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In the know....

Trade Union Act 2016



The Trade Union Act 2016 was recently passed and will be brought into effect over a phased period of time. Here, we have a look at the main changes it makes to the law on strikes.

Trade Union Act 2016

Trade union activity has been a high profile topic lately with the contract wrangles between the BMA – the doctors' trade union – and the Government in relation to terms and conditions for junior doctors. Contrary to popular belief, it isn't just public sector employees who take part in industrial action; strikes are also common in the private sector, for example, tube and bus services.

In order to make a lawful strike more difficult to obtain, the Government has used the Trade Union Act to increase the thresholds required to make the strike lawful, generally requiring greater interest and participation from the affected workers.

Ballot turnout

In order for any industrial action to be lawful the ballot for the particular strike must have at least a 50% turnout – this means that at least 50% of those entitled to vote must have done so. For Important Public Services (IPS) there is a second requirement for a lawful strike: at least 40% of those entitled to vote must have voted in favour of the industrial action. Regulations setting out exactly what Important Public Services refers to are yet to be made by the Secretary of State, however the Trade Union Act clarifies that IPS include health services, education services for those under 17, fire services, transport services, nuclear and border security.

Once the relevant provisions come into force, there will be further requirements of what needs to be included on the ballot paper. It must include:

- A summary of the issues which are disputed.
- The intended type or types of industrial action must be specified.
- How long the intended industrial action or each type of industrial action is expected to last.

Minimum Notice

There will also be requirement to give the employer at least 14 days' notice that there will be industrial action unless the employer agrees to receive just 7 days' notice.

After the ballot, the trade union must take reasonable steps to give certain information and statistics to all people who were entitled to vote.

Time Limits For The Strike

The current position is that industrial action must be taken 4 to 8 weeks after the ballot takes place and can re-occur indefinitely as long as the dispute remains unresolved. However, the Trade Union Act will update the current legal period after which a ballot ceases to be effective. This new law will allow lawful industrial action to take place within 6 months after the ballot (or 9 months if both parties agree) after which its mandate expires. Any industrial action which takes place after this deadline will not be lawful.

Facility Time

Public sector and some private sector employers (those carrying out public sector functions and mainly public funded) with at least 1 trade union official will have to publish information about trade union facility time. An example of this is information of the amount of time spent carrying out trade union activities. These employers will also be required to publish the cost and amount of paid time off spent for trade union duties, although further legislation must be created to enact this requirement.

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