

Pay and contract FAQs during strike action of resident doctors.

Updated 29th July 2025

Q.1 How will a day's pay be calculated?

The 2016 Terms and Conditions of Service for Doctors and Dentists in Training (2016 TCS) deal with payment of annual salaries in terms of calendar days rather than working days. It refers to the apportionment of annual salaries for full time employees for each calendar month as one-twelfth of the annual salary and for each odd day as the monthly sum divided by the number of days in the particular month. ESR calculates a day's pay on this calendar day basis and in accordance with the contract.

During the 2022-23 pay dispute, most organisations approached pay deductions for industrial action on an hourly basis, even where they had the ability to deduct a whole day's pay under the contract of employment. Consequently, ESR has been reconfigured to facilitate pay deductions on an hourly basis when staff have not taken strike action for an entire day. This approach is effectively a good will gesture by organisations that allows them to be more generous than the contractual terms regarding apportionment of salary – it encourages striking staff to attend work on a day of action (as they are paid for hours worked) and assists organisations to maintain safe service levels.

However, organisations making pay deductions by the hour, for a day of action via ESR, should ensure that this more generous approach does not inadvertently lead to a pay deduction that exceeds the employee's contractual entitlement to a calendar day's pay, that is, where staff work condensed hours and shifts which are longer than the standard eight hours. If this occurs, the risk would be that the organisation faces breach of contract claims. It should be noted that the standard eight hours per day averaged out over calendar days equates to approximately 5.699 hours per day (2080 (WTE annual hours = 40hours x 52) / 365).

Organisations should be aware that under section 8 of the Employment Rights Act 1996, they are required to provide employees with an itemised pay statement at or before any time at which any payment of salary is made. Section 8(2) states that particulars should be contained of any fixed or variable deductions from the gross amount and the purposes for which the deductions are made. As such, deductions made from an employee's wages for a day of action or partial performance should be clearly set out on the payslip and we understand that ESR provides a function whereby a statement can be included on a payslip that a deduction has been made for industrial action.

Q.2 Can we deduct enhancements as well as a calendar day's pay for industrial action.

Schedule 2 of the 2016 TCS deals with payments for on-call and hours that attract a payment enhancement.

For on-call payments, paragraph 14 of Schedule 2 states that doctors shall be paid for their average hours of work and the hours paid will be calculated prospectively across the rota cycle. For the purposes of pay, these average estimates are converted into equal weekly amounts which will then be turned into an annual figure and the doctor is paid 1/12th of the annual figure for each complete month. To the extent that on-call hours worked are in excess of the average, doctors are paid per hour worked or given time off in lieu.

Paragraphs 16 to 19 deal with hours worked that attract a pay enhancement. Such hours are treated in the same way as on-call time in that they are converted into equal weekly amounts which is then turned into an annual figure and the doctor is paid 1/12th of the annual figure for each complete month.

As we understand it, on-call and out of hours payments are therefore already accounted for in the annual salary of resident doctors and a deduction of a calendar day where ESR also includes on-call and out of hours payments to calculate a calendar day will account for these so that no separate deduction for the enhancement will need to be made.

However, where payments are made by the hour (for example on-call payments in excess of the average) which are not averaged out and included in annual salary, organisations could choose to deduct these payments specifically in addition to a calendar day on the basis that they are paid by reference to actual hours worked during specific days and times and during industrial action the individual has not worked those days/times and so should not receive the payment. Where specific payments are made under a local contract for resident on-call time which a doctor refuses to work, an organisation should consider how these payments are usually made.

Where they are rolled up into a prospective payment across the year, an organisation would need to work out what element of the salary relates to that activity and make a deduction accordingly. Where the payment is made separately in addition to annual salary and paid on an hourly basis, it could be deducted for the hours the individual took industrial action. We recommend that further advice is sought on this subject as the approach will be dependent on the specific facts in each case.

It will be vital that organisations consider any local terms and conditions regarding the payment of enhancements and apportionment which may vary the national terms and conditions.

Q.3 Do we approach apportionment in the same way for less than full time (LTFT) staff?

