ECONOMICS OF EMPLOYEE RELATIONS

November 2010

DLA PIPER

EVERYTHING MATTERS
FOREWORD

In a volatile economic climate and with the continuing globalisation of business, employers face multiple risks and challenges in labour relations. This year has seen several high-profile disputes, from the long-running conflicts at Royal Mail and British Airways to threats of strike action at Network Rail, BAA and BT. Further industrial action is expected towards the end of 2010 and into 2011, particularly in the public sector where the Government’s economic austerity measures will begin to have a significant impact.

DLA Piper in partnership with YouGovStone has conducted market research with senior business leaders and human resources professionals to gauge the current mood in employee relations and to identify the impact industrial unrest is having on UK businesses. Over 500 responded from both the public and private sectors, across industry sectors and UK regions.

In this report, we highlight the key trends emerging from the responses to the study and provide comparisons between the approaches to employee relations and trade unions in eight countries.

The study reveals that, although many employers have constructive relationships with trade unions, in the context of full recognition or on an informal basis, there is real concern over the perceived increasing militancy of and failure by certain unions to ‘move with the times’. Respondents pointed out the inability of unions to appreciate the pressures felt by organisations, particularly in a challenging economy. This was illustrated in particular by some of the open-ended responses to the study.

Despite increasingly high-profile strike action in the transport and communications sectors, including the long-running British Airways dispute and walkouts by Royal Mail and London Underground staff, the majority of respondents reported having suffered no significant disruption from industrial action in the last 12 months. A small majority of respondents (51%) agree, or agree strongly, that the Government should intervene to prevent strikes in the transport and communications industries, but almost a third (31%) disagree or disagree strongly with this proposition. However, private sector businesses are concerned about the potential impact of planned public sector walkouts. A substantial minority (17%) of private sector respondents are expecting public sector unrest to have a significant detrimental effect on their business.

The last 20 years has seen a significant level of litigation surrounding strikes and other industrial action. The reforms of labour relations law by the Conservative Government in the 1980s introduced complex balloting requirements for lawful strike action and made trade unions liable for damages if the requirements were not followed. The Labour Government made only minor changes at the margins of the law and it seems that there is now little political appetite from the three main political parties for wholesale change. The new Coalition Government has not made any commitments to amend industrial action legislation, but did say that it would “look at it” if necessary. Recently the CBI (Confederation of British Industry) launched a report calling for a package of measures to modernise employment relations legislation, including a recommendation that the test for a legitimate strike should require 40% of balloted members to support it as well as a majority of those voting. Our study reveals that there would be significant support for this proposal, with 76% of respondents in favour of changing the law to introduce a minimum threshold for ballots for industrial action. Such a change would, in practice, significantly limit trade unions’ ability to take lawful strike action.

As the threat of a double-dip recession remains, it is worrying that industrial unrest is on the increase, creating a fear that this could hinder economic recovery. The study findings provide a strong encouragement from business for the Government to tighten the laws around strike action. However, careful consideration will be required as trade unions already consider existing laws as punitive and disproportionate. A further tightening would be bound to bring a greater challenge at a European level based on workers’ human rights.

“Politically motivated strikes following probably the worst economic crisis in history could wreck the UK recovery and seriously [damage] my company, which currently has the largest single block of its employees in the UK. Certainly, concerted industrial action on the scale proposed by the TUC will encourage me to downsize the UK team and strengthen overseas offices”

Respondent in the transport and logistics sector

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EXECUTIVE SUMMARY

INDUSTRIAL DISPUTES

- The overwhelming majority of respondents (88%) anticipate increased industrial action in coming months.
- 66% of respondents believe that industrial disputes are in danger of stifling Britain’s economic recovery.
- Many of the respondents have confidence in ACAS, with 69% believing that it will have a critical role to play in future industrial disputes.
- In recent months, there have been high-profile strikes in the air and rail sectors. Verbatim responses to our study reveal that these disputes have had a detrimental impact on business. However, 69% of respondents said that their organisation had suffered no disruption as a result of industrial action by workers of another organisation in the last 12 months and just 51% of respondents agree, or agree strongly, that the Government should intervene to prevent strikes in the transport and communications industries.
- The majority of private sector employers believe that the predicted widespread industrial action in the public sector would have a minor (66%) or significant (17%) detrimental effect on their business.
- 25% of respondents have been involved in an industrial dispute in the last five years. Pay and benefits was the primary cause for nearly half (47%) of those disputes. Where a dispute arose, 78% of these disputes resulted in a threat of industrial action. However, just 13% resulted in industrial action taking place.
- A large majority (71%) of respondents who have been involved in an industrial dispute in the last five years experienced costs of less than £10,000.
- 69% of public sector respondents expect more public sector industrial unrest in the next 12 months, but only 28% of private sector respondents expect more unrest in the private sector.
- Business leaders were evenly split on whether it is a mistake to make any changes to industrial relations laws until economic recovery gains more pace, with 41% wanting to wait while 39% were supportive of change now.
- In relation to specific proposals for reform, only 26% of respondents support changes proposed in a private members’ bill which would extend the circumstances in which trade unions are immune from legal action in relation to industrial action. However, 76% of respondents are in favour of changing the law to introduce a minimum threshold for ballots for industrial action. Such a change would, in practice, significantly limit trade unions’ ability to take lawful strike action.

UNION ENGAGEMENT

- 47% of private sector respondents think that union recognition or increased recognition would have a detrimental effect on the future of employee relations within their organisation.
- 90% of public sector respondents recognise a trade union for collective bargaining purposes, compared with 39% of private sector respondents.

EMPLOYEE RELATIONS

- 71% of respondents inform employees directly regarding major issues. Respondents are more likely to consult with a trade union than another standing or specifically elected body.
- 44% of respondents with 100 or more employees always engage in a consultative process with employees over employment-related issues.
- Where employers do regularly engage in a consultative process, 82% responded that the consultation has a material impact on the organisation’s decision-making process. Respondents are actively engaging with their employees, with traditional methods of communication such as staff briefings, newsletters, staff forums and intranets proving popular. Businesses do not yet appear to be using social media or text messaging on a wide scale to engage with their employees, with just 8% and 7% respectively using these methods.
- Employee relations ranked first in importance by the highest percentage of respondents (39%) in terms of the amount of management time spent dealing with collective employee issues. Equality and diversity is not a high priority for respondents, with just 4% ranking this as the most important issue.
- 63% of respondents have consulted with their employees about potential redundancies in the last five years.
SURVEY REPORT

Do you agree or disagree with the following statements?

