

## University of Strathclyde

### Statement of Position on Industrial Action and the Withholding of Pay

#### Contents

1. AIMS AND PURPOSE .....	2
2. GENERAL PRINCIPLES .....	2
3. STRIKE ACTION .....	2
4. PARTIAL PERFORMANCE.....	3
5. COMMUNICATION WITH STAFF REGARDING THE WITHHOLDING OF PAY .....	3
6. ANNUAL LEAVE AND SPECIAL LEAVE DURING INDUSTRIAL ACTION .....	4
7. UNIVERSITY CLOSURE DURING INDUSTRIAL ACTION.....	4

## **1. AIMS AND PURPOSE**

- 1.1 The University's statement on industrial action and withholding pay has been developed to ensure that University staff who may choose to participate in official industrial action are clear in advance as to how the University will respond to their participation. The statement is intended to ensure that the University complies with all relevant employment legislation.
- 1.2 The University's aim during industrial action will be to remain open for business and to minimise disruption to students.
- 1.3 This statement outlines the University's current position in the event of industrial action being taken and covers both strike action and action short of a strike as it relates to partial performance.

## **2. GENERAL PRINCIPLES**

- 2.1 Members of staff taking any form of industrial action are in breach of their contract of employment as they are not undertaking the work that they are paid to do.
- 2.2 Official industrial action is protected, subject to certain rules, for unfair dismissal purposes. However, there is no obligation for the University to pay employees who take Strike Action or who take Action Short of a Strike by refusing to undertake some duties.

## **3. STRIKE ACTION**

- 3.1 A day's pay will be withheld for each day of strike action that an employee participates in.
- 3.2 A day's pay will be calculated on the basis of 1/365<sup>th</sup> of an employee's annual salary. In the case of participating part time staff, pay will be withheld on a pro-rata basis as appropriate. This pay deduction is a legal and appropriate response to strike activity.
- 3.3 On occasion, a Trade Union may ask its members to participate in strike action which lasts for less than a day e.g. two hour strikes. In contractual terms, strike action of less than a day or shift amounts to partial performance of the contract and, therefore, the University is not legally obliged to pay any salary for the rest of the working day outwith the short strike period. In the event of staff participating in strike action of less than a day, the University may choose to withhold a full day's pay or may choose to pay for the hours which have been worked. If the University chooses to withhold less than 100% of a day's pay, where hours are worked outwith the period of the strike action, then this will be discretionary, entirely voluntary and paid without prejudice to the University's legal rights. The level withheld will also be subject to ongoing review.

#### **4. PARTIAL PERFORMANCE**

- 4.1 Where affected employees are called on to take action short of a strike which involves the withdrawal from some specific duties which are held to be contractual, this will amount to partial performance of the employment contract. The University does not accept partial performance. Employees who refuse to undertake some of their contractual duties are in breach of their contracts of employment, whether or not they are willing to perform some other duties. In these circumstances the University will withhold the pay of participating employees as outlined in 4.3, below.
- 4.2 An employee is not entitled to choose which of their contractual duties they will undertake. If a staff member chooses to take part in action short of a strike that amounts to partial performance, i.e. where they are willing to undertake some of their contractual duties but are refusing to undertake others, this partial performance will not be acceptable to the University. Any duties which the employee does choose to undertake in this scenario will be voluntary and, by choosing to do some duties, the individual should be aware that the University will neither be deemed to have accepted the partial performance nor be obliged to pay for it.
- 4.3 In the case of action short of a strike resulting in partial performance, the University shall normally withhold pay wholly (i.e. 100%) from the commencement of the individual's refusal to undertake some contractual duties. In certain circumstances, less than 100% may be withheld (on a discretionary basis and without prejudice to the University's right to withhold 100%) but withholding 100% will be the University's normal practice. The University reserves the right to reassess and modify its position on withholding pay as appropriate at any point during the industrial action. Staff will be notified of the amount of pay to be withheld for partial performance, and any change to that which the University may decide to make, as soon as reasonably practicable.

#### **5. COMMUNICATION WITH STAFF REGARDING THE WITHHOLDING OF PAY**

- 5.1 HR will email all categories of staff who are potentially covered by the industrial action, in advance of the industrial action commencing, advising that participation in industrial action is a breach of contract, and confirming that pay will consequently be withheld. As appropriate, alternative communication arrangements will be put in place for operational staff who do not have access to email.
- 5.2 Employees will be asked to fully complete and return a pro forma to HR confirming whether they are participating in strike action or action short of a strike which involves partial performance. A date for returning the pro forma to HR will be set and staff will be required to meet this deadline. Employees who fail to return the pro forma by the specified deadline and who are confirmed by their Head of Department as potential participants because they were not present within the University at the time of the strike and there is no known reason for their absence, will have their

pay withheld on the assumption that they are participating in industrial action. Similarly, should a Head of Department notify HR that a member of staff has failed to undertake all duties then pay will be withheld even in the absence of a returned pro forma.

- 5.3 If an employee is not participating in the industrial action but has pay withheld, for example as a result of information received from their Head of Department, they should notify HR as soon as possible. Following suitable enquiries, arrangements will then be made to reimburse any pay that has been mistakenly withheld as soon as reasonably practicable.
- 5.4 The trade unions will usually advise on pension implications for employees participating in industrial action. Staff choosing to participate in industrial action should be aware that this may have a consequence for death in service benefits during the period of the action. Staff should contact [pensions@strath.ac.uk](mailto:pensions@strath.ac.uk) for guidance on their own situation or see the Pensions homepage on the University website for more general information.
- 5.5 There is no obligation on the University to pay any salary withheld from an employee following the conclusion of industrial action, or confirmation from them that they are no longer taking part in industrial action.

## **6. ANNUAL LEAVE AND SPECIAL LEAVE DURING INDUSTRIAL ACTION**

- 6.1 Annual leave will not normally be agreed at times that coincide with key industrial action dates, unless it has already been arranged with a Head of Department at least a week in advance of the commencement of the action.
- 6.2 Staff who are unable to attend work as a result of caring responsibilities, for example if the school their children attend is closed due to industrial action which is not specific to Higher Education, and they do not have alternative child care arrangements, should refer to the guidelines provided in the [Emergency Time Off for Dependents Policy](#).

## **7. UNIVERSITY CLOSURE DURING INDUSTRIAL ACTION**

- 7.1 Exceptionally, if the University decides to close due to strike action, the policy in relation to withholding pay for participation in industrial action will be unaffected. The closure of the University does not have the effect of 'cancelling' the strike locally; only the trade union in question can suspend or call off the industrial action. Staff may still choose to take part in industrial action; the fact that they could not have attended work, should they have wished to do so, does not mean that they cannot be on strike. Therefore, the University will still withhold pay from employees who confirm that they are participating in the strike, even in the event of Campus closure and regardless of whether or not the employees may have been able to work from home on the day.