals with labour and strike law and has been committed to improving German strike law for many years. Among other things, he has represented Gorillas riders in court who were dismissed after a wildcat strike.

www.kanzlei72a.de

The lawfirm Bechert specializes in protection against dismissal and offers free initial consultations. Among other things, they have represented workers at Gorillas for many years, won countless cases against bosses, and have even changed some aspects of the Works Constitution Act. www.arbeitsrecht-berlin.de

BASTA! is an initiative for the unemployed and provides advice on social benefits, and attends appointments at Jobcenter, Agentur für Arbeit and Sozialgericht. www.bastaberlin.de

The KuB provides advice and support on migration issues such as residence and asylum law. www.kub-berlin.org

The BEMA supports migrant workers in precarious work-life-situations in realising their labour and social rights.

www.bema.berlin

"Recht Auf Streik" is a campaign for a comprehensive right to strike and aims to legalize political strikes, strikes by civil servants and wildcat strikes in Germany. www.rechtaufstreik.noblogs.org

The book "Secrets of a Successful Organizer" contains many helpful tips and strategies for organizing in the workplace. It can be ordered from bookshops or from www.labornotes.org/secrets

FAU Dresden has published the brochure "Streiken ist unser gutes Recht!" (English: "Striking is our right!"), which contains further interesting information on strikes, especially on political and feminist strikes.

www.fau.org/materialien/streiken-ist-unser-gutes-recht

Solidarity media

There are numerous left-wing media outlets in Germany that you can contact to have journalists report on the emergency situations at your workplace and your industrial action. Here are just a few examples to get you started. You should consider which media outlets make sense strategically in your case, e.g. sector-specific magazines, local newspapers and radio stations, news agencies, or TV stations.

Union newspaper 'Direkte Aktion'	www.direkteaktion.org
Magazine 'Wildcat'	www.wildcat-www.de
Monthly newspaper 'Analyse & Kritik'	www.akweb.de
Daily newspaper 'Neues Deutschland'	www.nd-aktuell.de
Daily newspaper 'TAZ'	www.taz.de
Daily newspaper 'Junge Welt'	www.jungewelt.de
Blog 'LabourNet'	www.labournet.de
Video collective 'labournet.tv'	www.labournet.tv
Radio collective 'Anarchistisches Radio Berlin'	www.aradio-berlin.org



DEFEND
THE
RIGHT
TO
STRIKE

Where's
The
Funds?

THE GOVERNMENT
REQUIREMENT...
me!

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In 2021, the Gorillas Workers Collective fought against poor working conditions with a so-called "wildcat" strike. Based on this, and our own experiences, we have compiled tips and a step-by-step guide to workplace organizing, collective action and striking.

With this brochure we want to encourage the appropriation of strikes for industrial action — independent of big established trade unions.

The brochure also contains an overview of the legal situation of wildcat strikes in Germany and strategic considerations for changing the German law in favour of us workers.



A brochure of the AG8M of the FAU Berlin.
May 2024

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