I believe there will be a lot more industrial action in Britain over the coming few months

Industrial relations are in danger of stifling Britain’s economic recovery

The Government’s conciliation service ACAS will have a critical role to play over coming months

The study reveals that the vast majority of respondents to this question are anticipating an increase in industrial action over the coming months. The responses from the private sector mirror those from the public sector, with 86% and 88% respectively agreeing, or agreeing strongly, that there will be a lot more industrial action over the coming few months.

As the threat of a double-dip recession lingers, it is worrying that 66% of respondents agree, or agree strongly, that industrial relations are in danger of stifling Britain’s economic recovery. However, there is a marked difference in the responses from the private and public sectors, with 70% and 54% respectively agreeing or agreeing strongly with this statement.

ACAS has played a conciliatory role in many of the recent industrial disputes by facilitating discussion between concerned parties and suggesting proposals for the way forward. Most recently, ACAS has offered to conciliate between London Underground and the RMT and TSSA trade unions. Prior to this, ACAS provided its conciliation services in the very high-profile dispute between British Airways and Unite.

The study shows that a significant majority of respondents (69%) agree that ACAS will have a critical role to play over coming months, with just 8% of respondents disagreeing.

Agree strongly
Agree
Neither agree nor disagree
Disagree
Disagree strongly
Don’t know
The study reveals that respondents’ views on the need to reform industrial relations laws are finely balanced. Some 41% of respondents agree that it is a mistake to make any changes to industrial relations laws until economic recovery gains more pace. This compares with 39% of respondents who disagree with this statement.

The findings illustrate that only a small majority of respondents (51%) agree that the Government should intervene to prevent strikes in the transport and communications industries. In contrast, 31% disagree. There is, however, a marked difference in the responses of the private and public sectors, with 58% and 37% respectively agreeing that the Government should intervene.

However, open ended responses to our study reveal that recent strikes in the transport and communications industries have had a noticeable impact on some businesses:

“Tube strikes have had an effect on attendance and important meetings and pitches have been postponed”

“Sales were down significantly on the days of the London tube strike. Unplanned absence was higher on those days which affected customer service and availability”

“Tube strike resulted in people being unable to come to work or arriving late/leaving early, therefore output was reduced”
The majority of respondents (69%) have suffered no disruption as a result of industrial action taken by workers of another organisation in the last 12 months. A significant proportion (28%) have suffered minor disruption but only 4% have suffered significant disruption. There was no significant distinction between the public and private sectors or between larger employers and small and medium sized enterprises (SMEs). As highlighted above, the majority of the disruption suffered related to transport and in particular tube and rail strikes, meaning that staff could not get to work. However, a minority of respondents also highlighted delays to mail and supply chain disruption as a result of third party industrial action.

“One of our businesses has BA as its major customer and the strikes, real and threatened, were both obviously disruptive to services”

“Minor disruption to postal services”

“Suppliers on work to rule over pay limiting their production and quantity of supply as a result of refusing to work overtime”
The TUC recently voted in favour of a motion calling for widespread industrial action by public sector workers. Would such action have a detrimental effect on your business?

This question was directed at private sector employers only. At the annual TUC Congress in Manchester in September 2010, Congress resolved that all TUC affiliates would work together to build a broad solidarity alliance of unions and communities to organise a national demonstration, lobby of Parliament and national days of protest against the Government’s austerity measures.

The majority of respondents (66%) predicted that widespread industrial action by public sector workers would have a detrimental effect on their business, and a considerable proportion (17%) thought that the impact would be significant. Overall, large employers were more concerned by the threat of impending public sector action. Some 24% of respondents employing 250 or more employees thought that the impact of public sector action would be significant, compared with only 9% of SME respondents.

“As a private organisation that supplies services to the public sector, I feel that the dangers we may experience are not so much related to my own staff or organisation, but that provision of services may stall, and personal relationships between my staff and their clients may sour in the face of significant and co-ordinated industrial action. At a time when private and public sector relations are showing signs of strain over the perceived inequality of pensions and certain working conditions, I think any attempt to shirk collective responsibility for austerity measures risks causing a permanent rift between the sectors that will harm both the recovery and the country as a whole, possibly for a generation, much as the stigma of the 70s strikes damaged both sides for some time”

Respondent in the media and information services sector
Have you consulted with your employees (either directly or indirectly) on any of the following topics in the last five years?

- Potential redundancies - 63%
- Terms and conditions - 61%
- Transfer of undertakings - 33%
- Other - 6%
- None of these - 22%

In the prevailing economic climate, it is no surprise that a high percentage of respondents had consulted about potential redundancies (63%) or terms and conditions (61%) in the last five years. Large employers were more likely than SMEs to have consulted over redundancies. Some 73% of large employers but only 47% of SMEs had consulted over redundancies in the last five years.
How does your organisation consult with and inform its employees on major issues?

Some 71% of respondents said that they consulted with and informed employees on major issues by informing them directly. Where respondents consulted with or informed a collective body, however, they were most likely to consult with a trade union (42%). This figure was much higher for public sector respondents than for private sector respondents; 79% of public sector respondents consulted with or informed a trade union on major issues, compared with just 26% of private sector respondents.

Large employers were also more likely to consult with or inform a trade union on major issues; 59% of large employers consulted with trade unions as opposed to 14% of SMEs. Perhaps unsurprisingly, SMEs were more likely than large employers to inform employees directly on major issues (81% and 65% respectively).
Does your company ever engage in a consultative process with its employees on employment related issues or more generally?

Only respondents with 100 or more employees were asked to respond to this question. The majority of respondents engaged in a consultative process with employees either always (44%) or sometimes (42%). More public sector respondents (63%) than private sector respondents (34%) said that they 'always' engaged in a consultative process with employees.
How often would you say that the consultation process has a material impact on your organisation’s decisions on policy issues?

Of the respondents who said that they ‘always’ or ‘sometimes’ engaged in a consultative process with employees, the vast majority (82%) responded that the consultation process has a material impact on decisions always or sometimes. Some 64% said that the consultation process sometimes had a material impact on the organisation’s decisions on policy issues and 18% said that the consultation process always had a material impact. Overall, responses from the public sector were very similar to responses from the private sector.
Does your organisation use any of the following methods to engage with employees?

Staff briefings are used by the overwhelming majority of respondents (91%) to engage with employees. However, other methods are also popular, with email being used by 77%, intranets by 75%, employee satisfaction surveys by 74%, a staff newsletter by 73% and information and consultation/staff forums by 62%.

