



Section 2 - Partnership working, derogations and health and wellbeing

Partnership working and communicating with staff

Partnership is essentially about employers, unions and employees working together and creating long-term positive relationships which focus on the future of business and improving working life for employees.

NHS Employers' guidance on staff engagement provides the practical information and tools required to help increase staff engagement in your organisation. Early engagement with local staff side partners and honest open discussions are a key element in successfully resolving local issues before they escalate. Unfortunately, there are occasions where partnership working breaks down and industrial action can follow.

In times of national trade disputes, local partnership arrangements are not the ones that are responsible for the dispute, nor can they resolve a national dispute. However, good partnership working and maintaining dialogue between managers and staff is needed to agree local service provision on strike days and to preserve working relationships that will be needed after the dispute has ended.

Any local response to industrial action must take account of the need to maintain patient services in the long, as well as short term, and avoid escalation of the dispute and/or cause lasting damage to local industrial relations.

Partnership working and communicating with overseas staff

Industrial action can be different around the world, therefore overseas staff may not know what to expect from this in the UK. It is good practice to ensure clear communication is provided to international staff on what this means for them, including the wider implications and disruptions industrial action has on services and patient care.

Some helpful points for managers to consider includes:

- sharing guidance on how specific work/duties may be affected by strike action
- implications on pay and who staff need to speak to regarding concerns, for instance payroll or finance departments
- why staff are being asked to change roles. Managers should ensure conversations are taking place with affected staff and that there is an open dialogue regarding their confidence levels in being able to undertake duties/roles.

- ensuring that requests for changes to staff deployment are managed equitably
- ensuring staff are aware of the health and wellbeing and occupational health resources available to them
- being mindful that typically, international staff may not be in a union therefore they may be unaware of their rights. In such cases managers should ensure staff are aware that they have rights and should be signposted to information provided by the organisation, trade unions and relevant international networks for details
- encouraging staff to raise issues with their manager, trade union representative, through networks or freedom to speak up guardian
- the need to ensure there is clear communications with BME staff and highlighting where staff can go for support if they experience discriminatory treatment during this period. Please see NHS England's anti-racism resource which includes guidance for nurses, midwives organisations and leaders.

Derogations

Derogations are a method of maintaining safe staffing levels on strike days by agreement and are achieved when the union and the employer agree (which could be on a national and/or local basis) that a member or service shall be exempt from taking part in industrial action. They are an informal agreement between unions and employers, and are not legally enforceable. They

are typically sought in areas of greatest risk to patients if services cease or are reduced during a period of industrial action. They are agreed with unions and may lead to a service being derogated in full or partially, for example, reduced level of service during the period of industrial action.

In planning for a period of industrial action, organisations should discuss derogations with trade unions as soon as possible. This may be in the context of national guidance on derogations from the trade union.

Each union has processes in place for NHS organisations to request local derogations. These should be followed by the organisation requesting derogations. The staffing levels on strike days in derogated areas will be agreed at employer level. Where agreement can't be reached on derogations and this creates a patient safety risk this should be escalated through emergency preparedness resilience and response (EPRR) regional teams. Unions may have escalation/appeals processes that should be followed too in these circumstances.

Union members in derogated areas can still take strike action and will be protected against dismissal if the industrial action is lawful. Non-union members who take part in legal, official industrial action at their employing organisation have the same rights as union members not to be dismissed as a result of taking action. In advance of industrial action organisations can:

- ask staff rostered to be on duty if they will be attending work. Staff do not need to confirm their attendance at work

- discuss with local trade union representatives how to cover any absences on the day of strike to ensure staffing levels are at the level agreed in derogation discussions for patient safety reasons. Absences may be due to strike action or for unplanned absence (e.g. sick leave, special leave)
- communicate to staff – ideally in partnership with local union representatives – including how staff may be contacted on the day.

If on the day of a strike staffing levels in derogated areas fall below the level agreed, employers should work with local union representatives to maintain staffing levels to protect patient safety. This may include asking some staff who are striking to return to work. It is for staff to decide if they agree to the request to return to work.

Other mitigations may include change of staff rosters, engaging temporary staff or internal redeployment of staff. Where the risk can't be mitigated, staff who refuse to work in derogated services can be advised they may be committing a criminal offence if their strike action has the potential to cause patient harm, endanger human life or cause serious bodily injury. They should seek advice from their union in these instances.

Please note: The action referred to above would be action under section 240 of Trade Union and Labour Relations (Consolidation) Act 1992. Only the Attorney General can take action under this Act and it is understood to date no case has been brought using this legislation. To secure a conviction under this act would require a criminal level of proof.

Additionally, to further support a consistent approach to maintaining patient safety during industrial action, NHS England has set out a common approach for local discussions and provided clarity to patients and staff around service provision on days of planned industrial action through early notification and communication. They have also set the following principles that should underpin derogation discussions:

- Safety of delivery of NHS services - ensuring minimum staff levels are available to deliver emergency, immediate life, limb or organ-saving intervention.
- Safety of staff should be protected - for those working during industrial action.
- Safety of the public is maintained - ensuring appropriate staff levels are available to deliver care to the public in case of a major incident at national or local level.
- Professional regulatory advice is provided and followed.
- Life preserving services will continue - with the necessary number of professionals.
- Derogations are to be agreed locally to reflect local population and service needs.

Please refer to NHS England's guidance for further detail.

Health and wellbeing

Looking after the health and wellbeing of our NHS staff has always been important and continues to be as we enter a period of industrial action. NHS leaders and managers should continue having regular and compassionate wellbeing conversations to understand how staff are feeling and how their organisation can support them. Please refer to NHS Employers [resources to support your staff](#) with their health and wellbeing.