Yes. The 2016 TCS at Schedule 2 sets out the apportionment provisions at paragraphs 81-83. Paragraph 81 refers to full time employees and sets out the calendar day approach. Section 82 states that for less than full time employees, salary should be apportioned as per paragraph 81 except in the months in which employment commences or terminates when they should be paid for the hours worked. Therefore, unless an organisation has varied paragraph 82 at a local level so that calendar days are pro-rated for apportionment purposes for LTFT doctors, we consider that the full calendar day approach (rather than a pro rated calendar day approach) should be followed.

Q.4 Is it right to pay doctors who will be striking who will be on annual leave or zero day?

During a zero day where a doctor is not rostered to work, an individual will not be withdrawing labour and therefore no pay should be deducted. Where someone has booked annual leave, they should receive pay for annual leave even if this coincides with a day of industrial action unless an employer has evidence that the individual is associating with strike action, which could justify a deduction.

For further information on the treatment of annual leave and sick leave during strike action please see Capsticks FAQs.

Q.5 Will doctors on locally employed contracts be able to participate in industrial action?

Yes. We understand that the BMA has balloted and is calling out all their resident doctor members who are employed by an NHS employer on a variety of contracts, including those employed on the 2016 TCS (including GP trainees) local terms and conditions ('Trust grade') and locums. It will therefore be lawful for the BMA to call out these members and for them to strike and be protected, regardless of the contracts under which they are employed. We understand that agency locum doctors have not been balloted and are not being called out. It should be noted that just because an employee has not been balloted does not mean they cannot take industrial action. Employees who are not members of any union, and so will not have been balloted, can take official action where they go out with resident doctors.

Q.6 For doctors wishing to take part in strike action who don't come in during 9-5 as per their rostered shift, are they able to cover a locum shift in the evening / night shift?

The legislation does not prohibit a doctor who has withdrawn labour during his/her rostered shift from undertaking bank shifts as a locum at other times where he/she isn't rostered to work. Organisations may not want to offer bank work to striking doctors as a point of principle but use of doctors in this way is likely to be determined by an organisation's requirement to provide safe services.

Using the definitions contained within the Working Time Regulations 1998, time spent on strike can be considered a rest period. Time on strike does not count as "working time" (unless there is a collective agreement stating otherwise) as the individual is not working, not carrying out their duties and not at the employer's disposal during that period (all requirements for "working time"). A rest period is a period which is not working time, other than a rest break (the uninterrupted period of not less than 20 minutes if the worker's working time is more than six hours) or annual leave. Accordingly, if individuals are rostered on days and strike during those periods, it is not working time (and is therefore a rest period) so the individual could then work the night shift.

Q.7 Can we insist that a doctor attends their rostered shift which falls outside the period of strike action i.e. where strike action finishes at 6:59am, could we require doctors to attend one hour of their rostered night shift from 7am until 8am?

During contingency planning, organisations can certainly communicate that they expect doctors to attend any part of their shift which falls outside the specific times which are referred to by the BMA but it is important to note that the union only has to provide notice to employers of the days of the action, not the specific times. The BMA's advice to their members (on their website) is that if they are already at work when the strike action starts *"You should finish your shift. As per the [GMC's Good Medical Practice](#), you are responsible for ensuring an effective handover. This is essential as part of a patient's continuity of care."* However, the advice goes on to say that anyone whose shift starts within the strike period are being advised not to attend work (*"we are asking all resident doctors to not begin any shift that is due to start [within the strike period]"* and *"You should not return mid-shift to any shift that started within the strike period even if the employer offers to pay you for time worked. You also run the risk of not getting paid for any part shifts."*). We recommend that further clarity is requested at a local level from the BMA on this issue.

Q.8 Will unpaid leave as a result of industrial action affect those working under a visa?

The [guidance for sponsors](#) makes clear that they are under a duty to report to UKVI where a sponsored worker is absent from work for more than 10 consecutive working days without permission. This report must be made within 10 working days of the tenth day of absence and we consider it applies to industrial action. However, at this point, it seems unlikely that industrial action will be called for 10 consecutive working days or that if it were to be, a sponsored worker's rostered hours would coincide with a period of industrial action for 10 consecutive days.

