



Foresight

Coping with Industrial Action

Now that Unite has rejected the latest proposal from the Offshore Contractors Association, a ballot on industrial action is a real possibility unless parties are willing to go back to the negotiating table. If this does happen this will be the first time in a generation that industrial action has impacted offshore operations on any scale. As a result, many experienced HR professionals will have had little or no experience of responding to the challenges this presents.

So how can employers 'cope' with industrial action?

Communicate

Some employers faced with industrial action think they are not permitted to communicate directly with employees. This is a myth. Clearly, they cannot threaten employees or intimidate them, but they can talk about the service impact, costs, and so on. Employers should also explain the consequences of lawful industrial action, namely that employees on strike are not entitled to be paid, and that those who participate in unofficial industrial action - in other words, action not endorsed by a trade union - run the risk of having no protection against dismissal.

Employers should consider using online communications and, if appropriate, social media. As well as helping an employer to convey information to a broad audience, it may allow them to gauge employees' views on forthcoming action and plans for any unofficial action or picketing.

They should also keep communications going with unions. If nothing else, this should help prevent a headline that an employer is being unreasonable and refusing to maintain dialogue with the union.

Oppose

In relation to any ballot, unions must comply with stringent balloting and notification requirements. There are three key areas that the union must get right: the notification of an intention to ballot, the process for the ballot itself, and the way in which the union communicates the outcome. All aspects of the process should be checked. If there are discrepancies then an employer may have grounds for applying for an interim injunction/interdict which may have the effect of preventing the strike from taking place.

Litigation is, however, only one option. Mediation or Acas conciliation should also be considered. Employers need to consider the cost/benefit analysis of proceeding with litigation - it is expensive and may only serve to delay the industrial action rather than prevent it entirely. Tactically, a delay can sometimes give crucial negotiating territory - particularly where the aim is to hold mass industrial action on one particular day.

Plan

This is crucial. Ideally employers should draw up an industrial action strategy. Employers can bring in labour to help minimise disruption, and can ask those who are not participating in industrial action to help them provide cover. But they should remember that employment agencies are prohibited under the conduct of Employment Agencies and Employment Business Regulations 2003 from providing agency workers to replace individuals taking part in official industrial action, or to replace individuals who have themselves been transferred by the end-user to perform the duties of the person taking industrial action.

Some lateral thinking may help minimise the impact. For example, alternative routes for suppliers and deliveries may need to be identified if picketing is anticipated.

Ensure

Employers should ensure non-striking employees are not threatened or intimidated and that any protests/picketing remains peaceful to prevent non-striking employees being dissuaded from attending work. Broadly speaking picketers are entitled to obtain or communicate information, or persuade any person to work or abstain from work, provided they do so peacefully.

Employers who do receive a notification of ballot should bear in mind that not every notification results in a strike. Unions often use ballots as a tactical move to 'up the stakes' in a negotiation, rather than as a last resort before a strike. This is definitely a situation where advanced planning and strategic thinking will help you to stay in control of the situation, from the ballot process right through to the strike itself.

New rules are not yet in force

The new government proposals to make it more difficult to strike by introducing a new 50% participation threshold for ballots and a number of other changes, including the ability to use agency workers during a strike action are not yet in force. The government consultation exploring the detail of these plans closes on 9 September and further details will be published later this year. In the meantime the existing rules on balloting and picketing will remain in force.

One issue under consideration is the impact social media has had on picketing, particularly where photos of non-striking workers are posted online as a form of public shaming. The current Code of Practice on Picketing was last updated in 1992 and is silent on this point, meaning that these sorts of practices are difficult for business to deal with effectively. The government would like to revise the Code to make it clear that this is unacceptable and any clarity here would be welcome.

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