

Industrial action by other unions: the position of RCN members



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Introduction

Occasions may arise where RCN members are employed in a workplace where colleagues in other unions are involved in industrial action. This paper outlines the position of those RCN members in respect of the particular action, and advises what approaches they should take relating to their own contract of employment, while ensuring that they do not undermine the lawful industrial action taken by trade union colleagues.

It covers the issues arising out of lawful industrial action and does not cover action that might be described as wild cat industrial action; ie action that does not have the authorisation of the union concerned.

It is highly unlikely that an employer will not be fully prepared for the industrial action undertaken by its staff. The employer will have been informed of the union ballot and who has been balloted, and they will have been notified of the result of the ballot and the action that the union will be taking. They will also have been informed who will be taking action. They may not know the name of every employee involved but the information will be sufficient for them to understand the nature of the action, the locations involved and the category of worker likely to be involved in it. Industrial action must be taken by the union within four weeks of the last day of voting, although there are provisions for this period to be extended in some circumstances.

The employer will have had sufficient time to plan for the action and to take appropriate steps for staff cover, staff safety, patient safety and risk management.

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The employment position

A worker engaging in industrial action is likely to be in breach of their contract of employment. However, the law provides certain immunities to the worker when they undertake lawful industrial action ie action that is supported by a lawful ballot. This immunity does not apply to those who are not part of that action. If a worker who is not involved in the dispute fails to attend work or attends work but does not fulfil their contract of employment, then they could be subject to disciplinary action by their employer.

While at work, the employee should not be expected to work beyond their contract of employment, should not undertake activity for which they are not competent, and should not put themselves at risk of danger or harm. You cannot be told by your manager, or any other person, that you are competent in a role or task that you have not undertaken before. Whether or not you are competent is for you to decide, having considered your training, development, competencies, skill set and your duties and obligations under the NMC Code.

Information on the NMC position is available on their website.

The RCN view

- Members, including agency staff and students, should attend work as normal – failure to do so will be seen as a breach of contract.
- Members should not undertake any work that is outside of their professional competency.
- Members should not cover the work of colleagues who are undertaking industrial action if that work falls outside their contract.
- Members should not undertake any voluntary overtime work to cover the work of those taking industrial action.
- Members should not undertake any bank or agency work to cover the work of those involved in the industrial action.
- Members should monitor the work environment in respect of health and safety and should, where necessary, immediately report to their manager or other relevant person any concerns they might have on the safety of staff, patients or property and the environment.

- Members should ensure that they take any breaks they are entitled to during their shift/day.
- Members should report any difficulties or concerns in delivering care to their manager immediately. They should also notify their RCN representative as soon as possible.
- Members may wish, in their own time, to support the action of colleagues by attending demonstrations or signing petitions etc.
- Members should not ask fellow nurses, HCAs and APs to undertake work that they are not clinically competent to undertake.
- Members should work within the NMC Code at all times

Joint membership

It is sometimes the case that an RCN member is also member of another trade union. Sometimes this is a formal arrangement between the RCN and the other union as is the case where we have a joint recognition agreement with the Royal College of Midwives (RCM), the University and College Union (UCU) and the Educational Institute of Scotland (EIS). In cases where there is no joint member agreement, members may still be a member of the RCN and another union, for example an RCN member working in the prison service might also be a member of the Prison Officers' Association or in local government they might also be a member of Unison, GMB or UNITE. In some cases in the NHS an RCN member may also be a member of UNISON or another NHS-recognised trade union.

If the other union undertakes industrial action and the member has voted in the ballot on the basis of their membership of that union, then they will make a decision as to whether or not they undertake the action recommended by that union. The RCN member needs to understand that they are undertaking the action on the basis of their membership of the other union. The action is unrelated to their RCN membership.

If they are subject to any detriment for taking such lawful action this should be dealt with through the union taking the action and not the RCN.

