

The Trade Union Act: Unpicking the new rules

The Trade Union Act 2016 (“the Act”) introduces significant reforms to the organising of industrial action, the most radical shake-up since the Thatcher era.

Balloting

The most significant of the Act’s balloting reforms is that a ballot for industrial action will not be valid unless 50% of eligible voters participate in the vote. This is in addition to the current requirement that a majority of those voting support the action. The impact of this will vary from sector to sector and employer to employer. On the ground, employers are likely to witness unions rounding up the voters, making it clear that being a silent supporter is no longer an option.

The Act also requires the ballot paper to include a ‘summary’ of the matters in issue in the trade dispute to which the industrial action relates, the period or periods that each type of industrial action is expected to take place and, if the ballot papers asks whether voters are willing to take part in action short of a strike, the type of industrial action. It is inevitable that there will be litigation and applications for injunctions on the question of whether such requirements have been satisfied.

Electronic balloting

Trade unions have tirelessly argued for the right to ballot electronically. The Act requires there to be an independent review on electronic balloting which, if introduced, would likely increase the numbers participating in the ballot.



Public services

The Act imposes a further requirement on balloting in ‘important public services.’ In addition to the requirements set out under ‘balloting’ above, ‘important public services’ ballots require 40% of eligible voters to vote in favour of the action.

‘Important public services’ include parts of the health, fire, transport, border security and certain nuclear services, as well as the education of those aged under 17. Regulations and guidance published in December 2016 provide more detail on what falls within some of these categories and includes, among others, doctors and nurses in hospital A&E and high-dependency units; station, train and operations staff in passenger rail services (including the underground); and bus drivers and engineers of a London local bus service.

Timing of industrial action

Currently, industrial action must commence within four weeks (or eight weeks if the employer agrees) of the ballot approving the industrial action. The Act removes this requirement, instead providing that industrial action must take place within six months (this can be extended by up to a further three months by agreement between the parties) of the successful ballot.

Any industrial action after this period requires a further ballot approving industrial action. Currently, there is no maximum period that industrial action can last, provided that the relevant dispute remains live. In the recent industrial action by BA cabin crew, BA did not agree to increase the time for commencing action from four to eight weeks, most likely as a tactic to place the union under pressure to ‘put up or shut up’. This won’t be a problem for unions in the future.

Trade unions will be required to provide 14 days’ (or seven days if the employer agrees) notice of industrial action. Currently, seven days’ notice is required, and it’s unclear whether this additional seven days will deliver any real benefit for employers. In practice, an employers’



ability to extend the periods is likely to impact on parties’ tactics during industrial disputes.

Picketing

The Act imposes additional requirements that trade unions must comply with if they are to enjoy statutory protection for picketing during industrial disputes, including the requirement to appoint a picket supervisor and that they be on the picket line or be available at ‘short notice.’ The uncertainty of what this, and other wording in the Act, means will likely result in employers challenging the legality of picketing.

Agency workers

One of the original proposals was to remove the ban on employers using agency workers to cover striking workers. Unfortunately for employers, this was abandoned while in the House of Lords.

Next steps

The Act is likely to significantly impact the future of industrial relations in this country but its full practical significance will not be known for some time.

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GMB Slams Met Over Blacklisting Inquiry

The GMB has criticised Scotland Yard after the Met Police destroyed evidence needed for an inquiry into state sponsored spying on trade unions and blacklisting operations, despite a court order to the contrary.

The Pitchford Inquiry into undercover policing has failed to secure potentially crucial documents central to the investigation.

GMB has remained concerned about undercover police tactics since links between police and the blacklisting organisation - The Consulting

Association - were uncovered by the Information Commissioner in 2009.

GMB subsequently won £5.4million million in compensation for members blacklisted by 44 construction companies, and a full apology.

Maria Ludkin, GMB Legal Director, said:

“The fact police destroyed these potentially vital documents in the face of a court order is nothing short of a national scandal.

“We need an immediate investigation into how this evidence was allowed to be eradicated.

“Without this, how can we have any faith in the future of the Pitchford Inquiry?”

“Blacklisted workers have endured lies, denials and cover ups for decades.

“Pitchford represents a real opportunity to bring light and transparency to this murky and unlawful world.

“We hope the Commission will be part of the solution and not hide the problem.”



Change to Discount Rate for Personal Injury Damages

Occasionally, employment tribunals award personal injury damages in discrimination and detriment cases.

If an (ex-) employee has a serious long term medical condition and is being awarded a sum of money for long-term loss of earnings, a ‘discount rate’ is applied to reflect the fact that the employee receives several years’ loss of earnings up front (and thus can be expected to earn money on the lump sum by investing it.)

The discount rate has been set at 2.5% for over 15 years, during which time interest rates and gilt returns have plummeted. The government has announced, it is being reduced to minus 0.75%. This will have the effect of increasing awards for long-term loss of earnings for personal injury in discrimination and detriment cases.

Increase in UK Compensation Limits from 6 April 2017

The government has announced new limits on certain Employment Tribunal awards coming into effect on 6 April 2017.

The two key changes to be aware of are:

- The limit on the compensatory award for “ordinary” unfair dismissal will increase from £78,962 to £80,541
- The maximum amount of a week’s pay for the purposes of calculating statutory redundancy payments and the basic award in unfair dismissal claims will increase from £479 to £489

These new limits will apply to dismissals that take place on or after 6 April 2017.

The cap on the compensatory award for “ordinary” unfair dismissal is the lower of the statutory limit set out above and 52 weeks’ pay of the individual concerned.

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