Industrial Action Guidance

From: Head of Employee Relations  Date: November 2019

LEGISLATION

Trade Union Act 2016:
• From 1st March 2017, the Trade Union Act 2016 introduced the following thresholds for turnout and support for lawful industrial action:
  o For ballots opened on or after 1st March 2017, as well as requiring a majority of votes cast to be in favour of industrial action, at least 50% of those entitled to vote must have cast ballots, for resulting action to be lawful.

UNIVERSITY GUIDANCE

1. Introduction

1.1 This guidance has been developed to provide managers with an overview of industrial action and the main areas that need to be considered when planning for and managing periods of official industrial action. Any specific concerns or queries should be addressed to AskHR in the first instance.

2. Industrial action

2.1 Industrial action can take two forms – strike or action short of a strike (ASOS). The latter can include:
• Working contracted hours
• Doing work specified in job descriptions
• Refusing to work any standby duty (if voluntary)
• Refusing to do voluntary overtime
• Ceasing certain responsibilities

2.2 There is a very clear and established legal framework surrounding industrial action which has to be followed in order for any industrial action to be legitimate. As and when the University is notified by one or more of our recognised Trade Unions that they intend to take industrial action, the form that such action will take and the relevant dates and times involved, the University will make appropriate arrangements to plan for and manage the operational issues arising from the proposed action. Local risk assessments form part of this planning process and may be required to identify and mitigate the impact of the industrial action on key activities (see section on Health and Safety below). Managers will be required to put in place contingency arrangements to mitigate the effects of industrial action.

2.3 There may be periods where tensions run high during industrial action. General advice is available through AskHR. For serious incidents where advice and action is required immediately (e.g. disturbance of a picket line, potential suspension of employee related to their conduct during industrial action) management should contact the Head of Employee Relations.

3. Communications with staff

3.1 During periods of industrial action, emotions are often heightened and it is therefore important that when local managers are communicating with staff, this should be undertaken sensitively and
respectfully, regardless of whether individuals are members of a Union or intending to participate in any notified industrial action.

3.2 As part of the University's planning for managing periods of industrial action, it will be necessary to seek an indication of levels of participation by staff in a managers' area of responsibility. Staff are not required by law to inform their employer that they intend to participate in industrial action, however, a manager is entitled to make reasonable enquiries in order to prepare for industrial action and maintain business operations. This can be a particularly sensitive issue for individuals so should be approached with this in mind.

3.3 Where industrial action is expected or formally notified, the University will cascade information to line managers as it becomes available in order for the business to mitigate the impact of the action as far as possible.

3.4 Once formal notification has been received, the University will notify all staff of the planned industrial action arrangements. This will include information about the Union(s) involved, the date and times of the notified periods of action and other relevant arrangements.

4. Notifying the University about participation in strike action or other forms of industrial action leading to partial performance of the contract of employment

4.1 The University encourages those staff who intend to support industrial action to make their line manager aware in advance in order to assist with business planning activities. It will be necessary to ask staff working in key operational or safety critical areas directly if they intend to participate. As far as reasonably practicable, this should be done by a face to face informal discussion rather than by email. Staff are not obliged to declare their intention and should not be pressed if they refuse.

Notification process 1 (Before strike action):
1. HR issues a central communication to all staff once confirmation of action received.
2. Staff volunteer to advise their line manager of their intention to participate.
3. Line manager supplies the Associate Director of Faculty Operations (ADoFO) or Director of Professional Service with the names of those staff who intend to take industrial action.
4. ADoFO or Director of Professional Service collates all names from their area and records on a “Notification of Intention” form (see Appendix A).
5. The form is emailed to AskHR

4.2 This information is reviewed locally by the Faculty/Unit/Service to assess the potential risks arising from the strike and identify any steps required to minimise the anticipated impact. A planning tool to support this process is provided in Appendix B.

4.3 In addition, HR review all the information received centrally to support University-wide understanding of the potential impact of the action.

5. Notifying the University during and following participation in industrial action

5.1 Staff are required to confirm whether or not they have participated in industrial action and provide the dates on which they participated in industrial action when directly asked by the line manager or someone in authority.

Notification process 2 (During or after strike action):
1. On the day of any strike action, line managers should identify those staff that were due at their place of work. If absent, without explanation they should record them as being on strike.
2. If a staff member withdraws their labour for any part of the day, this will be regarded as a full day of strike action, even if they have advised they have worked part of the day.
3. Following strike action the line manager must ask their team members whether or not they have participated in industrial action.
4. The member of staff confirms whether or not they have participated in industrial action.
5. Line manager supplies their ADoFO or Director of Professional Service with the names of those staff who participated or are participating in industrial action.
6. Picketing

6.1 Information on picketing is available in the University's Conduct on Picketing Guidance.

6.2 ADoFO and Directors of Service are responsible for advising the Head of Employee Relation on the number of Pickets on strike days.

