



# Section 1 - Industrial action and picketing

## What is industrial action?

Industrial action can take many forms, the extent and impact of which will often depend on the causes and issues at stake in any particular dispute.

Industrial action may occur when trade union members are in a dispute with their employer that can't be solved through negotiations.

It involves action by staff that results in some disruption to, or impact upon, work under their contract of employment and is generally coordinated by trade unions. It can include strike action or action short of a strike.

- **Strike action** is 'any concerted stoppage of work'. This is typically thought of as a walk out or full withdrawal of labour on a set day or days. A strike takes place in response to a trade dispute.
- **Action short of strike (ASOS)** – is a term used to cover industrial action which does not constitute a stoppage, but where work is affected in some way, for example:
  - overtime ban - staff refuse to engage in overtime work. Whether this constitutes a breach of contract depends on the terms of the contract
  - work to rule – staff do no more than the

minimum required by their contract of employment, for example, refusing to work longer than contracted hours. It can also see staff following all safety or other regulations precisely and meticulously which may cause a slow down or decrease in productivity. A withdrawal of goodwill or acting in a way which breaches the implied term of faithful service in a work to rule scenario may constitute a breach of contract.

- slowdown - staff perform their duties but seek to reduce productivity or efficiency in their performance of these duties.

## Who can participate in industrial action?

Any staff members can choose to participate in the planned industrial action, but they will not all be protected against dismissal. Protection is only available to those who are taking part in official strike action. Members of a union which has balloted and called out its members will be taking part in official protected action. Additionally, non-union members will be protected against dismissal for taking part in industrial action where there are also members of a union which has lawfully called out its members amongst those taking industrial action.

Staff who are members of unions which have not successfully balloted and called out their members, will be taking part in unofficial action if they go out on strike and will therefore not be protected against dismissal. Given the risk of dismissal, it is anticipated that the numbers of

non-balloting union members going out on sympathy strikes is likely to be very low.

## What is picketing?

Picketing is a common feature of trade disputes. Staff and their union representatives stand at or near their workplace on a day of industrial action for the purpose of exchanging information or peacefully persuading others to abstain from some or all of their usual work. This can include colleagues and those who work at other organisations, for example, delivery drivers. Under statute, peaceful picketing under the law, is where a person in contemplation of a trade union dispute attends:

1. at or near their own place of work; or
2. if they are an official of a union, at or near the place of work of a member of the union who they are accompanying and represents, for the purpose only of peacefully obtaining or communicating information or peacefully persuading someone to work or abstain from work.

Employers have the right to refuse permission to picket on or inside any part of trust property.

Pickets cannot force people to stop and listen to them or prevent people from going to work if they want to do so. Obstruction, threats and abuse and any actual or threatened violence will often amount to criminal offences, in addition to being unlawful in the context of picketing.

Any person who joins a picket line and does not meet all of the conditions set out above, for example, attending a picket line at another organisation which is not their place of work, will not be committing an offence by merely attending. However, they will not have immunity from certain legal claims (such as inducing those crossing picket lines to breach their contracts) and may be liable for any civil wrong or criminal offence committed during the course of picketing.

Where individuals have more than one workplace, they can picket outside any premises of their employer from which the individual works or from which their work is administered.

The statutory Code of Practice on picketing provides detailed practical guidance. The code suggests that in general, no more than six pickets should stand at the entrance or exit of a workplace. Although the code is not legally binding, its provisions are admissible as evidence in legal proceedings and courts may refer to it to decide whether or not the picket was being conducted lawfully.

Unions themselves will also have guidance for their members on taking industrial action that could be a useful source of information. The codes of conduct for some professional groups also provide information that may be helpful.

## Picketing – practical issues

Employers have the right to refuse permission to picket on or inside any part of trust property. Discussions should take place with staff-side in advance of the day of action in order to agree permissions, for example, where the picket can take place, whether pickets can enter trust premises for refreshments/to use the toilets and how the pickets will conduct themselves.

Protocols for reporting and escalating concerns about unlawful conduct of the picket line, for example, the pickets are intimidating staff or service users, should be put in place in advance of any days of action.

Anyone can join a picket line and employers cannot prevent individuals from doing so. What action managers/ trusts can take (if any) in response will depend upon the individual's conduct whilst picketing and whether they retain their immunity from the legal action set out above or where members of the public/supporters join the picket line and whether they are committing a civil or criminal offence.

Staff will be picketing unlawfully if they join a picket line that is not at or near their own workplace. This does not in itself constitute an offence, but staff will lose their immunity from the legal claims referred to above.

Where staff are not taking strike action and they choose to join a picket line during their normal working hours, they will be in breach of contract and taking unauthorised leave which could be the basis of disciplinary action. Staff may, however, choose to attend picket lines at their place of

work either before work, after work or during a break.

Mobile workers can picket at any of their workplaces or the place where their work is administered, for example, the trust headquarters. Provided they are on the premises of their employer, they will not lose their immunity from the legal claims referred to above.

Staff do not have to be taking part in lawful industrial action, for instance, striking to join a picket line. For example they could do so in their own time if they are not due to work on a strike day.