Other methods of employee engagement identified by respondents to the study include focus groups, “tool box talks”, storm voicemail, monthly meetings, senior management roadshows and listening sessions, engagement workshops, company-wide conference calls, “captains table” lunch meetings with directors, newsletters, social events, away days and seminars.
Please indicate the importance of the following issues to the management of your organisation in terms of management time expended on dealing with these issues, ranking from 1 to 5 with 1 the most important and 5 the least.

Given the recent implementation of the Equality Act 2010, it is surprising to see that just 4% of respondents ranked equality and diversity as the most important issue to their organisation in terms of management time spent on dealing with it, with 42% ranking it in fifth place. This may suggest that employers’ time is being subsumed with more immediate industrial relations issues. However, the Equality Act 2010 is a far-reaching piece of legislation which may prove to be a latent danger and catch out the unprepared in the medium to long term.

The study’s results suggest that employers have different priorities. Interestingly, no single issue attracted an overwhelmingly high percentage of first place rankings. Unsurprisingly in times of economic uncertainty, where maintaining a good relationship with the workforce is essential, employee relations was ranked first by the highest percentage of respondents (39%), followed by employee commitment at 23%. However, there was some divergence between public and private sector respondents on these issues. Some 46% of public sector respondents rated employee relations first, compared with 34% of private sector respondents. For employee commitment, just 14% of public sector respondents ranked this issue first, compared with 28% of private sector respondents.

CHART BREAKDOWN

1. Employee relations
   - Ranked first: 39%
   - Ranked second: 29%

2. Employee commitment
   - Ranked first: 23%
   - Ranked second: 18%

3. Reward, compensation and benefits (including pension)
   - Ranked first: 19%
   - Ranked second: 25%

4. Absence management
   - Ranked first: 15%
   - Ranked second: 19%

5. Diversity/equal opportunities
   - Ranked first: 4%
   - Ranked second: 8%
What effect do you feel recognition (or increased levels of recognition) of a trade union would have on the future employment relations structure within your organisation?

The 2009/2010 Annual Report for the Central Arbitration Committee (CAC) shows that, in the year ending 31 March 2010, the CAC received 42 applications for union recognition. This was the same number as for the previous year. The manufacturing, transport and communications sectors provided 54% of the caseload.

The study sought to discover respondents’ views on the impact of trade union recognition, or increased recognition, on future employee relations. Some 47% of private sector respondents consider that recognition would damage the future employee relations structure. However, only 16% of public sector respondents concurred with this. A low percentage of respondents (12%) consider that recognition would damage the future employee relations structure within their organisation. However, this figure was higher in the public sector (24%). Some 41% of total respondents believe that recognition would have no effect.

Respondents’ comments about the effect of union recognition, or increased recognition, shed light on these findings:

“Many of the trade unions recognised in our industry are not moving with the times in terms of their thinking and do not seem to grasp the need to work more collaboratively to survive. Also, many of them do not take on board the financials of the business and the implications this has in terms of the company constraints when it comes to negotiations.”

“It would slow the decision making process and potential conflict between the employer and the employee.”

“Unnecessary third party intervention that would hamper relations between organisation and employees”

“Trade unions have their own agendas which are often not relevant to the employees’ concerns/employer; often about increasing power of a trade union and not about specific issues in the workplace”

“It is difficult to assess the impact of recognising a trade union as it depends on their agenda and the relationship created between the organisation and the union. Can be a positive if partnership is centric in the principles of the relationship”

“There is of course benefit [to trade union recognition] if both parties have the same agenda which is to make the business productive and profitable with an aim for long-term employment opportunities. Unfortunately some individuals within the trade union are politically motivated and seek to build in layers of distrust and conflict, often as a mechanism to increase trade union membership”

A lack of perceived benefit for further recognition in the public sector is likely to be influenced by the high level of union recognition already existing in the public sector (see below). This is reflected in some of the open-ended responses to the study:

“We are a public sector organisation with trade unions at the centre of our consultation and information strategy. I’m not sure we could increase the levels of recognition other than to recognise other unions and I don’t know how they would operate alongside the already well established unions we deal with”

“The organisation is already signed up to collective bargaining so recognising other unions would not have a significant effect”

“Already have recognised unions and good working relationships”
Does your organisation have a defined strategy for its dealings with trade unions (whether you currently recognise a trade union or not)?

Some 90% of respondents in the public sector recognise a trade union for collective bargaining purposes, compared with only 39% in the private sector.

Respondents had many reasons for engaging with trade unions, including:

“If the workforce seek representation then it is right and proper to use the body for information/consultation/negotiation purposes”

“Unions are representations of the workforce, and as it is the workforce that drives the company, unions play an important role”

“This provides a clear and open framework for discussing such issues”

Some 24% of private sector respondents do not engage with unions or are actively seeking to keep unions out of the workplace. A further 24% do not have a defined strategy at all. The reasons for this include:

“Paying direct attention to employee needs and concerns, conducting regular performance appraisals and communicating well/frequently with them on company strategy, direction or specific issues removes the need for employees to resort to trade union representation”

“We believe in one to one with everyone in our organisation and unions add no benefit. We have very good employee relationships/communications without unions. Everyone has access to management and there are many times when this is used to deal with issues”

“We believe they would have negatively impacted on our business, including the interests of our employees. Our business success is, in part, due to the flexibility and responsiveness of our business and our workforce. We believe a trade union would damage this”
In your opinion, has union membership increased, declined or stayed static in your organisation in the past two years?

Some 54% of respondents believe that trade union membership has stayed static, while 16% believe it has increased. However, there was a marked public/private sector split on this issue. Some 29% of public sector respondents believe that trade union membership in their organisation has increased in the past two years, compared with just 10% of private sector respondents. Some 20% of public sector respondents believe that membership has declined, compared with 36% of private sector respondents.

Interestingly, the findings show that the respondents’ perception of the trend in trade union membership in their own organisation does not match the position as revealed by the Office for National Statistics (ONS) statistics. Trade union membership and density is much stronger in the public sector. Private sector union density was just 15.1% in 2009, while public sector density was 56.6%. However, both fell by the same rate, around half a percent, in 2009 compared with 2008. In the UK as a whole, the decline in trade union membership and density has been an established trend for many years. Trade union membership peaked in 1979 at 13 million. In 2009, membership levels fell by 2.4% to 6.7 million compared with 2008, though union density (the proportion of people in employment who are trade union members) remained constant at 27.4%.
INDUSTRIAL DISPUTES

Has your organisation been involved in an industrial dispute in the last five years?

