

Industrial Action

Frequently Asked Questions

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1. Understanding Industrial Action

1.1. What is industrial action?

Industrial action is when a Trade Union calls its members (our employees) to take action as a form of protest due to a dispute (in this case it relates to pay). This action could take the form of an overtime ban, working to rule, go slows or strike action.

Please note it must be officially organised by the Trade Union to be legitimate.

Quick reference guide to Industrial Action

	Member of TU participating in the action	Non-TU member	Member of a different TU who is not participating in the action
Entitled to strike	Yes	Yes	No
Entitled to pay from the employer	No	No	No
Entitled to strike pay from the TU*	Yes	No	No
Protection from dismissal	Yes	Yes	No

*There is no set amount of strike pay that must be paid to an employee as the amount is set by the TU.

1.2. 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.

1.3. What is strike action?

This is where workers stop working for a period of time due to a dispute. There may also be a picket line during a strike. We are not expecting any picket lines at City/Sandwell or Rowley Regis Hospitals at present.

1.4. What does action short of Strike 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.

1.5. 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 of six months from the last day of the ballot.

2. Strike Action

2.1. 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 you can change your mind and are not required to inform anyone of your decision.

Your Trade Union may encourage you to strike, but it is your choice whether you wish to strike or work as normal.

2.2. I am not in a Trade Union- can I take part in industrial action?

Yes, non-members can take part in industrial action provided that the strike was called for by the Trade Union following a successful balloting of its members. Any non-members who take part will have the same rights and protections as Union members and a non-union member of staff will be protected against dismissal if they take part in strike action also.

As SWBH have not reached the threshold in current ballots for Unison and RCN, any member of staff taking strike action is potentially breaching their employment contract and/or professional registration where this applies. The Trust could view this as a disciplinary offence and one outcome could potentially be dismissal and referral to their professional body (where this applies).

2.3. 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.

2.4. Can my trust ask me if I am part of a Trade Union?

Yes. The Trust can ask but there is no obligation to confirm whether they are part of a union or not.

2.5. 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' (please see the quick reference guide at 1:1 regarding protection).

2.6. 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.

2.7. 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.

2.8. Can I attend a different NHS body to join their strike action?

For non-Trade Union Stewards, joining another organisation/employer's picket line would be deemed a flying picket and is potentially considered illegal.

2.9. Can employees who are members of a different Trade Union to the one that is participating in action that day take part in the industrial action?

An employee who is a member of a different union, who is not participating in the action called for on that day has no protection and will be deemed to be taking unofficial action unless the strike is supported by their own Trade Union.

For example, Union A balloted for strike action on 1st December, but Union B has not. Members of Union B will be deemed to be taking part in unofficial action if they also strike on 1st December.

2.10. Can I take part in some of the industrial action but not all of it?

Yes, an employee can choose to only participate in some of the planned industrial action.

2.11. I am a line manager, and a member of staff is asking my advice regarding whether they should take part in industrial action- can I respond?

The current dispute over pay is a sensitive issue and we will all likely have our own views about whether strike action is called for or not. Equally staff themselves may be acutely aware of the pressures currently being experienced in our services and may feel conflicted about what to do. Ultimately it is a matter for individuals whether they wish to take part or not. The best you can do is sign post them to this FAQ document to help them make up their own mind.

3. Pickets and Picket Lines

3.1. What is picketing?

Picketing is a common feature of industrial disputes. It must be done peacefully (with no threatening behaviour) and can only be for the purpose of exchanging information or peacefully persuading others to abstain from work.

The right to picket is a conditional right for an individual to be present on the public highway outside their own workplace (but not to obstruct it). Employees can only picket at or near their own place of work. Union officials can attend pickets in support of their members.

3.2. What is a picket line?

A picket line is where workers and union reps ('picketers' or 'pickets') stand outside a workplace to tell other people why they are striking. Pickets may inform people about why they are striking, to seek support and **ask** people not to:

- do some of their usual work, and/or,
- go into work.

Pickets must **not** prevent people from going to work or doing their usual work if they want to do so.

3.3. If I am not supportive of the strike action, can I cross a picket line?

If you are not in support of the strike action, you can cross a picket line and should not be subject to verbal abuse.

3.4. Do I answer work emails/calls from home if I choose to go on strike?

No, not on strike days. We suggest that you use an automated reply for the entirety of the planned hours/day(s) if you are taking part in the industrial action and 'striking'.

4. Pay

4.1. 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. The contractual right to be paid is dependent on your availability and willingness to work. In the case of taking strike action, the Trust will withhold/stop pay for each day/hour the

employee does not work. If you have salary sacrifice in place, the full 'notional' salary will be used to calculate the amount to withhold.

In the event that strike action leads to partial performance of the contract (because action commences halfway through a shift or only provides emergency care whilst not fulfilling other duties) the Trust can refuse to accept this partial performance and deduct full day's pay. If the Trust wants to refuse to accept partial performance, it will need to notify employees in advance that partial performance will not be acceptable, and any work undertaken will be treated as voluntary.

4.2. 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.

4.3. 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.

4.4. Can I make up the contractual hours for the period covered by strike action either on that day or during that week?

Employees supporting the strike may, with the agreement of their line manager, choose to make up the contractual hours for the period covered by strike action either on that day or during that week, in which case there will be no deduction of pay.

4.5. Will taking industrial action affect my reckonable or continuous service dates?

Taking industrial action doesn't usually mean that the Trust will say you've broken your period of continuous employment as this begins when you start working for your employer and ends on the day your employer uses to calculate your length of service.

However, if you take industrial action, we will reduce your length of service with us by the number of days you were on strike. This is important when working out your pension and things like statutory redundancy pay

5. Absence during Strike Action

5.1. 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 and a self-certificate will need to be completed.

If a member of staff is believed to have falsely submitted a self-certificate and are reasonably believed to have been taking strike action, this may not be covered by the protected strike action and the Trust may consider acting in line with the Disciplinary Policy.

5.2. 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, unless there is evidence to suggest you are taking part in strike action. The Trust is allowed to ask any member of staff who was absent during a strike day whether they were on strike.

5.3. Can I request annual leave during industrial action?

Yes, and the usual holiday request process will apply.

5.4. Can the Trust refuse annual leave requests during Industrial action?

Yes. The Trust's annual leave policy will continue to apply, and managers can refuse leave requests based on operational needs where appropriate.

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.

5.5. 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

5.6. Will my study leave be cancelled?

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

5.7. Will I be paid if I am on sick leave/family leave?

Employees who are absent on sick or family leave when industrial action takes place retain their right to be paid during this time as long as they do not take part in strike action. The Trust is permitted to ask any member of staff who was absent during the strike day whether they were on strike.

5.8. What about those not scheduled to work on strike days?

Those not scheduled to work on a particular day of action cannot be subject to a deduction of wages as they are not technically in receipt of payment for that day in any event. Please note they are entitled to join in organised activities on the day.

6. Wellbeing

6.1. Will the Trust be offering wellbeing support to those taking industrial action or affected by it?

Yes. The Wellbeing Team and Wellbeing Hubs will be available that day to offer support. The occupational Helpline will be running to support with advice and the team will be available to support with any urgent calls/assessments during core service hours. For more information on Wellbeing please click here: [Occupational Health and Wellbeing Service \(swbh.nhs.uk\)](https://swbh.nhs.uk)

7. Media

7.1. 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 or call 0121 507 5303