

3. TRADE UNIONS AND EMPLOYEE PROTECTION IN ENGLAND AND WALES



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Background

Approximately 6.4 million employees, out of 30.60 million, are members of trade unions in the United Kingdom. Of those 6.4 million employees, 3.8 million are in the public sector whilst 2.6 million are in the private sector. Figures suggest membership is more common amongst females, older employees and those in professional occupations. The education and public administration sector has the highest percentage of trade union members, while the accommodation and food service sector has the lowest. Trade union membership levels in the United Kingdom have remained fairly stable since the mid 1990s, but remain far lower than the peak levels witnessed in the late 1970s.

The Trade Union and Labour Relations (Consolidation) Act 1992 provides the legal framework in England and Wales for trade unions to engage in collective bargaining with employers. It also protects the employee rights of trade union members and non-members. The general rule is that workers have a right not to suffer any detriment in employment as a consequence of trade union membership or non-membership.

What is a trade union and an independent trade union?

A trade union is an organisation which consists mainly or wholly of workers, whose principal purpose includes the regulation of relations between workers and employers or employers' associations. Only independent trade unions can take full advantage of the legal rights available to trade unions. An independent trade union is one which is not under the domination of or controlled by an employer or group of employers or employers' associations and does not receive financial or material support from an employer or any such group or association.

Right to belong to a union

All workers have a right to belong or not to a union and to take part in union activities at appropriate times. It is unlawful to refuse employment, dismiss or subject a worker to a detriment because he or she is or is not a member of a trade union or has taken part in trade union activities.

Selection for Employment

It is unlawful to refuse employment to any worker because of their membership or non-membership of a trade union. Even deductions connected to trade union membership are not permitted from workers' wages without their authorisation.

An employer cannot run a "closed shop" where all workers must be members of a particular union or unions and advertisements for a job should not indicate or imply that employment is only available to union members or non-members or that any membership-related requirement will apply.

Employer's Actions and Detriment

Workers are protected from any detriment. This means that an employer cannot:

- ▶▶▶ prevent or deter, or seek to prevent or deter a worker from joining a trade union
- ▶▶▶ penalise him for doing so
- ▶▶▶ offer inducements to workers to opt out of collective bargaining.

In addition, workers cannot be compelled to join a trade union or be offered inducements to (a) join a trade union or (b) to not join a trade union, or (c) use its services.

Dismissal on Union Grounds

An employee dismissed or made redundant on union grounds is automatically unfairly dismissed, unless the dismissal is because of participation in unofficial industrial action. Where an employee is found to have been automatically unfairly dismissed on union grounds they will be entitled to remedies for unfair dismissal.

Rights of Trade Union Members

Members of a trade union which is recognised by the employer have certain rights (see p. 92). Members of unions which are not recognised by an employer have these rights only if the employer agrees to them informally or as part of the contract of employment.

- ▶▶▶ Employees who are officials of recognised trade unions have the right to paid time off to carry out union duties. The amount of time must be "reasonable in all the circumstances".
- ▶▶▶ Members of a recognised trade union have a right to reasonable unpaid time off to take part in union activities. This does not include taking part in industrial action.

Trade Union Recognition

If an employer agrees to negotiate with a trade union for the purposes of collective bargaining, the union is considered to be recognised by the employer. Although most recognition is voluntary, a union can apply for statutory recognition in some circumstances:

- ▶▶▶ **Voluntary Recognition:** Recognition may be negotiated between an employer and unions or may be implied from custom and practice. It does not have to be set out in an agreement, although it normally is and it is strongly advisable to document all terms in writing.
- ▶▶▶ **Recognition through Statutory Procedure:** Where voluntary recognition is not agreed, a union may apply to the Central Arbitration Committee to

obtain a declaration to require an employer with 21 or more employees or other workers to recognise the union. The procedure is complex and rarely used and is outside the scope of this guidance.

Rights of Trade Unions

Employers must provide certain information to recognised trade unions and consult them in certain circumstances.

- ➡ **Collective Bargaining:** An employer is required to provide information to representatives of a recognised trade union if the union requests it for the purpose of collective bargaining. There is a general duty to provide all available information if its absence would impede the union's ability to negotiate, but there are a number of exceptions to this general duty.
- ➡ **Information and Consultation:** Recognised trade unions have a statutory right to be informed and consulted in relation to health and safety and occupational pension schemes. If employees are to be transferred to another employer or 20 or more employees are to be made redundant within a 90 day period, the employer must consult representatives of recognised trade unions or in the absence of a recognised trade union, employee representatives.

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