7. Health and Safety

7.1 Each Faculty/Unit/Service should undertake an appropriately detailed local risk assessment to decide if staff absence due to industrial action will adversely affect operational activity within their area of responsibility for the duration of the planned action. An example risk assessment is shown in Appendix B. Activities may need to be modified, postponed or suspended if the risk becomes elevated to a high level.

7.2 Examples of some key considerations may include the following:
   - Can adequate levels of supervision be maintained?
   - Will 'lone working' be a result?
   - Should consideration be given to first aider and fire warden coverage?
   - Consider the need to review Personal Emergency Evacuations Plans (PEEPs)
   - Will arrangements to share cover between areas be necessary?

7.3 For further information and guidance, contact your Faculty/Professional Service Health and Safety Officers across the University.

8. Access to University premises and facilities

8.1 Staff taking strike action are not working. As a result the University is able to restrict access to certain facilities and premises. Staff taking strike action should not access University buildings whilst on strike or use the University's facilities during this period.

8.2 University premises, facilities, paid time and trade union facility time must not be used for the execution of strike action without the express permission of HR. Breaches of this could result in disciplinary action being initiated.

9. Withholding Pay

9.1 Pay will be withheld where a staff member withdraws their labour in relation to all or part of their role in support of industrial action, particularly when this takes the form of a strike. Further details are available in the University's Policy on Withholding Pay. Where the industrial action is taken in the form of a one day strike, a full day's pay is calculated on the following basis:
   - At Levels 4 and above: 1/365th of the staff member's annual salary – to recognise the contract obligation to work such hours as may be reasonably necessary for the performance of their duties and therefore there are no specific limits around working hours and when duties may be undertaken.
   - At Levels 1-3: 1/260th of the staff member's annual salary – to recognise that the contract sets out normal regular working hours.

9.2 The University does not accept partial performance including partial performance due to a part-day strike and is entitled to withhold a full day's pay in respect of each day on which partial performance occurs. Where a member of staff participates in a part-day strike and chooses to attend work and carry out their normal duties during the remainder of that day it will be considered that they are doing so on a voluntary basis. The University is not obliged to make a payment in respect of any such work undertaken.
9.3 In the case of action short of a strike, leading to partial performance, the University reserves the right to withhold 100% of pay. However, the University may decide to withhold a proportion of the employee's pay where, for example, the duty withheld is visible and time bound, or where the effect is minimal or of a low intensity rather than material.

9.4 Staff who are taking action short of a strike and are working to contract, as notified to the University, will be paid their contractual salary as normal as this would not constitute partial performance.

9.5 Staff who do not cross picket lines for reasons connected to a strike will be considered as having taken strike action and their pay will be withheld.

9.6 On the day of any strike action, the University will assume that staff were working their normal work pattern unless otherwise notified. Where a member of staff was absent, and it is likely that this arose because of strike action but has not been declared, line managers should establish a reason for the absence before completing the notification process (step 3 above).

10. Individuals who refuse to cross picket lines

10.1 Staff who choose not to cross picket lines as a result of industrial action will be deemed to have participated in the action and their pay will be withheld accordingly.

10.2 If a member of staff claims they felt intimidated into not attending work at the picket line, line managers are advised to explore this further with the individual immediately, seeking support and guidance from AskHR as soon as possible. Clear evidence is required for such a claim to be considered and normal salary paid.

10.3 AskHR will inform the HR Director of any claims before final advice is provided.

11. Pensions

11.1 In cases of a strike (or action short of a strike) where a whole's day's pay is withheld, this may lead to a loss of pensionable service for each day of the strike. This means that the University is not obliged to pay pension contributions where pay is withheld for participating in a strike of one or more days' duration. For each instance, the University will exercise its discretion whether to apply one of the following options (and notify employees in advance of the action):

- The employee can choose to pay both the University and employee contributions for each day of action, but they must notify this to the employer before the action takes place. This will mean that the day(s) of industrial action will count towards pensionable service.
- Alternatively, the employee can elect not to make up the University and employee contributions for each day of action – in which case the day(s) of industrial action will not count towards pensionable service – but they can choose to pay a charge for maintaining their death in service benefits (this only applies to members of USS and not PASNAS). Again, they must notify the University of this choice before the industrial action commences.
- The University may continue to make its employer contribution and the employee will continue to make his/her contribution. This will mean that the period of the strike will continue to count as pensionable service.

12. Annual Leave

12.1 Line managers have the discretion to accept or reject requests for annual leave. Where industrial action may reduce the number of staff available to undertake work, line managers may wish to maximise attendance by limiting the amount of annual leave they agree to for the period of industrial action.

