

Getting ready to face Industrial Action

14 December 2022  Jacqui Atkinson

For the first time in its 106-year history the Royal College of Nursing has balloted for strike action. In addition, Unison, Unite, GMB and the Chartered Society of Physiotherapists members have also voted in favour of action as well as the Royal College of Midwives in Wales (England did not secure a sufficient turn out). It's clear that the combined effect of the pay increase and the current cost of living crisis where many workers are struggling to keep up with the rising cost of living, has prompted workers to vote with their feet in the pay dispute with the government.

Junior doctors in England are also planning to ballot in January over a pay deal which will give them 2% this year. Given that the current rate of inflation is over 10% and pay deals are a considerable way off this, it clear that staff see the existing offers as being an effective pay cut.

This will no doubt be of concern to NHS employers who are already battling with a staffing crisis at a time when demand for service is squeezed beyond comprehension. Latest data shows that NHS England is operating short of almost 130,000 staff due to unfilled vacancies (a vacancy rate of 9.7%). Further, 50% of workers in health and social care have said that the government approach on pay has made them more likely to leave their job in the next one to three years. This in addition to winter pressures with experts predicting that this winter will be the worst on record for the NHS.

In light of these pressures below we set a reminder of some of the key lessons from previous industrial disputes for boards to consider over the coming months:

- Be sympathetic to staff concerns about the rising cost of living and the impact it is having on their pay and remember that this is a national phase of industrial action which may impact on your communications with staff. Ultimately, it is a matter for individuals whether they take action or not but showing that you understand their concerns may go some way to winning hearts and minds especially as the employer is ultimately not responsible for the pay deal on the table. This is a very similar position to the national industrial action regarding pensions which the NHS experienced in 2012 where the 'trade dispute' with workers is with the government rather than being a matter which their local employer has control over.
- Do take control of the communications with your workforce. Consider sending out sensitively worded comms to staff that may help them make up their minds about whether they genuinely wish to take action. Staff will already be acutely aware of long waits for ambulances/beds/treatment and will feel genuinely conflicted knowing that any action taken will compound this. Therefore, emphasise that whilst you are sympathetic to their concerns over pay, you also know that staff genuinely want to do right by their patients.

Use of Agency Staff

Since the last period of national industrial action in the NHS the law has changed so that employers can use agency workers to replace those who strike. However, in response to a period of national industrial action, employers should consider the use of agency workers carefully so as not to bring greater employee relations issues running the risk of the local employer's actions becoming the focus of a new dispute with the workforce.

Strike action is usually a last resort due to negotiations breaking down and is used as a bargaining tool by the Union, therefore the ability of an employer to backfill for striking workers seriously undermines the action which then risks exacerbating industrial relations even further. For this reason, employers may be reluctant to engage agency workers.

Employers must also ensure that any agency workers engaged are suitably qualified to meet the obligations of the role they are undertaking. As the action is national it is unlikely that there will be a ready supply of agency workers suitably qualified to backfill roles. In addition, some agencies may be reluctant to supply their workers given it will effectively undermine the action and could place their workers in a hostile environment. Further, workers themselves may not be prepared to cross a picket line so may refuse the assignment.

There may also be an increase in alternative forms of industrial action, such as working to rule or go slows, which are harder to cover using agency workers. Although such action may not have the same immediate impact of a strike, they can be equally as disruptive to employers as they may take place over a prolonged period of time given that employees taking part still receive some of their pay.

It is also worth noting that judicial review proceedings in relation to the new Regulations have been commenced by 11 separate Unions, co-ordinated by the TUC, which could result in the new Regulations being deemed unlawful.

Contact



Jacqui Atkinson

Head of Employment Healthcare

jacqui.atkinson@brownejacobson.com

+44 (0)330 045 2547