Just 26% of respondent organisations have been involved in an industrial dispute in the last five years, with 24% of these being involved in five or less. Perhaps unsurprisingly, just 12% of the respondents who have experienced industrial disputes were in the private sector.
The study highlights that pay and benefits are the most common causes of industrial disputes, with 47% of respondents identifying this issue as the primary cause. Other terms and conditions and employment/termination of workers are evenly matched as the primary cause at 11%.

The findings are in line with national statistics for the UK as a whole. According to official labour market statistics, the main causes of industrial action in 2009 were wage disputes (mainly wage rates and earnings levels) and redundancy issues. Some 60% of the working days lost in 2009 were due to disputes primarily over redundancies.
Again, thinking of the most recent dispute, did it result in a threat of industrial action?

Yes - 78%

No - 22%

A high percentage of respondents (78%) have been subjected to a threat of industrial action arising out of a dispute.
Despite 78% of respondents being threatened with industrial action when dealing with their most recent dispute, just 12% took legal action to delay or prevent industrial action taking place.
A total of 105 respondents, with at least 100 employees, who have had a dispute in the last five years and taken legal action, answered this question.

In just 13% of cases industrial action still proceeded when respondents took legal action. In the vast majority of cases (87%), the industrial action did not proceed, either because legal action was successful, or more commonly (68%) for another reason.
Q.18

What was the approximate cost of the dispute to the organisation (in terms of direct financial cost, lost production, management time and effect on future business)?

A total of 105 respondents, with at least 100 employees, who have had a dispute in the last five years and taken legal action, answered this question.

The majority of respondents (71%) who have had a dispute in the last five years experienced less than £10,000 of costs to the organisation in terms of direct financial cost, lost production, management time and effect on future business.
Overall, a small majority of respondents (52%) expect industrial unrest to remain the same in their sector. In light of impending public sector cuts and the TUC’s call for widespread action by public sector workers, it is unsurprising that 69% of public sector respondents expect more industrial unrest in the public sector in the next 12 months.

ONS figures show that 455,000 working days were lost to industrial action in 2009, compared with the 27 million lost during the 1984 miners’ strikes and the 29 million lost during the 1979 Winter of Discontent. ONS statistics for 2010 show lower levels of industrial action than in 2009, except in March 2010 when the impact of the British Airways cabin crew strike led to 277,000 working days being lost to industrial action.
A total of 486 respondents with at least five employees answered this question.

It is interesting that although 41% of respondents expect more industrial unrest in their sector in the next 12 months, only 29% of respondents expect more unrest in their organisation. Large employers were more likely than SMEs to expect more industrial unrest in their organisation (40% of large employers responded ‘more’ compared with only 9% of SMEs).
This Private Members’ Bill aims to extend the circumstances in which trade unions are immune from legal action in relation to industrial action. As a general rule, industrial action is unlawful unless it has the support of a properly conducted ballot, but there is an exception in certain specified situations if the balloting process suffered from a “small accidental” failure which is “unlikely to affect the result”. The Bill would extend the circumstances in which the “small accidental failure” exception would apply. Would you support this change to the law?

Only 26% of respondents support the proposed change to the law. Support was higher in the public sector than in the private sector, with 33% of public sector but only 24% of private sector respondents supporting the proposed change.

Section 232B of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) provides that failures by the union in ascertaining which members are entitled to vote and ensuring that those members receive a ballot paper can be disregarded if they are “accidental and on a scale which is unlikely to affect the result of the ballot”. This ‘accidental failures’ exception also applies to ensuring that the members’ votes are fairly and accurately counted. However, TULRCA makes no express provision for accidental failures to be disregarded so far as the union’s various notice obligations (to the employer and to its members) are concerned. This would be addressed by the proposed Private Members’ Bill.
The majority (76%) of respondents would support the proposed change in the law. Recently the CBI launched a report “Keeping the wheels turning: modernising the legal framework of industrial relations” calling for a package of measures to modernise employment relations legislation. The proposals comprised the following 11 recommendations:

- rationalise the law on employers using temporary workers to cover for striking employees to allow employers to hire agency workers;
- extend the notice period for industrial action from 7 to 14 days;
- ballot mandates should be limited to the original dispute;
- make a ballot of employees in the bargaining unit compulsory when a union is seeking statutory recognition;
- the test for a legitimate strike should require 40% of balloted members to support it as well as a majority of those voting;
- only paid-up union members should be eligible to vote;
- unions should be required to conduct an annual audit of their membership and use reasonable endeavours to keep records up to date;
- employers should be able to include a written statement in the information which goes out with strike ballot papers;
- ballot papers should include a notice stating that pay and non-contractual benefits can be withdrawn by the employer if the worker goes on strike;
- unions should be required to repudiate unlawful strike action within a defined time period and the Certification Officer should be given more power to enforce the law;
- unions should face realistic sanctions for failing to comply with the law on industrial action.

Many of these recommendations are new, but there have been suggestions for some time that if the Government did consider reforming the law on industrial action, the most likely reform would be to the thresholds for support for lawful strike action. The proposed “40% of those eligible to vote, and a majority of those voting” test would mirror the threshold in a ballot for statutory trade union recognition. Several employers who responded to the study were in favour of the thresholds being raised even higher than proposed by the CBI:

Q.22

The Government is widely reported to be proposing a change to industrial action law to bring in a minimum threshold in strike ballots; ie that no strike should be legal unless 40% of those eligible to vote in a strike ballot support it. At present the strike is legal if a simple majority of those actually voting support the strike. Would you support the proposed change in the law?
“Support the need for a minimum threshold to vote but this should be at least 50% of those eligible to vote in my opinion”

“40% is too low, more than 60% should have to take part in a vote to take industrial action in order to make it lawful”

Recent case law suggests that there are numerous instances where a union would be able to demonstrate a clear majority in favour of strike action on the basis of the current law but would be unable to achieve the proposed 40% threshold. It would be particularly difficult for unions to gain the requisite support for strike action where the workforce is geographically diverse or works in non-traditional workplaces.

The RMT recently balloted its members over action which did not go ahead due to a legal challenge to the accuracy of the union’s membership data. However, even if the data had been accurate, a simple majority of those voting would not have achieved the threshold of 40% of those eligible to vote. The ballot result of 1,705 ‘yes’ votes from a voting constituency of 4,556 members gives an overall percentage of eligible voters voting in favour of only 37%.

In a recent vote (August 2010) by Unite members to take strike action against BAA, of the 6,185 staff eligible to vote, only 3,054 valid papers were returned. Although 2,263 voted in favour of strike action, again this gives an overall percentage of eligible voters voting in favour of action of only 37%.