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Employers seeking exemptions of union members from industrial action

When a union authorises industrial action, employers may ask the union(s) to exempt one or more, or all, of its members from the action in order to ensure delivery of some essential task or service. Essentially they will be asking the union to allow the member(s) to work as normal. It is for the union that is calling out its members on industrial action to agree with an employer whether or not they will exempt members from the action and if so under what arrangements.

If an employer has concerns over the delivery of a service, it is their responsibility to discuss it with the union authorising the action. It is not appropriate for the employer to ask the RCN to engage in discussions about how that work is covered. Neither should unions undertaking industrial action divert the issue away from themselves onto the RCN. RCN representatives should not be involved in this discussion and they should refer the matter back to the unions taking the action.

Picket lines

The law allows those undertaking industrial action the opportunity of asking those continuing to work to support their action by such activity as refusing to attend work, not enter a particular building, not deliver goods or not provide services to the employer. The law allows a maximum of six people on a picket line. The picket line is therefore made up of people who are actively engaged in industrial action supported by a lawful ballot. No person who is not undertaking industrial action should be on a picket line.

Health and Safety Act: serious and imminent danger

Employers have a duty to protect the mental and physical health of their employees. In particular, the employer is obliged to provide and maintain the workplace so that it is safe and without risk to health. If an employer has notice that industrial action will be taking place they should be ensuring that this duty is fulfilled. These duties are not overridden by industrial action.

Employers must also set up procedures to be followed in the event of serious and imminent danger to persons at work (H&S Act Regulation 8). These procedures should enable employees to stop work and immediately proceed to a place of safety in the event of being exposed to serious and imminent and unavoidable danger. The legislation states that the individual can take appropriate steps, including stopping work, in the absence of guidance or instruction or in the light of their knowledge. If a worker was dismissed because they stopped working due to a fear of being in serious or imminent danger, the dismissal would automatically be deemed an unfair dismissal (ERA 1996, Section 100).

Where members fear that they are in a position that endangers their health and safety, they should notify their manager immediately and ensure they are in a place of safety. They do not need their employer's permission to do this but they must be clear in their own mind that such a danger is present.

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Work attendance

RCN members will be at work as normal on any day of action or strike day in the NHS. If members do not attend work they will be breaching their contract of employment and could face disciplinary action.

Taking part on a picket line

Picket lines give those who are undertaking industrial action the opportunity to try and influence others to support their action. A person who is not involved in the action should not be on a picket line.

I have been asked to provide cover for a striking colleague

The RCN would not wish its members to undermine the lawful industrial action of another trade union or professional association. You should attend work as normal and undertake your normal contractual role. If you are asked to cover other work this should not be in addition to your normal work.

I have been asked to work overtime or do extra work on the hospital/unit bank

You cannot be made or required to undertake work that is outside of your contract of employment. Your employer will have had ample time to make arrangements to cope with any industrial action in your workplace. We would ask that you support the lawful industrial action of colleagues by not undertaking extra contractual work and/or voluntary overtime.

My employer wants to discuss cover with me as an RCN rep

The employer should discuss any concerns they may have over the action with the union authorising and undertaking the action. It is for the employer to ensure that safety is maintained and risk minimised. The employer should not come to the RCN asking us to resolve the issue for them.

My employer wants to speak to me in my capacity as staff side chair/secretary

If this happens it will be purely on the basis of the office you hold on the staff side and not because of your membership of the RCN. There is no reason not to speak with the employer. However, you will want to ensure that if the employer is seeking exemptions from the action that they speak first to the union calling their members out.

Taking part in a demonstration/march

It is acceptable to support the issue and your fellow workers on a march or demonstration. You should ensure that this is done in your own time and that you do nothing that contravenes your contract of employment or NMC requirements.

My employer wants me to extend my prescribing rights to cover the period of industrial action

Any extension of your prescribing role can only be with your agreement and has to comply in full with any regulatory guidance set out by the NMC. Any such change should not be 'short term' but should be part of your normal role in the future.

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