

# Industrial Action

## 1. Introduction

The aim of this Staff Notice is to minimise the impact of industrial action on the Forestry Commission's services to the public and to ensure that any industrial action taken is within the law and conducted in an orderly fashion. Also detailed are the arrangements that will apply during industrial action and the impact of striking on an employee's terms and conditions.

This document is intended for all employees. Unit Managers should make arrangements to ensure that employees who do not have access to email or eConnect receive a personal copy.

## 2. Involvement in Industrial Action

It is the Forestry Commission's aim to resolve any disputes or disagreements with employees or the Trade Unions by means that do not involve industrial action. However, if you are involved in industrial action as a result of a dispute with the FC or Civil Service, there will be no legal or disciplinary action taken against you provided that the industrial action has been called in accordance with the law.

It is for individual union members to decide how to respond to any call for industrial action. Union members who choose not to take part in industrial action cannot be disciplined by their union.

Members of any other unions who have not been balloted to take part in industrial action must report for work as normal. Similarly, people who are not union members will be expected to work as normal.

The presence of pickets operating in a lawful manner will not generally be accepted as a reason for not attending work. If you choose not to cross a picket line then you will be deemed as being on strike.

People intending to take strike action may wish to inform their Line Manager of this beforehand, though they are under no legal obligation to do so.

Management will make every effort to ensure that FC work continues as normal.

### 3. Carrying Out Other Work During Industrial Action

At times of industrial action, you may be asked to cover the essential duties of someone else who is taking industrial action. You are expected to comply with reasonable requests. However, you will not be asked to undertake work for which you have inadequate training or experience, including work of another pay band or work which you would be unable to do for other reasons.

You will not be asked to do additional work that you do not have the time to do.

### 4. Unit Manager Responsibilities

The FC has an obligation to fulfil its statutory duties and functions. As a result, managers have a responsibility to help prepare for any industrial action and maintain normal services, regardless of their own intention to take industrial action. This may mean reallocating work to other people or putting in place alternative, temporary arrangements to cover disruptions to essential work. If you manage a Unit, you will need to involve all your managers in business continuity planning.

**All pay stoppages for industrial action will be taken centrally by HR Services in Silvan House.**

In order to achieve this, each Unit Manager will be required to send, **by email**, a return to HR Services, identifying all employees who participate in the industrial action. Please send only one return for each cost unit. A template document for this will be issued by HR as required. 'Nil' returns are required.

### 5. Line Manager Responsibilities

It will be acceptable for the Unit Manager to nominate a co-ordinator to take charge of collecting, co-ordinating and sending information to HR Services.

However, each Line Manager is responsible for confirming whether or not each of their employees who were absent on the day of action are taking part in the action, rather than, for example, working at another location. All employees must be checked, including home workers and people working remotely.

## 6. How Your Terms and Conditions are Affected by Industrial Action

### 6.1 Pay

- Strike action or other industrial action, such as selective working, is regarded as an unauthorised absence from work. Unauthorised absences carry no entitlement to pay or other pay linked benefits. **You will therefore not be paid for the time you are not at work due to industrial action.**
- Whole days of absence do not count as qualifying service for pension, annual leave entitlements, probation periods or any other time linked allowances.
- Your National Insurance contributions may not be payable if, as a result of unauthorised absence, your earnings fall below the lower earnings limit for contributions.
- Should any longer periods of industrial action be called, you will not be paid for any Saturdays, Sundays, public, bank or privilege holidays that occur **during** a period of unauthorised absence linked to industrial action. This does not apply to Saturdays, Sundays and public, bank or privilege holidays which fall immediately before or after a period of unauthorised absence, for which normal arrangements will apply.
- You will not usually have pay deducted for unauthorised absences of less than 15 minutes, but a succession of short absences over a period of weeks (should more industrial action be called) will be added together and pay deducted. Your Line Manager will keep a record of such absences.