The proposed change in the law would not have affected the outcome in the recent Unite and British Airways dispute. In that case, the actual number of union members eligible to vote was in dispute (and was the subject of legal challenge), but in any event with a turnout of around 80% of eligible voters and 9,514 of the total 10,286 votes cast in favour of industrial action, Unite would in that case have passed the 40% threshold.
THE INTERNATIONAL PERSPECTIVE

The cross-border dimension of employee relations is increasingly important for multinational businesses, not least due to the increasing globalisation of the trade union movement. Like businesses, unions want to extend their reach, to attract new members and grow. The internationalisation of the union movement gives unions the potential to apply more pressure to susceptible parts of an international business. Similarly unions recognise that in order to tackle the labour issues that arise from globalisation they have to operate at a transnational level. There is currently no genuinely global union but in recent years the trend in the trade union movement has been towards increased international co-operation. National trade unions work together on an international scale by industry sector forming influential workers’ federations such as the International Transport Workers’ Federation and the International Metalworkers’ Federation. The recent British Airways dispute is an example of how domestic unions can use their alliances with unions overseas to increase the pressure on a multinational business. During the cabin crew strike there were reports of sympathetic action by unions in the US and Australia.

Increasingly global union federations are also entering into multinational framework agreements with multinational companies involving a commitment on behalf of the company concerned to engage the relevant international trade union federation and discuss issues of fundamental importance to both parties.

Against this background, it is crucial for multinational companies to understand the different legal requirements, cultures and expectations which apply in respect of employee relations in all the countries in which they operate. In this report we look at some of the key issues shaping the employee relations landscape in the following countries:

- Australia
- Belgium
- China
- France
- Germany
- Italy
- Spain
- UK
- US

Our report reveals that there are important differences across jurisdictions in the role which trade unions play in employee relations, the influence which trade unions can bring to bear and the rights or freedoms of employees to take industrial action.

With few exceptions, official figures show an overall decline in trade union density over the last decade. One notable exception is Belgium, where density increased from 49.3% to 54.1% between 2000 and 2006. Density levels alone do not show the full picture. For example, in France union density levels are relatively low but unions participate to a greater degree in Works Councils.

At the national level the right to freedom to take strike action is guaranteed by the constitution in most countries in the European Union, with the exception of Austria, Belgium, Luxembourg, Malta, the Netherlands, Ireland and the UK. In Germany and Finland the right derives from the freedom of association.
**AUSTRALIA**

**The role of trade unions in employee relations**

For well over 100 years, the industrial relations systems throughout Australia operating at the state and federal levels have compelled employers to recognise trade unions in the workplace. Today, it is freedom of association that gives trade unions a role in the workplace. The role of trade unions remains important because freedom of association is an enduring theme of workplace relations law.

Under federal law, employees have the freedom to choose whether they are a member of a union and whether to be or not be represented by a union, particularly in the collective bargaining regime that operates under the Fair Work Act 2009 (Cth) (FW Act). As a consequence, any union validly appointed to represent an employee or employees is someone an employer in those circumstances must recognise and deal with according to law. This did not change under the reforms introduced by the FW Act, although many will argue that unions’ role in collective agreement negotiations has been enhanced by their ‘default’ position as a bargaining representative for their members under the new collective agreement making rules that have applied since 1 July 2009.

An employer simply cannot refuse to deal with a trade union if the employee wishes to be represented by that body. The employer would breach provisions in the FW Act were it to do so. If an employer treats an employee less favourably because of his or her union membership, then that employer will breach the law and possibly face pecuniary penalties.

**Trade union membership**

Information obtained from the Australian Bureau of Statistics reveals that trade union membership in Australia hit its peak in 1962, with just over 61% of workers having union membership. This level declined rapidly from 1962 until in 1970 just over half of all Australian workers were union members. Though there was a resurgence in union membership throughout the 1970s, beyond that time trade union membership slowly declined, until in 1990 only 40.5% of workers were union members. Since then, membership levels have continued to fall, to 32.7% in 1995, 24.7% in 2000, 22.4% in 2005 and 18.9% in 2008. In 2009, there was a slight increase in membership to 19.7%.

**Industrial action and the employee relations climate**

The FW Act retains the distinction between ‘protected’ industrial action (lawful action) and ‘unprotected’ industrial action (unlawful action).

Industri action continues to be permitted for the purpose of supporting or advancing claims in relation to an enterprise agreement that are about (or reasonably believed to be about) ‘permitted matters’. Protected action can only take place once the nominal expiry date of an enterprise agreement has passed. Permitted matters are essentially matters pertaining to the relationship between an employer and employee and matters pertaining to the relationship between an employer and the union.

Protected industrial action is lawful industrial action which is immune to legal remedies that would otherwise apply unless it falls outside the exemption. Industrial action will only be protected when strict conditions are observed which include a ballot in support, notice requirements and time limits. Protected industrial action must also be categorised as an:

- ‘employee claim action’ (industrial action organised to support or advance permitted claims made in relation to an agreement);
- ‘employee response action’ (industrial action engaged in by employees who will be covered by the proposed agreement in response to industrial action taken by an employer who will be covered by the agreement); or
- ‘employer response action’ (industrial action engaged in by an employer who will be covered by the proposed agreement in response to industrial action taken by an employee who will be covered by the agreement).

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**ESSENTIAL FACTS AND FIGURES**

**Number of trade unions:**

There are currently 46 federally registered trade unions.

**Trade union membership/density:**

As of August 2009 (the latest statistics available), 19.7% of the workforce are union members. This equates to approximately 1.8 million workers.

**Days lost to industrial action:**

In the June quarter 2010, there were 56 disputes involving 13,900 workers, resulting in the loss of 24,000 working days. This compares with the March quarter 2010, when there were 54 disputes involving 13,200 workers and the resultant loss of 28,800 working days.

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BELGIUM

The role of trade unions in employee relations

Trade unions mainly have influence through the establishment of union delegations within a company. An employer must establish a union delegation at the request of one or more representative trade unions, subject to a number of conditions. The union delegation members are workers of the company who are either appointed by the union or elected by the other unionised workers.

Trade unions have a significant role to play in employee relations. Their rights include:

- conducting collective negotiations and concluding collective bargaining agreements;
- representing union members before an employment tribunal.

Trade unions also indirectly have the following rights through staff representative bodies:

- There are extensive staff information and consultation rights within the Works Council and the committee for prevention and protection in the workplace. While the staff representatives in these bodies are elected every four years by the workers themselves in the framework of the so-called social election process, in principle only the trade unions have the right to submit lists of candidates in the framework of this social election process (although there are exceptions to this rule for the representation of management of staff in the Works Council).

- The trade union delegation has the right to be heard if a conflict on a collective bargaining agreement or an individual employment agreement arises.

