

## **Guidance Note – Industrial Action (Generic Guidance)**

### **Background**

The University has established frameworks for consultation and negotiation with the recognised trade unions and is highly committed to maintaining an effective employee relations culture. This includes working with trade union colleagues to achieve reasonable solutions to matters that may arise from time to time. However, there are occasions where, despite the collective efforts of the University and the recognised trade unions, that this does not prove successful. Whilst relatively infrequent, such matters/issues may result in industrial action, following due legal process in the form of a ballot for industrial action. Industrial action may be formal strike action (for part of day, a full day or more than a day over a period of time), action short of strike (e.g. 'working to contract') or a boycott of some responsibilities (e.g. partial performance).

Where industrial action does occur, the University will seek to ensure that normal operations and services are maintained as far as possible. Most importantly, the University will take all reasonable steps to fulfil its responsibilities to students in ensuring that any disruption is minimised, and that students are as far as possible not disadvantaged in any way by the action.

The University respects the right of employees to take part in legal industrial action and this general guidance has been developed to provide information which will allow staff and managers to understand the University's policy and approach to dealing with industrial action. It may be amended or added to in the future and information and decisions taken on specific instances of industrial action will be circulated to staff and managers at the time and communications will be co-ordinated by the Executive Director of People and Organisational Development.

If you have any specific queries regarding industrial action, further advice is available from your College/US People and Organisational Development team.

### **Leading Up To Industrial Action**

- Trade unions are legally required to conduct a ballot before industrial action takes place. They are required to give the University an advance copy of the ballot paper to be used to ensure that the University has advance notice of any potential industrial action.
- Once the ballot result is declared, the trade unions potentially involved in any such action must give at least 14 days notice of the action which members will be called to take.
- Failure to follow these requirements will result in industrial action being unlawful.
- Notification of ballots and their outcomes are normally communicated directly to The Principal or the Executive Director of People and Organisational Development and the University's response will be co-ordinated centrally.

### **Assessing The Potential Impact of Industrial Action**

- Line managers/Heads of School/Service are required to assess the likely impact of industrial action in order to make appropriate arrangements, and put contingency plans in place to protect normal operations and minimise any potential disruption to students, staff or visitors to the University.
- Normally, communication will be sent to all staff asking them to confirm their intention to participate or not in industrial action. It is entirely appropriate for managers to kindly ask/request staff about their intentions and they should ensure they do so courteously.

Staff are obliged to answer truthfully if they are asked to confirm if they are taking part or have taken part in industrial action.

- It is important that staff are not in any way victimised for taking a decision to participate in lawful industrial action.
- Managers will be asked to promptly feed back information on the likely impact of industrial action through their HoC/HoS/senior managers to inform University decision-making processes with regards to operational arrangements. Detailed instructions on information required will be circulated in advance of each instance of industrial action.

### **Strike Action**

- Participation in any form of strike action is a breach of contract and it is therefore University policy to withhold a full day's pay for each day in which an employee takes part in strike action, as employees participating in such action are regarded as not performing or undertaking the work for which they are paid.

### **Part-Day Strike Action**

- The University considers that strike action of less than a day or shift amounts to **partial performance of the contract** of employment. The University does not accept partial performance.
- Unless employees perform their contract in full on a day of strike action, the University's policy is to withhold a full day's pay.
- There may be occasions when the University will decide to adopt a different position in the interest of effective employee relations and may choose to vary the amount of pay withheld.
- For the avoidance of doubt, clear guidance on this will be given in advance of any legal strike action, failing which the University's policy as outlined above will apply.

### **Action Short of Strike Action (ASOS)**

- ASOS includes all forms of industrial action which do not amount to a strike such as working to contract, an overtime ban or boycott of an element of work (e.g. a marking boycott).
- Unless members of staff perform their contract in full they will be considered to be in breach of their contract of employment and this will be regarded by the University as **partial performance of contract**. The University does not accept partial performance as University policy requires all employees to perform and undertake ALL aspects of the work for which they are paid. Pay will be withheld from employees participating in any form of partial performance.
- The University's policy is to withhold 100% of pay for any period in which there has been partial performance.
- There may be occasions when the University will decide to adopt a different position and may choose to vary the amount of pay withheld. For the avoidance of any doubt, clear guidance on this will be given in advance of any legal industrial action, failing which the University's policy as outlined above will apply.

### **Marking/Assessment Boycott**

- The University considers that a boycott of any element of an employee's normal duties amounts to partial performance of the contract of employment by the employee, and University policy does not accept partial performance.
- Staff will be asked to notify their Head of School/Head of Service if they are taking part in the action.

