



# Industrial Action – Information for Managers

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This guidance has been developed to help managers plan for, and manage, the impact of the industrial action that has been called by our recognised trade union, UNISON.

You should read this in conjunction with the University's [Industrial Action Policy](#). The dates of any planned industrial action, which is in connection with the 2022-23 national pay award, will be communicated regularly by Staff Communications via email.



## Definitions

- ☑ **Strike Action** – is any concerted stoppage of work. A strike of less than one day, for example a two-hour strike, is still a strike and not action short of a strike.
- ☑ **Action Short of a Strike (ASOS)** – other industrial action that is not a strike. The legislation does not define what amounts to ASOS other than it includes an overtime ban and a call-out ban. Other examples include working to contract, withdrawal of goodwill, not covering for absent colleagues until contractually required to do or refusing to undertake any voluntary duties.
- ☑ **Partial Performance** – both part-day strikes and ASOS that breach the employment contract will, in contractual terms, amount to partial performance of the contract. Where a member of staff tenders only partial performance, an employer is entitled to reject this and withhold pay in full or partially.
- ☑ **Picketing** – During strike actions picket lines of striking staff may be present around the University campuses. Picketing is a lawful activity where staff who support the strike stand outside to inform other staff members why they are striking. Picketing should be undertaken peacefully and it should not prevent those who are not striking to go to work or continue doing their usual work. There is not a legal limit on the number of people who may picket at any one place. The government's Code of Practice on Picketing, which is not in itself legally enforceable but which can be taken into account in legal proceedings, suggests no more than six people on any picket line.

## Staff groups taking action


- ☑ UNISON represent staff employed by the University on support contracts.
- ☑ Members of UNISON and staff who are not members of either union or another trade union may choose to participate in the official strike action.

## Staff communications

An email will be issued to all staff potentially covered by the industrial action advising that participation in industrial action is a breach of contract and giving notice that pay will consequently be withheld and on what basis.

## Crossing picket lines

Line managers should ensure that staff are aware that they are expected to attend work as normal if they are not taking part in the strike action and may have to cross a picket line which has been set up at entrances and exits to University campuses.



Whilst the University supports freedom of expression within the law, all staff are expected to demonstrate respect and dignity in their interactions with others during industrial action in accordance with our [Dignity at Work Policy](#).

If you, or any of your staff have any concerns with pickets, you should contact the HR team.

## Planning ahead of the industrial action

### ☺ **Establishing the intentions of staff to take part in industrial action**

Managers should ask their team members at an early stage if they intend to take part in the industrial action. Staff are under no obligation to disclose their intentions and may or may not, choose to do so.

It is important that managers take a respectful approach when asking staff about their intentions acknowledging their right to take part in the action without disclosing their intentions in advance.

They should make no assumptions about who is, and who is not a trade union member, so should ask everyone in their team(s) to make a voluntary disclosure. They should ensure that any disclosures are handled with discretion and not chase staff to respond.

Trade union membership is classed as sensitive personal data so any correspondence from staff disclosing their intentions in advance of action should be deleted once the member of staff has declared they took part in the action.

### ☺ **Areas of activity and service most affected and steps to mitigate any disruption**

It is important that managers identify any critical areas of activity and services which may be affected by industrial action, assess the risk of these activities and services being disrupted and ensure that all reasonable steps are taken to mitigate the disruption.

This may include considering what essential work could be reasonably reallocated to other appropriate staff and what work needs to be undertaken by additional staff. Whilst reallocating work to staff not taking part in the action does not present any contractual issues as such, staff who have decided not to take part in industrial action should not be asked unreasonably to take on the duties of colleagues who choose to take industrial action, or to undertake duties that they are not competent to perform. Consideration should be given to the appropriateness of the work in relation to the duties, position and skills/qualifications, as well as how necessary the cover is.

In putting in place these arrangements, the focus should be on prioritising work that ensures the health and safety of students, staff and others and the impact on student learning and teaching.



### ☑ **Minimising potential impact on students arising from industrial action**

Considerations to minimise the potential impact on students include:

- ☑ Strategies to communicate with students during the dispute to relay and rebut information and hear/respond to their concerns.
- ☑ Alternative means of supporting students' learning if formal teaching is affected by the action, for example use of the virtual learning environment (VLE) or distribution of materials from previous lectures. Lecture recordings should not be used as replacement lectures on strike days.
- ☑ Practicality of rescheduling teaching after the notified period(s) of action end(s); i.e. prioritising final year students, or particular modules or practical courses where the VLE is not sufficient.

### ☑ **Annual leave during strike days**

We wish to ensure that there is adequate cover during periods of industrial action so that we can maintain services as much as possible, provide adequate support for students and reduce any possible impacts on learning and teaching.

Annual leave requests should not be granted at times that coincide with key industrial action dates, unless it has already been agreed, or is requested for exceptional reasons. Exceptional reasons should be considered on a case by case basis taking into account the request and anticipated impact of the strike action, particularly if there is a reduction in staff within the area.

If a member of staff has been identified as taking part in industrial action, but has already booked annual leave which coincides with the industrial action, they will be entitled to be paid at full pay for the period of authorised leave.

### ☑ **Requests to work from home during the strike**

Staff may only work from home during a day of strike if they have sought permission from their manager in advance or are currently scheduled to work from home. Permission should only be given once the manager has assessed the anticipated impact of the strike action in the area and where working from home would have been normal business practice for that member of staff were there no strike action on that particular day.

Staff who choose to work from home without prior permission will be treated as absent without permission and deemed to be taking part in the strike action.



## Reporting and recording Strike Action

### Impact for staff of taking part in industrial action

This industrial action is lawful so whilst staff members who take part in the strike action are in breach of their contract, they are protected from dismissal. Staff who choose to take part in the industrial action and who do not attend for work as expected on a strike day will be recorded as being on strike for those particular day(s) and will be subject to a deduction of pay as a result of doing so.

### Reporting absences

Managers are responsible for ensuring a process is in place to identify members of staff who are absent on each strike day. This may involve physically checking attendance on the days in question. If it is unclear whether a member of staff was on strike or working away from the University, they should be asked to confirm if they were on strike and they are obliged to respond. If a member of staff refuses to respond, it will be assumed that they participated in the industrial action.

Managers with responsibilities for the delivery of teaching should keep further records of teaching activities which were not delivered as a result of the industrial action so as any missing activities can be rescheduled.

### Recording absences on strike days / Action Short of Strike (ASOS)

Staff who participate in strike action should record their absence from work in the normal way on HR Connect, however they should use "Strike Action" as the reason for absence.

Managers should ensure that staff who participate in the strike action either record their absence before the strike day or on their first day back at work following the strike action. Managers will receive a notification from HR Connect when an absence due to strike action has been recorded by one of their team members. They do not need to approve this absence.

HR will cross check this information with departmental records and if any discrepancies arise these will be explored further to ensure that pay is withheld appropriately and in line with policy.

### Sick leave during strike action

If a member of staff reports a sickness absence on a day of strike action, the manager should follow the usual process and hold a return to work meeting with the member of staff when they return to work and ensure that the absence is recorded as sickness absence on HR Connect.

## Further information

- ☺ HR team - [humanresources@napier.ac.uk](mailto:humanresources@napier.ac.uk) or x3344.
- ☺ Government information about industrial action and strikes can be found [here](#)