



## Public sector pensions day of action - 30 November 2011

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### What is industrial action?

There is no statutory definition. However, it is generally considered to be concerted action, by 'workers', which is taken in order to put pressure on their employer in relation to, for example, a dispute concerning terms and conditions of employment.

Industrial action includes a strike (where 'workers' refuse to work) and action short of a strike. The latter includes (though this is not an exhaustive list):

- refusal to perform administrative or other duties
- an overtime ban
- work to contract
- unauthorised sickness – or other – absence
- withdrawal of goodwill
- a 'go slow'
- a boycott of management meetings.

### Who is a 'worker'?

Employed doctors (primarily hospital doctors and employed GPs) will fall within this definition. In addition, for the purposes of trade union law, GP partners, with the exception of APMS partners, are deemed to be 'workers'.

### Isn't the dispute in this situation really with the Government, not the employers?

In general, under trade union law, a dispute has to be between 'workers and their employer' to enable industrial action to be taken lawfully (for which there would first need to be a ballot). Even though, in this situation, the changes are being pursued by the government, it could also be seen to be a dispute between 'workers and their employer' as pension benefits form part of the employment relationship.

However, it is also possible, in certain circumstances, for lawful industrial action to be taken where a dispute arises directly with the Government. The nature of the dispute is not currently directly relevant to BMA members as we are not yet balloting on industrial action.

## **Can I participate in industrial action which is being called by another trade union?**

To be lawful, a trade union must ballot its members on whether they are prepared to take industrial action and a majority of those voting must vote in favour of it. The BMA is not, at this stage, balloting its members on taking industrial action. It would not, therefore, be lawful for the BMA to advise its members to participate in any form of industrial action.

An individual who is **not** a member of another trade union and who takes part, of his/her own volition, in lawful industrial action organised by another trade union, has certain protection from unfair dismissal.

An individual who **is** a member of another trade union may, of course, vote in a ballot and participate in lawful industrial action organised by that trade union.

## **As an individual, what type of things can I do to show support for my colleagues?**

The BMA is recommending a range of campaigning and lobbying activities to show your support (see above). We will be distributing campaign materials and tools directly to you nearer the time. We would also encourage you to get in touch with, as appropriate, your Local Negotiating Committee, Local Medical Committee or BMA division or regional council to join forces with colleagues on the campaign.

On the day of action you must attend work as normal.

You must also take great care to ensure that, whatever you do, you do not breach your contract of employment and/or, collectively, that you and your colleagues do not take concerted action which 'puts pressure on your employer'.

The dispute regarding public sector pensions is, in reality, with the Government and anything you decide to do (such as wearing a badge to show support for the day of action) should be clearly aimed at the Government, not individual employers.

By way of example, in relation to wearing items showing your support, you must first check that there is no restriction on dress codes in your contract of employment and/or in your employers' HR policies. In addition, the content of the message must be such that it cannot be interpreted as bringing your employer into disrepute. Subject to the above, it is unlikely that an employer would take action against you for simply wearing a particular item.

## **Can I refuse a request to cover work not being done by a colleague taking lawful industrial action?**

This will depend on the nature of the request, the terms of your contract of employment and whether the request to cover is a reasonable one. As a general rule, the more senior you are, the more flexible you will be expected to be. A request relating to patient safety will almost certainly be reasonable. If you unreasonably refuse to cover work, you could be in breach of contract and if so, you will run the risk of disciplinary action and, possibly, dismissal.

If, however, you are asked to do something which you reasonably believe is beyond your competency and/or is likely to compromise health and safety (including patient safety), then, as a general rule, you would be entitled to refuse the request. If you are in any doubt please email our dedicated day of action advice service at [30nov@bma.org.uk](mailto:30nov@bma.org.uk) (Please provide your membership number and a contact telephone number).

## **Can I attend a meeting in my lunch hour or rest period?**

As a general rule, you can do what you like within your lunch hour or rest period, providing always that it does not breach your contract of employment. You should, therefore, check to ensure that there are no contractual restrictions - for example, the need to be on call to cover for emergencies. In particular, consultants should ensure that, if attending meeting during a rest break, adequate cover is provided.

If you are in any doubt as to the action you propose to take, then you should email our dedicated day of action advice service at [30nov@bma.org.uk](mailto:30nov@bma.org.uk) (Please provide your membership number and a contact telephone number).

## **Can I take part in a picket without being a member of the union which authorised the industrial action?**

In principle, yes. However, great care must be taken as you run the risk of committing an unlawful act, being in breach of contract (for example, if picketing is carried out during your normal working hours) or, by your actions, bringing your employer into disrepute.

## **Are there any laws relating to picketing that I should be aware of?**

Yes. As a general rule, the number of pickets should not exceed six at an entrance to, or an exit from, a workplace. If this is exceeded, the picket is unlawful and you may risk disciplinary action (for bringing your employer into disrepute) and/or be liable for claims for damages for harassment, nuisance or trespass.

There are also restrictions in terms of how pickets must conduct themselves on a picket line.

The Code of Practice on Picketing issued by the Department for Business Innovation and Skills recommends:

- “anyone seeking to demonstrate support for those in dispute should keep well away from any picket line so as not to create a risk of breach of the peace”

In the absence of a BMA ballot in favour of industrial action, the BMA strongly advises members against joining a picket line.

## **Can I take refreshments to those on a picket line to show support?**

Providing that you prepare and deliver the refreshments in your own time and do not participate in the picket, then, in principle, this should be okay.

## **Can I cross a picket line?**

Yes. If you refuse to do so and do not attend work for this, or any other unauthorised reason, you will be in breach of your contract of employment. You may wish to inform those on the picket that your union has decided not to ballot its members at this point and that you are required to attend work.

## **I will be on a day off on 30th November. Can I support my colleagues on a picket line since I will not be at work anyway?**

In principle yes however, the advice in Q8 and Q9 above will continue to apply namely, great care must be taken as you run the risk of committing an unlawful act by bringing your employer into disrepute.

## **Can my employer cancel leave I have already booked for 30th November?**

In principle yes, particularly so if patient safety could potentially be at risk. Employers are however expected to act reasonably by providing as much notice as possible and only cancelling if really necessary.

## **If I can't get to work on 30th November what can I do? What if I have a personal emergency?**

This does depend upon the circumstances for the absence. Most employers have agreed procedures related to emergency leave and parental leave. As a general rule if you fail to attend work the employer can view this as unauthorised absence and therefore you may be liable for disciplinary action. Our advice is that in these instances you should contact your employer in the normal way and at the earliest opportunity to advise why you may not be able to attend work.

## **What if I think health and safety is being compromised at my workplace?**

Health and safety is, primarily, your employer's responsibility. Any concerns must be reported to your line manager immediately.

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