- If individuals confirm they are taking part in the boycott, scripts will not be issued to them and pay will be withheld as detailed below.
- Assessment submission deadlines will be closely monitored and where course assessment/exam scripts have been received by a member of staff and are not returned, marked, it will be assumed that the member of staff is taking part in industrial action unless another valid reason is given.
- Where the reason given for failure to fulfil responsibilities with regards to completing course assessment/exam script marking is sickness absence, a sickness certificate will be required.
- Unless employees perform their contractual responsibilities in full, the University's policy is to withhold 100%\* of pay, continuously from the date that an employee does not perform the assessment duties required of them. This will remain the case until assessment/marking outcomes are submitted by the marker concerned, or the end of the legal industrial action.
- Where individuals confirm to the University they are taking part in an assessment/marking boycott, 100%\* of pay will be withheld from the day following the date the first set of marks were due to be returned by the marker until assessment/marking outcomes are submitted by the marker concerned, or the end of the legal industrial action.
- Where the individual does not declare, when asked that they are taking part in the boycott and undertakes to mark and return material but does not do so, 100%\* of pay will be withheld from the day following the date the first set of marks were due to be returned by the marker until assessment/marking outcomes are submitted by the marker concerned, or the end of the legal industrial action.
- Where individuals refuse to take part in other assessment-related activities, reasonably required of them, 100%\* of pay will be withheld from the date on which the first activity is refused until the individual informs the University that they are no longer taking part in the boycott and resumes their normal responsibilities, or the end of the legal industrial action.
- There will be no reimbursement of withheld pay to staff after industrial action ceases, including where outstanding work is duly completed and/or after returning to normal working.
- Examination scripts and other assessment material are the property of the University and the University may require the return of this material at any time.

*\*There may be occasions when the University will decide to adopt a different position and may choose to vary the amount of pay withheld. For the avoidance of any doubt, clear guidance on this will be given in advance of any legal industrial action, failing which the University's policy as outlined above will apply.*

### **Withholding Pay**

- Employees who take part in strike action will not be paid during the period of their participation in strike action. Pay will be withheld on the basis of 1/365th of annual salary for each day of action for full-time staff or on a proportionate basis for part-time staff.
- This will apply in cases, such as a part-day strike or boycott of elements of the duties for which any member of staff is employed as a result of legal industrial action. In the case of a part-day strike, it is University policy to withhold a full day's pay on any day or shift when strike action has occurred.
- In the case of **partial performance** of duties over a continuous period, full pay will normally be withheld for the duration of the industrial action as outlined above.
- As outlined in the Industrial Action policy, the University reserves the right to amend the above approach to deductions for both strike action or any action short of a strike

in individual instances of industrial action and will communicate its position to the relevant staff on each occasion.

### **Picketing and Crossing Picket Lines**

- Picketing of workplaces is protected by law and, any such past activity at the University has been undertaken peacefully and courteously. A dialogue is maintained between the services, People and Organisational Development and the trade unions during industrial action with a commitment to dealing promptly with inappropriate behaviour by either pickets or staff attending work. Any such instances should be reported to your College/US People and Organisational Development Team immediately.
- Staff should not be prevented from entering their normal place of work, but if they choose not to cross a picket line, they will be considered to have taken part in industrial action and appropriate pay stoppages will be made.

### **Non-Participants**

In order to keep disruption for students and staff to a minimum, all staff who are not taking part in strike action are expected to attend work at their normal base unless they have prior approval for their absence.

### **Re-Allocation Of Work:**

- Work may be re-allocated to those staff who are not involved in industrial action. Such requests should be reasonable and within the capabilities and experience of the employee concerned and adequate training and health and safety issues should be addressed. Heads of School/Service must give due consideration to workload distribution of those continuing to work normally with a view to minimising excessive demands upon willing colleagues.

### **Time Off During Industrial Action:**

- Leave approved through the HR Self-Service Portal prior to the date of strike action should be honoured. Where this is not the case, only in exceptional circumstances should leave be approved where it coincides with a period of industrial action.

### **Sickness Absence:**

- Sickness absence which coincides with periods of industrial action should be managed as normal in line with the Managing Attendance Policy.

### **Working At Home:**

- Requests for home-working on strike days will not be granted unless home is the normal place of work.

### **Health and Safety**

- A risk assessment, will require to be conducted to ensure that issues such as first-aid; fire evacuation procedures; lone working; etc. are properly managed if there are likely

to be fewer staff present than normal. This should be carried out at a local level by the responsible manager.

### **Communication**

- Written communication for staff and managers will be co-ordinated centrally and approval/guidance should be sought from College/US People and Organisational Development team before writing to staff in relation to industrial action, except to request or pass on information relating to operational arrangements.
- Any University-wide communication must have the approval of the Principal, Executive Director of People and Organisational Development or their nominated deputies.
- All media or other external enquiries regarding industrial action should be referred to the University's Communications Team.

### **Record Keeping**

Managers must ensure that a careful record is kept of staff taking part in all forms of industrial action, for the following reasons:

- The University must ensure it does everything possible to mitigate the effect of industrial action and requires prompt, full and accurate information on the numbers of staff participating and the potential impact upon students and services and in what way these have been specifically affected.
- There must be a fair and consistent approach to withholding pay across all areas of the University and full and accurate information is required to achieve this and to assess the level of support for the dispute.

The deadline for submitting initial information is likely to be early on each day or period concerned. You will be informed of local arrangements for reporting numbers of staff participating.

Local College/US People & OD Teams will support this process and will communicate any specific local arrangements relevant to each period of action.

FAQs on Industrial Action are also available at Industrial Action FAQs.