### 6.2 Hours of Work

- Any industrial action that you take, which includes withdrawal of your labour, is treated as unpaid absence and **does not count** towards the completion of your weekly contracted working hours.
- If you are on strike for any time, you are not permitted to use flexi time systems at all during the day. Since all industrial action absences are unpaid, you will be given a credit for your standard day if you are off the whole day (7.4 hours for full time employees, pro-rata for part-time employees as per your contract of employment). This will only be credited after Unit Managers have completed their list of absent employees.

## 6.3 Overtime

The following guidance applies to non-operational employees:

- Overtime is payable for hours worked in excess of normal weekly contracted hours. Since industrial action is treated as unpaid unauthorised absence, any hours that you are absent through strike action **do not** count towards the completion of your weekly hours for overtime purposes.
- If you take industrial action, therefore, you cannot claim overtime/travelling time payments unless your working hours during the rest of that week exceed weekly contracted hours (see Staff Handbook Chapter 11). The shortfall in hours for the week would have to be 'made up' by other hours that week because each week is treated separately for overtime purposes.
- Similarly, any hours that you are **required by management** to work on a Saturday or Sunday that week will also be used to make up any shortfall. However, you are entitled to receive any premium payment that would normally be due for working at the weekend, whether you have completed your weekly working hours or not.

## 6.4 Annual Leave, Flexi Time Leave and TOIL

- If you have previously arranged leave with your manager, you may still take it as authorised paid leave. Such approval will generally only extend to formal requests for leave that were made prior to the day of industrial action being announced.
- If you have already arranged a longer period of leave with your manager, you will not be required to break into a period of leave to attend on the day on which industrial action is being taken.
- You will not be allowed to have any kind of leave retrospectively approved to cover an absence on the day of industrial action. This includes Flexible Working Hours and TOIL credits, which cannot be used to 'cover' your participation in industrial action.

## 6.5 Sick Leave

- If you are on a period of paid sick leave that started before and continues into the period of industrial action, your eligibility to paid sick leave will continue in the normal way.
- If you phone in sick on the day of action, you will be asked to attend a 'return to work' interview with your manager on your next working day in order to establish

whether there was an illness that prevented you attending. A manager may record you as having been on strike if he/she is not satisfied that there is evidence that you were ill.

## 6.6 Pension

- Whole days of unauthorised absence do not count for reckonable service for pension purposes.

## 7. Home Workers and Mobile Employees

If you work from home or are scheduled to be away from your usual place of work on a day on which strike action is called, you should inform your Line Manager if you are taking part in the industrial action. You may do this either in advance, if you choose, or as soon as possible on the day itself and certainly before 10:00am.

## Appendix One

# Picketing

Picketing is legal following a properly constituted ballot. However, criminal law protects the right of every person to go about their lawful daily business free from interference from others. No one is under any obligation to stop when a picket asks them to do so, or to comply with any request of that picket e.g. not to go into work.

For picketing to be lawful it must satisfy certain legal conditions including:

- that the picketing is at or near the pickets' own place of work; and
- that the purpose of the picketing is peacefully to obtain or communicate information, or peacefully to persuade a person to work or not to work.

You may only stand on a picket line if you are a member of a union that is legally part of the industrial action. Individuals can only picket their normal place of work, unless they are a trade union official who represents employees working at another site.

If you refuse to cross a picket line you will be regarded as being on an unauthorised unpaid absence and if you are not a member of the union which has called the action, disciplinary action may be taken.

## 1.1 Conduct on a Picket Line

Pickets should not use threatening, abusive or insulting words, or engage in similar behaviour within sight or hearing of any person with the intention of causing them alarm, distress or with the intention of harassing that person. Disciplinary action may be taken where behaviour falls below an acceptable standard. People who are subjected to unacceptable behaviour by someone on a picket line should notify this to their manager.

The **Department for Business, Innovation and Skills' Code of Practice on Picketing** recommends that pickets consist of no more than 6 individuals at any entrance or exit from a building. Additionally, it is recommended that an individual should be in charge of each picket, and as such should hold a letter of authority from the union to show Office Managers or Police Officers. It is advisable that individual pickets are identifiable by either badges or armbands.