Trade unions operate alongside Works Councils which function as a meeting and discussion forum for both management and the workers’ representatives. A Works Council has to be established in every company usually employing a minimum of 100 workers. A committee for prevention and protection in the workplace must in principle be set up if there are at least 50 workers. The conditions for allowing trade unions to claim the establishment of a union delegation vary, but generally stand around 25 workers. The number of representatives on a Works Council, a committee for prevention and protection in the workplace or a union delegation is related to the size of the company.

There is also a system of ‘replacement’, so that if an union delegation has been established within the company, but there is no Works Council or committee for prevention and protection at work, then the union delegation takes over certain functions of the other two bodies.

Trade union membership

There are three main unions in Belgium: the socialist trade union (ABVV in Dutch, FGTB in French), the Christian union (ACV in Dutch, CSC in French) and the liberal trade union (ACLVB in Dutch and CGSLB in French). According to a 2006 European Trade Union Confederation Report, trade union membership stands at approximately 54% of the workforce.

Industrial action and the employee relations climate

In Belgium, employees have complete freedom to strike. The right of employees to strike is guaranteed in the European Social Charter and by case law. In the majority of case law, no distinction is made between a strike organised by a registered union and one by a non-registered union or by individual staff representatives.

A strike suspends the employment contract, hence there is no right to remuneration. Traditionally, the trade unions pay their members a certain amount for each day they participate in a strike organised by the trade union.

An employer may seek an injunction to prevent a strike going ahead but, in most cases, an injunction will only be granted if there is sufficient evidence that, either there are workers who are not participating in the strike and are being refused access to the premises, or the employer’s premises are being damaged. In the majority of cases where such an interlocutory injunction is granted, it does not prohibit the strike as such (ie the concerted refusal of work), but rather incidents linked to the strike (for instance, blocking access to the premises of the employer for the workers who are not participating in the strike).

The current industrial climate is difficult to summarise. In the current economic crisis, unions have been adopting a more pragmatic approach; the claims formulated by unions are often mitigated by an understanding of the limited room for negotiation as a result of the financial and economic situation of a considerable number of employers. Notwithstanding this, there have been a few fiercely contested and confrontational industrial disputes at some of the largest employers in the country, which have been covered extensively by the media.

ESSENTIAL FACTS AND FIGURES

Number of trade unions:
There are three main unions in Belgium: the socialist trade union (ABVV in Dutch, FGTB in French), the Christian union (ACV in Dutch, CSC in French) and the liberal trade union (ACLVB in Dutch and CGSLB in French).

Trade union membership/density:
Estimated in 2006 at 54%

Days lost to industrial action:
88,941 working days lost due to strikes during 2006.
CHINA

The role of trade unions in employee relations

All unions in China belong to or are controlled by the All China Federation of Trade Unions (ACFTU). Union representatives have the right to negotiate and sign collective agreements that address compensation and benefits, social insurance, working time and health and safety issues.

Trade union membership

Approximately 170 million employees in China are members of a trade union. The last two decades witnessed the dissolution of many state-owned enterprises, whose employees formed the core of China’s unions. To compensate for the decrease in size and strength, the ACFTU announced an aggressive campaign to unionise all foreign enterprises. Just over a year ago, 83% of MNC headquarters in China had been unionised. Union members are heavily protected under Chinese law.

Industrial action and the employee relations climate

Any provision in a collective agreement can be disputed. By law, the union must participate in the resolution of any labour dispute. The union also has the right to ask local government to initiate court proceedings against any employer or individual who violates the Labour Union Law.

Unions in China are not authorised to organise, initiate or support strikes. Should a strike or work to rule situation arise, the union is responsible for negotiating with employers on behalf of employees. The union is required to assist the company in resolving the matter and resuming production and work as quickly as possible. Strikes are not expressly prohibited, but they are also not authorised. Since there is no legal right to strike, there is no outlined procedure for organising or conducting strikes. Strikes are most common in the manufacturing sector, specifically in factories that produce low tech, labour intensive goods. Disputes frequently revolve around back payment of wages and sub-standard working conditions.

The law in China is silent on strike liability. The only obligation mentioned in relation to strikes is the union’s role in mediation and return to work. There are no forms of protest legally recognised under PRC law. In addition to strikes, typical reactionary measures include taking management hostage or the destruction or theft of company property. Although the global economic crisis has affected demand and factory output, labour relations in China have remained remarkably stable.

ESSENTIAL FACTS AND FIGURES

Number of trade unions: 1,324,000
Trade union membership/density: 169,942,111
Days lost to industrial action: Not publicly available

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The role of trade unions in employee relations

Many of the rules applying to unions in France were changed in August 2008 when new legislation was passed.

A union must create a Union Section within a company in order to acquire any rights. The purpose of the Union Section is to represent the moral and material interests of its members in accordance with the aims of the union.

A union can establish a Union Section in any company having at least 50 employees. A Union Section gives a union a number of rights, including communication rights, negotiation of collective bargaining agreements and determining candidates for the election of employee representatives.

The Union Section must be provided with all necessary means to achieve its objectives, including collecting contributions, posting union communications on noticeboards made available by the employer, distributing leaflets and publications, exclusive access to a meeting room in companies of more than 200 employees and freedom to organise a certain number of meetings.

Once a Union Section is in place, Union Delegates may be appointed. Their mission is to represent the interests of their union before the employer and, in principle, they have a monopoly to negotiate and enter into collective bargaining agreements with the employer on most subjects.

Under the French Labour Code, companies employing 50 or more employees are also obliged to organise the election of members to a Works Council. The purpose of the Works Council is to exercise the employees’ right to information regarding the economic status of their company and decisions that may affect their employment.

Trade union membership

Historically, five trade unions have been officially recognised as ‘representative’ unions as of right (CGT, FO, CFDT, CFTC, CFE-CGC). However, recent legal provisions have changed the rules on representativeness. Under the new rules, any union, including an emerging one, has to prove its representativeness, on the basis of legally set criteria, at whatever level it wants to act (industry or company level).

In France, net union membership and union density are relatively low (less than 10% in the private sector) but a larger number of workers participate in elections to Works Councils and employees are protected by nationwide, industry-wide collective bargaining agreements.

Industrial action and the employee relations climate

The right to strike is recognised by the French Constitution of 1958.

Under the French Labour Code, a strike does not terminate an employment contract unless there has been wilful misconduct by the employee. The dismissal of a striking employee is considered void and the employee can demand to be reinstated in the company. Further, it is not possible for an employer to take into account the fact that an employee has gone on strike when determining salary increases, bonuses, etc.