12.2 A fair and consistent approach to decision making should be taken. For single days of annual leave requested for the day of notified strike action, the University recommends that requests are rejected, however line managers are advised to exercise appropriate discretion to ensure that the specific circumstances of the staff member making the request are taken into account alongside the needs of the Faculty/Service before making a final decision.
12.3 Where the date of notified industrial action occurs during a longer period of leave and a manager has concerns about service continuity on the day of action:
   - For leave being requested: an informal conversation with the staff member may help to establish whether there is any flexibility in the request which may be helpful to understand the options available. Reasons for any inflexibility should be taken into consideration alongside the potential risk to Faculty/Service delivery before deciding whether or not to agree the leave request.
   - For leave already approved prior to the dates of industrial action being announced: permission for leave should not be withdrawn. However line managers may consider sensitively asking the staff member if there may be any flexibility with their leave arrangements where there is a potential risk to Faculty/Service delivery.

12.4 An employee does not have the right to their conditions of service whilst on strike and therefore does not accrue annual leave during periods of strike action. The university will consider whether an adjustment to annual leave entitlement will be made.

13. Sickness Absence

13.1 The University will assume that any sickness absence reported during periods of industrial action is genuine unless there is specific evidence to the contrary, e.g. the staff member is seen on the picket line. The reporting and recording of sickness absence should proceed as normal during the period of industrial action.

13.2 Where there are concerns about sickness absence, line managers should first contact AskHR to discuss the evidence and decide on how to proceed.

14. Application of other HR Policies

14.1 Where it is possible to predict that difficulties with normal care or travel arrangements will arise during periods of industrial action, staff are encouraged to make all reasonable efforts to make alternative arrangements which will enable them to work as normal.

14.2 Where this is not possible, staff are encouraged to raise any concerns as early as possible so that options can be discussed and explored. Any requests received from staff should be considered by line managers within the context of the University policies for compassionate and domestic leave or, disruption to services in unusual circumstances, seeking advice from AskHR as appropriate.

15. Industrial action mitigation planning

15.1 Line managers may raise with HR the possibility of mitigating the effects of industrial action by using casual or temporary staff supplied by an employment agency. However, it is unlawful for an employment agency to supply staff to perform the duties of any staff member who is taking part in industrial action, or of any non-striking worker who has been asked to conduct the work of another striking member of staff. By law, any employment agency (which, for these purposes, we deem to include UniWorkforce) is prohibited from supplying temporary staff for these purposes. If they do so, that agency will be committing a criminal offence and the University could also be found to be aiding and abetting that offence.

15.2 Avoiding the use of agency workers, the University may directly employ temporary employees on fixed-term contracts to cover the work of employees on strike. It is permitted to use an employment agency/UniWorkforce to source those staff to be directly engaged by the University.

15.3 Existing employees or existing casual workers can be reassigned to do the work of striking employees, provided that the University does not then engage agency workers to carry out the usual work of those existing staff/workers.

15.4 Reassigned staff cannot be required to undertake duties outside their job description (and caution should be exercised by line managers in seeking staff's voluntary agreement to working outside their JD). The University has to be careful not to act unreasonably, for instance, by overloading these staff or setting unmanageable deadlines. The University's duties of care and of trust and confidence will continue to apply.
15.5 Managers should consult HR prior to making any decisions about whether to engage staff to mitigate the impact of strike action.

VERSION CONTROL

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| Author: | Jeremy Gautrey – Head of Employee Relations |
APPENDIX A

NOTIFICATION OF INTENTION TO STRIKE PRIOR TO STRIKE ACTION

Name of Faculty/Service: <name>
Date of strike action: <date>

INDIVIDUALS WHO HAVE INDICATED THEY INTEND TO PARTICIPATE IN STRIKE ACTION

Please list below individuals from your Faculty/Service who have indicated they intend to participate in planned strike action. This information should be collated prior to the date of strike action to help establish an overall picture of disruption to services.

<table>
<thead>
<tr>
<th>Staff number</th>
<th>Surname</th>
<th>Forename(s)</th>
<th>Area of work</th>
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Form completed by: <name>
Date submitted: <date>

Return to:
Email this completed form to AskHR@soton.ac.uk.
APPENDIX B

EXAMPLE RISK ASSESSMENT FORM FOR INDUSTRIAL ACTION

Use this example format for Faculty/Unit/Service planning to assess the potential risks arising from industrial action and the steps required to minimise or mitigate the anticipated impact.

<table>
<thead>
<tr>
<th>Description of risk</th>
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<th>Responsibility for action</th>
<th>Mitigation</th>
<th>Other information</th>
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