

TRADE UNION

Recognition of Trade Unions

There is no obligation to recognise a Trade Union under English law. Recognition has the advantage of providing contact point in negotiating terms, conditions and other matters with employees.

A trade Union is recognised when an employer agrees to negotiate with it in relation to pay and conditions for particular workers. Trade unions will generally use voluntary means to gain recognition.

ACAS is an independent public body which provides impartial information and advise on labour and trade union issues.

A trade union can also apply for statutory recognition where the employer and associated employers employ 21 people or more. The union may apply to the Central Arbitration Committee (CAC) which is an independent State body. Each panel contains one employer and one workforce representative. Independent trade unions only can claim recognition. This is a trade union which is not controlled by the employer and is financially independent.

The process for statutory recognition of a trade union is as follows. A request is made to the employer who has 10 days to respond. If application is accepted the employer and union have 20 days (which may be extended) to agree particulars. If agreement cannot be achieved, the matter may be referred to the CAC. The CAC may decide whether to make a declaration of recognition or hold a ballot of workers in the relevant units. They will make a recognition declaration if a majority of workers are members of the union. Otherwise it will call a ballot.

If the ballot is held, the CAC will appoint a qualified independent person to conduct it. The union needs the support of a majority of those voting in order to be recognised and

at least 40% of those entitled to vote. If an application fails, the union must wait 3 years before making a new application.

Where the CAC declare that unions must be recognised, certain consequences follow. The unions are entitled to conduct collective bargaining on pay and certain employment conditions. The employer must negotiate on the means for carrying out collective bargaining. Either party can apply to CAC for assistance if no agreement is reached. CAC is entitled to lay down legally binding terms if no agreement is reached. These terms can be modified voluntarily by employer and Trade Union. The term of the agreement are legally binding on employer and employee and can be enforced as breach of contract

Once a trade union is recognised the recognition agreement may be terminated at any time by both parties. The employer may not terminate for a period of 3 years. If difficulties arise it is possible to apply to CAC for assistance by way of conciliation.

There are procedures for derecognition of trade unions. These apply if the employer has less than 21 workers or there is no longer enough support. Application can be made to the CAC. If the number of employees falls below 21 derecognition will be more or less automatic. In circumstances based on the union not having enough support, certain procedures apply. A ballot must generally be held.

Trade Union Rights

Employees have the right not to be penalised on the grounds of trade union membership or non-membership. Employers may not refuse to employ an individual because he/she is not a trade union member. They may not refuse to employ a member because he/she does not belong to a particular trade union. Employees may not be dismissed or penalised because he/she belongs to a trade union or refuses to join one. An employer may not campaign unfairly against a workforce decision to recognise a trade union (e.g. by offering more inducements or sanctions).

Members of a recognised trade union have right to reasonable time off to take part in union activity and training. Industrial action does not count as union "activity".

A trade union official may be a full time official or an employee who has been appointed to represent its members in the workplace. Employers must allow a trade union representative reasonable time off to carry out their duties. These include meetings with the employer to discuss conditions, accompanying employees to disciplinary and grievance hearings and for training for union related duties.

Union Learning Representatives (ULR) have the same status as shop stewards and must be allowed time off to discharge their duties. ULR are representatives of the union that provide advice to union members about training, educational and development needs. They are elected in accordance with union rules. They have right to reasonable paid time off to undertake relevant training regarding the needs of union members and to provide information and advice.

Collective bargaining agreements between employers and trade unions may set out the procedures and arrangements for bargaining including who the relevant parties are, consultation, disclosures, information, conduct and negotiations, arrangements for deadlock, deduction of union contributions and redundancies. Collective bargaining agreements may cover pay arrangements and other terms of employment. Collective bargaining agreements are not usually legally binding but parts can be incorporated in individuals' contracts of employments and be thereby enforceable.

Apart from the above there are legal requirements for employee's representatives in various areas including health and safety representatives, pension trustees, members of work council in larger companies and representatives in the cases of redundancies and transfers.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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