

## Industrial Action

### Frequently Asked Questions

#### Understanding Industrial Action

##### **What is a trade dispute?**

A trade dispute is a dispute between workers and their employer which relates wholly or mainly to one or more matters, including the terms and conditions of employment. The current issue regarding the national public sector pay awards will constitute a trade dispute.

##### **What does “action short of Strike Action” mean?**

Other potential action includes refusal to carry out overtime or to carry out certain tasks or a go slow approach but such action would require the support of a ballot.

##### **Is there an ‘expiry date’ for the effectiveness of a ballot?**

Industrial action will only be considered to have the support of a ballot in the period up to six months from the last day of the ballot.

#### Strike Action

##### **I’m in a union – does that mean I have to strike?**

No, there is no requirement for you to strike if you are a Trade Union member, even if you have responded to the ballot saying “yes” you would be prepared to strike. Your Trade Union may encourage you to strike, but it is your choice whether you wish to strike or work as normal.

##### **Can my Trust ask me if I intend to take industrial action?**

Yes. There is no objection to asking staff in advance whether they intend to strike. You are not obliged to answer, however, to ensure the Trust has safe staffing levels to continue to provide essential services, you are encouraged to let your manager know whether or not you intend to strike.

##### **Can non-union employees take part in industrial action?**

Yes. There is no distinction between union members who have been balloted and non-union members in terms of the protection given to those who participate in industrial action. A non-union member of staff will be protected against dismissal if they take part in strike action also.

##### **What happens if members at my Trust vote against the strike? Presumably members of that workplace could not then come out in sympathy with those members who have voted for strike action at another site?**

If a union calls their members at the workplace to strike anyway, they will effectively be inducing their members to take unlawful secondary action (which is action taken in support of a trade dispute that they are not directly involved in - also known as a sympathy strike). This means that the strike action is not ‘protected’.

##### **I am a Trade Union representative does my Trust need to provide time off for union representatives in relation to this matter?**

There is no right to time off for trade union representatives taking part in industrial action. However, where a union representative is not taking part in industrial action but seeks to take time off to take part in campaigning regarding the ballots or attending meetings this can be unpaid as a trade union activity, this includes preparation for industrial action. The amount of time off and occasions which are taken by representatives must be reasonable in all the circumstances.

**Can volunteers/bank staff/ agency be legally used to help keep a service running during industrial action by substantive personnel?**

Yes. There is no longer any legal restriction on the way in which employers approach this situation. The ban on the use of agency staff during strike action to perform the duties normally performed by a worker taking part in a strike or other industrial action was removed.

The Trust will consider the usage of in-house banks and agency and volunteer personnel.

**Pay**

**Can my Trust withhold pay for any day on which the employee takes part in a strike?**

Yes. You are not entitled to be paid for any period during which you are on strike.

**Can I claim for an unlawful deduction from wages for pay deducted for taking strike action?**

No. You do not have the right to bring a claim for unlawful deductions in relation to wages which have been withdrawn for taking part in industrial action.

**What happens if the strike starts or ends mid-way through a shift?**

Strictly speaking, colleagues could go on strike from the time at which the strike officially starts, (i.e. having completed only part of their shift). We hope that staff will act reasonably in completing their shift before going on strike, or letting their manager know in advance if they intend to go on strike during the shift. When the strike ends, staff will be required to attend for work as normal even if that is part-way through a shift, unless alternative arrangements have been agreed in advance with their manager for that shift.

**Absence during Strike Action**

**What do I need to do if I am absent due to sickness during an agreed strike day?**

If you are unfit to attend work on the strike day, or for any part of the strike day, you must follow the normal sickness absence reporting procedures, and ensure that you contact your line manager to advise them of your illness. A return to work meeting will be held with you upon your return to work as per the current attendance at work policy.

**If I was on planned annual leave during the period of any industrial action, will this remain as annual leave and be paid under normal arrangements?**

Yes any pre-booked annual leave will be honoured as such.

**Can I take the strike day(s) as Annual Leave**

If strike action is agreed the Trust will make the decision not to agree any further annual leave for these dates to ensure patient safety can be maintained. Therefore, unless you have already booked annual leave for the strike day, no leave will be granted other than in exceptional circumstances.

**I should be on annual leave on the day of the strike. Can I cancel it so I can come in and strike?**

If you have already booked annual leave it is your choice whether you take the annual leave as planned, or whether you agree with your manager in advance that it can be cancelled. If you take the annual leave as planned, you will be paid in the normal way. If you decide to cancel your leave and go on strike, you will not be paid

**Study Leave/Other Absences**

All routine study leave will be cancelled on the strike day. If you have planned other absences on this day, for example, to attend training or meetings etc. please discuss with your manager in advance whether you should still attend.

## **Media**

### **What should I do if I am asked by the media to comment on the strike?**

If you are approached by the Media, colleagues should refer all enquiries to the communication department at [SWBH.comms@nhs.net](mailto:SWBH.comms@nhs.net) or call 0121 507 5303