

THE NEW TRADE UNION RECOGNITION RULES

The Employment Relations Act 1999 ("the Act") received Royal Assent on 27 July 1999 and provides a complex new procedure for the compulsory recognition of trade unions by employers for the purposes of collective bargaining.

The process of bringing the provisions of the Act into force began last year and is continuing this year. The government has indicated that these and the other provisions governing industrial relations will come into effect on 6 June 2000.

The main provisions will include:

- Compulsory recognition of trade unions for collective bargaining purposes;
- Greater protection for employees from detrimental treatment or dismissal due to union membership or activities; and
- Time off work for union duties.

Trade union recognition

The Act will provide for the compulsory recognition of unions to collectively negotiate terms of employment on behalf of its members.

A recognised trade union will acquire various rights of consultation and negotiation with the employer on behalf of a 'bargaining unit' (a specific group of employees as explained below). This is known as 'Collective Bargaining' and will cover areas such as pay, working hours and holidays as well as any additional matters which the parties agree.

Request for recognition

The union will initiate the process by submitting a written request to the employer for recognition specifying the relevant union, the group of employees on whose behalf recognition is sought (the 'bargaining unit') and that the request is pursuant to the Act. A request is not valid unless the employer employs at least 21 workers at the time of receipt of the request.

If the request is acceded to by the employer then no further steps are necessary - the union is recognised.

If the request is either refused (without a willingness to negotiate), or not responded to within ten working days of receipt, then the union may apply to the Central Arbitration Committee (CAC) for an order obliging the employer to recognise them. If a willingness to negotiate is indicated by the employer then a further period of 28 days following the initial 10-day period is allowed for negotiations to be concluded. If the negotiations are unsuccessful an application can be made by the union to the CAC.

No application will be considered by the CAC unless it is of the view that the members of the union constitute at least 10% of the bargaining unit and that a majority of that bargaining unit would be likely to favour recognition of the union to negotiate on their behalf. In principle, if the union shows that a majority of the bargaining unit are members of the union then the CAC must declare their recognition. However if the CAC considers that there is some doubt as to the level of support for

recognition amongst the union members constituting the bargaining unit, it can order a secret ballot of the members to be taken. If a majority of those voting (and at least 40% of the workers constituting the bargaining unit) are in support of recognition then it will be declared.

Recognition imposed by the CAC will have effect as if it were contained in a legally enforceable contract made between the employer and the union. As a result, any refusal to recognise the union would leave the employer open to contractual liability.

Determining the bargaining unit

'Bargaining unit' is the term used to describe the group of workers whose interests the union will represent.

If there is a dispute as to which workers should form the bargaining unit then the CAC will try to broker an agreement between the employer and the union. The CAC will take into account a number of matters along with the overriding principle that the unit must be compatible with effective management. The matters to be taken into account in determining the bargaining unit are:

- the views of the parties;
 - any existing national and local bargaining arrangements;
 - the location of the workers;
 - the desirability of avoiding 'small fragmented bargaining units' within an undertaking.
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Detriment relating to union membership

A worker shall have the right not to be subjected to any detriment by his employer on union recognition-related grounds. Such grounds may include the worker seeking to obtain recognition of a union, indicating support for recognition or voting via a ballot. Any detriment incurred on these grounds entitles a worker to bring a complaint to an Employment Tribunal. It will be for the employer to show that the ground on which he acted or failed to act was not union related. If the Tribunal finds the complaint well-founded it may award compensation. There will also be a new right for an employee to claim that his or her dismissal was unfair if it was on union recognition-related grounds.

Time off to attend hearings

Under the Act workers will acquire a new right to be accompanied at disciplinary and grievance hearings by a trade union representative or a fellow worker. The Government have indicated this right will come into effect in June/July 2000 and will allow a union official to represent a union member, if requested, even where a trade union is not recognised. Where the worker 'reasonably requests' to be accompanied at the hearing then the employer must permit the worker to be accompanied by a single companion of the choice of the worker who is free to take time off during 'working hours'. If an employer refuses to allow accompaniment, a tribunal can award up to 2 weeks' pay as compensation to the employee and if the employee is dismissed, the refusal may be a significant factor in determining whether there has been an unfair dismissal.

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further information:

If you would like more information about any of Goodman Derrick's Employment Law services please telephone and ask to speak to a member of the Employment Group.

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