

Striking Times: the shifting sands of industrial relations

Over the last twelve months we've seen unprecedented strike action in what has been dubbed the UK's second 'winter of discontent'. The landscape of industrial relations in the UK is changing prompted by factors such as high inflation and the 'cost of living' crisis. There is a heightened public awareness of the power of strike action to bring about change, and the trade unions are broadening their influence beyond the public sector and more traditionally unionised industries. In our recent webinar, Striking Times: the shifting sands of industrial relations, we looked at those developments and considered some practical steps that employers, particularly those with non-unionised workforces who are seeing increased trade union activity, can take in response.

Set your strategy

- Major change programmes such as corporate restructurings, collective redundancies or changes to terms and conditions of employment can generate workforce interest in trade union recognition.
- Look out for early indicators of trade union activity in the workplace ("recruiting and organising").
- Set your strategy. Consider whether:
 - i. your workforce is likely to support recognition?
 - ii if so, would you consider voluntary recognition?
On what terms? And who should be covered?
- Trade unions do not have a general right of access to your workforce (although an employee may be accompanied by a trade union representative at disciplinary and grievance hearings whether or not any union is recognised by the employer).

Recognition may not always be something to resist

- If there's a strong push for recognition, voluntary arrangements are more flexible than statutory recognition, can benefit employers and employees and in some cases can have a positive impact on employee relations.
- Bring management with you and think carefully about the scope and terms of any collective agreement. Make clear it's not legally binding.
- Where recognition is not supported, provide employees with other channels for meaningful engagement, such as employee consultation forums that are empowered to represent the workforce effectively on collective issues.

Watch out for unofficial industrial action

- There is no protection from dismissal for those who participate in unofficial strike action.
- Wildcat strikes are rare, but unofficial action short of strikes (such as overtime bans, working to rule etc) is more common and can also cause significant disruption.
- Take appropriate action where unofficial action is identified, noting that it can often be difficult to prove misconduct and/or breach of contract, and wider employee relations issues need careful management.

Be prepared

- The statutory recognition process can move quickly. Don't lose sight of your strategy – continue to speak to and engage with your workforce on the issues that matter to them.
- Generally it is better to avoid small, fragmented bargaining units and that is recognised by the CAC. But beware the unintended consequences of arguing for a larger bargaining unit.

Watch this space

- The Government has taken action in response to the spate of strike action in the UK including removing restrictions on employers using agency workers and imposing minimum service levels in certain public services during strike action.
- The trade unions are challenging the action taken by the Government and a change in Government would also be likely to see those actions overturned.

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