However, in order for a strike to be valid, the striking employees must cease working entirely. Continuing to work, but at a slower pace or in a poor manner, is not, under case law, considered a valid strike and could potentially be used against the employees as professional misconduct leading to a disciplinary sanction. However, case law has established that it is not necessary for the entire workforce, or even a majority of it, to go on strike in order for the strike to be valid.

Employees can decide to go on strike at any time and, unless they are in the public sector, are not required to give prior notice of the strike.

There has recently been widespread industrial unrest in France, largely aimed at putting pressure on the Government over a controversial pension reform plan. A general strike took place on 23 September 2010 causing widespread disruption to transport. Strikes in France are particularly common in the public transport sector and strike action is generally more extensive in France than in other European countries.
Germany

The role of trade unions in employee relations

German law provides for employee representation at different levels. The most important employee representative body is the Works Council (Betriebsrat), a body elected by employees for a term of four years. The Works Council has to be consulted on a wide range of subject matters but is not usually competent to negotiate salaries and other key terms of employment. This competence rests with the unions. Also, only unions have the competence to call for a strike. Key members of the Works Council, particularly in larger companies, are, however, often union members and have a say within the union.

Trade union membership

Trade unions are either industrial or professional organisations. Industrial organisations are associations of employees working in the same industrial sector. The IG Metall union, for example, represents employees working in the metal, electronics, textiles and clothing, wood and synthetics sectors, as well as employees in the information and communication technology sector. Professional unions, on the other hand, are unions for members of the same profession, such as Marburger Bund, the union for medical doctors.

There are three umbrella trade unions in Germany. The biggest is Deutscher Gewerkschaftsbund (DGB). Eight trade unions belong to the DGB and the DGB has a total membership of 6.26 million. The second biggest umbrella trade union is Deutscher Beamtenbund (DBB). Some 39 trade unions belong to the DBB with a total membership of 1.28 million (2007). The smallest umbrella trade union is Christlicher Gewerkschaftsbund (CGB). Some 16 trade unions belong to the CGB, with a total membership of 0.28 million. In addition there are four small trade unions which do not belong to one of the three umbrella trade unions, the Marburger Bund, which has 110,000 members, the Vereinigung Cockpit, with 8,200 members, the Unabhängige Flugbegleiter Organisation (UFO) with 10,000 members and the Verband angestellter Akademiker und leitender Angestellter der chemischen Industrie (VAA), which has 27,000 members.

Industrial action and the employee relations climate

Strikes are only admissible after all other options for solution of the problem are exhausted, which in turn means that all negotiations must have failed (the so-called ‘ultima ratio’ principle). According to case law of the Federal Labour Court, warning strikes are restricted by the ultima ratio principle and are therefore unlawful, if negotiations have not failed at the time of the warning strike. However, the warning strike itself implies that negotiations have failed and the failure does not have to be announced specifically to the employers. A lawful strike has to be organised by a trade union and can only be carried out by, and against, parties who are able to be parties to the collective bargaining agreement. It must be aimed at a change that can be achieved by collective bargaining agreements. A strike ballot must be held, in which a certain majority of members of the trade union must support the execution of the strike.

The strike itself is governed by the principle of proportionality. This implies that the strike is only admissible after all other options for solution of the problem are exhausted, which in turn means that all negotiations must have failed. If the trade union is bound by a no-strike clause in a collective bargaining agreement, all labour conflicts concerning issues governed by that agreement will be invalid until the agreement terminates. For the duration of a collective bargaining agreement there is a ‘relative peace’ obligation, meaning all measures of labour conflict must be refrained from, as long as the crucial issue is regulated in the agreement.

Demonstration and protest strikes are unlawful if the purpose is to criticise or influence the employer, ie the aim is not to achieve a conclusion of a collective bargaining agreement. Political strikes are illegal. In 2007, the Federal Labour Court ruled that ‘supporting strikes’ may be considered legal. Strikes whereby one trade union supports another in the latter’s labour conflict are lawful if a certain economic closeness exists between the businesses organised by the different trade unions. Nevertheless, the supporting strike itself needs to be lawful.

In Germany, collective labour disputes are most common in the metalworking industry and in the retail industry. However, due to the global economic crisis, employees and trade unions are more likely to understand detrimental management decisions, such as cutbacks. Therefore, the current industrial relations climate in Germany is rather relaxed, although, in particular, pilots and train drivers have been involved in strikes lately.

Essential facts and figures

Number of trade unions: 67.3 umbrella unions comprising 63 unions in total, plus 4 independent unions

Trade union membership: Approx 7,973,000

Days lost to industrial action: Between 2000 and 2008 5 average annual days were lost to strike action (per 1,000 employees). In 2006, however, the annual days lost to strike action (per 1,000 employees) reached 12.4.

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Trade unions usually act at a national level interfacing with government and public authorities and employers’ associations to deal with matters of general interest in the work and employment sector. They negotiate with employers’ associations and execute the National Collective Bargaining Agreements which are different according to the different industry sectors and contain the general terms and conditions applicable to the employment relationship.

In collective matters trade unions represent all employees employed in an employer’s establishment, regardless of their union membership. In individual cases, trade unions represent the rights and interests of their members or employees who seek assistance. Works Councils also function to represent the interests of employees and can be established in companies employing at least 15 employees. Members of a Works Council are elected by the employees.

Trade union membership

Even though there are no official statistics on trade union membership, it is estimated that Italian trade unions have more than 12 million members. However, a high proportion of them are retired (almost half - 47% - across the three largest confederations). Taking this into account, union density can be put at a rate of 30-33%.

There are three main union confederations in Italy – CGIL, CISL and UIL – whose divisions were initially based on political differences, although these have become less clear over time.

The largest is the CGIL, which has 5,734,900 members, although only 2,719,700 of them are employed. The second biggest is CISL with 4,507,500 members, of whom 2,306,800 are employed. And the third largest is UIL, which has 2,116,300 members of whom 1,181,000 are employed (all figures are for 2008).

In the past these union confederations had fairly clear political affiliations. CGIL was close to the Communist Party; CISL was created by Catholic trade unionists who were also active in the Christian Democratic Party, while UIL was closest to the Socialist Party. However, changes in the political structure (none of these parties still exist in their previous form) and changes within the confederations mean that this political categorisation is no longer appropriate. It is clear, however, that in general CGIL took a more combative approach to the right-wing government than the other two.

There are other groupings of trade unions outside these dominant confederations. The most important is the UGL, formerly called CISNAL. It is close to the right-wing party. The UGL states that it has two million members.