Sponsors must report to UKVI a reduction in salary from the level stated on the Certificate of Sponsorship within 10 working days of the relevant event occurring. There does not appear to be an exception to these reporting duties where the deduction is for taking part in industrial action and so we recommend that deductions for industrial action are reported by sponsors.

Organisations must normally stop sponsoring a worker who is absent from work without pay for more than four weeks in total in any calendar year (1 January to 31 December). This applies whether the worker is absent from work for a single period of more than four weeks, or if they have a number of absences which cumulatively total more than four weeks. However, there are specific exceptions to this rule and absence for industrial action is one of those exceptions (along with sick leave and maternity leave). In addition, taking industrial action will not have an impact on any application for indefinite leave to remain that an individual may make.

Q.9 How will pay be deducted if a resident doctor rotates in August?

The planned strike dates for July 2025 (25th-30th) will in most cases fall after payroll cutoff dates and/or pay days. This will mean that deductions would need to be taken from August's pay.

For some doctors due to rotate to a new employer on the 6th August, this may mean there would be insufficient working days in August for appropriate deductions to be made.

Where remaining deductions would come from August's pay, doctors who have rotated may be paid less than the deduction amount and therefore these payments will need to be reclaimed as an overpayment. Employers should look to engage with finance and/or payroll colleagues at the earliest opportunity to ensure a clear process and messaging is established.

Employers should write to employees to request repayment of the money owed due to industrial action deductions and could, ultimately, take legal action to recover the monies where they are not repaid voluntarily.

Q.10 Can resident doctors work on rest days immediately following industrial action?

If a doctor strikes over the weekend and is recorded as not attending work, they may not require the rest safeguards set out in schedule 3 and it may be possible for them to take on additional activity without breaching the rest safeguards in schedule 3. This is because time spent on strike is not "working time" for the purposes of the Working Time Regulations 1998 and the Schedule 3 rest provisions take into whether shifts have been rostered or worked (and the rostered shifts will not have been worked when a doctor has taken industrial action). Some doctors may wish to take on extra working hours on their non-working days following their strike days in order to make up for deducted pay. This would be additional work outside of contracted hours and would have to be agreed by the employer.

If the doctor and employer mutually agree to swap the hours of work from a weekend to midweek this is not recorded as strike action and would follow your standard process for swapping shifts.

Q.11 This round of industrial action will fall during incoming FY1s shadowing weeks. Can shadowing FY1s participate in industrial action?

Incoming FY1 doctors (due to officially start FY1 on 6th August) are not included in the upcoming industrial action.

Individuals due to start FY1 should plan to attend pre-FY1 induction and shadowing as advised by their employing trust (LEP) and Foundation School.

Foundation schools and trusts may need to make local adjustments. Individuals involved with delivering induction and shadowing events should not be asked to cover clinical service unless there are no other options and there is a risk to patient safety.

It is vital that any changes to any induction and shadowing programs are communicated to all involved, especially the incoming F1 doctors. Employers are encouraged to discuss with their local Foundation School in the first instance.

Q.12 Can a doctor choose to strike for part of a shift and work the remainder?

Where employees refuse to carry out part, but not all of their contractual work this is 'partial performance.'

During planning for cover during periods of industrial action, employers should determine in advance what stance they wish to take in regards to partial performance and whether to accept this or not. Employers are not obliged to accept partial performance but where they do so should deduct pay according to the hours which have not been worked.

Q.13 If doctors for whom we are the visa sponsor undertake industrial action, do we need to notify UK Visas & Immigration (UKVI)?

Potentially – if an individual is on a visa and participates in industrial action and, as a result their earnings fall below the amount specified in their Certificate of Sponsorship, the employer is obliged to notify UKVI of this reduction.

The guidance for sponsors of skilled workers makes clear that they are under a duty to report to UKVI where a sponsored worker is absent from work for more than 10 consecutive working days without permission. This report must be made within 10 working days of the 10th day of absence and we consider it applies to industrial action, although it should be noted that the reporting requirement is in respect of 10 consecutive working days.

Further information on reporting duties for sponsors can be found [here](#).