

Briefing Paper:

Please Support Workplace Justice – Amendments to the Employment Bill

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Fairer Industrial action balloting procedures

The duties on trade unions to provide employers with notice of ballots and industrial action place onerous, costly and excessively complicated duties on unions. They impose a significant burden on unions to keep meticulous records of their members' addresses, jobs, and workplaces and often expose unions to applications for injunctions by employers to prevent industrial action taking place, even where a clear majority have voted in a ballot to support the action. The obligations on trade unions are onerous, expensive and highly complex.

The effect of the amendment would mean employers should be under a duty to cooperate, when requested by the union, by supplying relevant information needed to enable the union to comply with notice and balloting requirements. This duty is similar to current duties in the statutory recognition scheme, where the employer is obliged to supply the CAC with information. Where the employer refuses to supply the necessary information, a subsequent application for an interim injunction to prevent industrial action should fail.

Preventing the use of agency workers to replace striking workers

The Conduct of Employment Agencies and Employment Businesses Regulations currently bars employment agencies from supplying agency workers: (i) to carry out duties normally performed by a worker undertaking lawful industrial action or lawful strike action; or (ii) to replace a worker who has been assigned to do the work normally performed by a worker undertaking lawful industrial action or lawful strike action. However this duty does not apply if the agency does not know (or has no reasonable ground for knowing) that the agency worker is replacing a worker taking industrial action. The effect of the amendment would be to extend the Regulations so as to impose an equivalent duty on the potential hirer of agency workers to inform the agency of the industrial action and to make it unlawful for the hirer to hire agency workers to carry out work normally done by workers involved in lawful industrial action.

Better protection for workers taking part in lawful industrial action

The ILO, UN and Council of Europe's supervisory agencies have repeatedly found that UK law is in breach of international human rights treaties by failing to provide effective dismissal protection for individual strikers.

The effect of the amendment would be to provide that dismissals in anticipation of, during or after lawful industrial action would be void and ineffective, unless the employer can show that the reason for the dismissal was not connected to the industrial action. If such a dismissal was effective the amendment would make it automatically unfair. This will act as a powerful disincentive to employers from employing replacement staff and making strikers redundant.

Interim relief would be available in all unfair dismissal claims relating to lawful industrial action and employees who have been unfairly dismissed would be entitled to automatic reinstatement if they request it.

All workers would be protected from suffering detriment or for being sued for damages as a result of their taking part in industrial action, other than appropriate deductions from the worker's wages for work s/he did not do whilst taking industrial action.

ⁱ Summarised from the TUC Equality & Employment Rights Department "Proposal for a Trade Union Freedom Bill, March 2006 at <http://www.tuc.org.uk/law/tuc-11539-f0.cfm>