Overall, trade union representation in Italy has become increasingly fragmented in the last 20 to 30 years, particularly in the public sector and transport. Figures compiled by the state agency ARAN, for example, show that in 2008, although union density in the public sector was around 50%, with 80% of union members in the three major confederations, CGIL, CISL and UIL, more than 700 other unions were also present. Of these, more than half (52%) had a membership below 0.1% of total union membership, including around 30% whose membership was below 10% and 11.5%, which had only a single member.

Industrial action and the employee relations climate

The freedom to strike is provided by Section 40 of the Constitution and its exercise cannot constitute a breach of contract. As a general principle, striking is a lawful action provided it does not prejudice the company’s organised assets or the company’s continued activity. However, a reduction in the volume of production is considered a normal consequence of a strike.

There are no specific procedures for conducting a legal strike. However, normally employees do give prior notice of the strike to the employer.

Specific rules apply for strikes involving public essential services, such as public healthcare, public transportation, administration of justice, telecommunications, public education, etc.

Strikes in Italy are most common in the industrial sector and in public and private transportation.

In the past two years there have been many strikes in the aviation sector, given the situation of the financial crisis of the former flag company Alitalia and the subsequent takeover of the private company CAL with implementation of thousands of dismissals and negotiation of a new collective agreement.

In 2010, FIAT, which is the most important Italian car manufacturer (metal industry sector), also experienced a large number of strikes.

ESSENTIAL FACTS AND FIGURES

Number of trade unions: There are 3 main union confederations in Italy – CGIL, CISL and UIL, plus UGL and hundreds of minor unions.

Trade union membership/density: 30-33%

Days lost to industrial action: According to ISTAT (Italian Institute of Statistics), total time lost to industrial action is equal to 5,059,000 hours in 2008 and 2,600,000 hours in 2009 (48.6% less).

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**SPAIN**

The role of trade unions in industrial relations

Employees may be represented by trade unions (which may create national inter-union organisations as well as national, regional or local trade unions) or employee representatives at a company’s level. Employees are entitled to participate in their company through Personnel Delegates or Works Councils. In collective matters unions represent all employees employed in an employer’s establishment, regardless of their union membership. In individual issues they only represent the rights and interests of the individual members asking for their assistance.

Trade union membership

All employees have the right to join trade unions for the promotion and defence of their social and economic rights.

The most important and representative trade unions (Sindicatos) in Spain are the Comisiones Obreras (CCOO) and the Union General de Trabajadores (UGT), which have the largest membership among the major Spanish industries.

Furthermore, those employees who are affiliated to a union may create union sections (secciones sindicales) within their company or workplace. In companies or workplace with more than 250 employees, union sections may be represented by a Union Delegate (Delegado Sindical) who enjoys the same legal protection as Employees’ Delegates or Works Councils’ members.

Industrial action and the employee relations climate

The most frequent collective labour disputes in Spain are those concerning interpretation or application of rules regarding remuneration and working hours. The right of employees to strike is guaranteed in the Spanish Constitution. It is an employee’s right, although it must be exercised collectively. A strike consists of collectively refraining from work by employees for the purpose of resolving a collective labour dispute. Retaliation against a strike is illegal and any dismissal will be declared null and void. Work to rule strikes, political strikes, solidarity strikes, shifting strikes, strategic strikes and strikes aimed at amending labour conditions agreed in a CBA that remains in force are illegal. However, only the competent labour court (and not the employer) is capable of declaring the strike illegal, and such declaration will take place in most of the cases once the strike has ended. Likewise, a strike that does not follow the legal requirements (eg notice) will be declared illegal.

Currently Spain is experiencing a complicated industrial relations climate motivated by a 20% unemployment rate and government, trade unions and employers organisations failing to reach an agreement regarding a labour law reform; things could worsen if the Government decides to give flexibility to the labour market by amending termination provisions/severance payment rules as advised by most of the national and international think tanks. The last 12 months has seen strike action in the following sectors: automobile sector, trains, public television and air traffic controllers.

On 29 September 2010, a general strike by Spanish workers against the labour law reform and spending cuts caused widespread travel chaos. This was the first general strike in Spain in eight years.

ESSENTIAL FACTS AND FIGURES

Number of trade unions:
There are at least 500 trade unions with workers’ representatives in Spain. The most important trade unions at national level are CCOO and UGT they qualify as the most representative trade unions.

Trade union membership/density:
In 2009, around 17% of the total workforce was unionised.

Days lost to industrial action:
Between 25,000 (low point) and 225,000 (high point) per month in 2009-2010.
The role of trade unions in employee relations

The areas of activity and influence of trade unions depend on whether the union is recognised by the employer, i.e. whether the union has a negotiating voice with the employer on behalf of its members for the purposes of collective bargaining. As a consequence of recognition, the union will enjoy more extensive rights such as the right to disclosure of information for the purposes of collective bargaining, the right to be informed and consulted in relation to collective redundancies, business transfers and occupational pension schemes, and rights for officials, members and learning representatives to take time off.

Regardless of whether the trade union is recognised by the employer for collective bargaining purposes, trade union representatives can accompany employees at discipline and grievance meetings if requested by the employee.

Works Councils or interpretation and consultation forums have not proved popular in the UK and, consequently, unions are the main representative body for employees’ interests. However, their influence has declined substantially since the 1970s as traditional industries such as manufacturing have declined. Just under half of UK workers are in a workplace where a union is present but this is largely due to the public sector.

Trade union membership

There are around 180 trade unions in the UK, of which 58 are affiliated to the Trades Union Congress (TUC). Most of the rights given to trade unions under UK labour law are reserved for independent trade unions. Trade unions may opt to become listed organisations with the Certification Officer, which enables the union to apply for a certificate of independence, which is the first step towards gaining recognition. Some 163 are listed with the Certification Officer and 114 have a certificate of independence.

Trade union density levels in the UK have been falling steadily since their high point in 1979. In 2009, 27.4% of employees were union members, 6.7 million in total. From 1996 to 2006 density levels fell from 31.4% to 28.3%.

Union density is highest in professional occupations (44.9% in 2009) and lowest in sales occupations (just 13.1% in 2009).

Industrial action and the employee relations climate

By ‘days lost’, strike action in the UK in recent years reached a peak in July 2008, October 2009 and March 2010. In the calendar year 2009 there were 455,200 working days lost due to 98 stoppages (as compared with 758,900 days lost due to 144 stoppages in 2008). A total of 81% of working days lost were in the public sector, although the stoppages were evenly split between the public and private sectors. Some 60% of working days lost in 2009 were due to redundancy disputes.

Although overall the number of strikes has fallen since the 1990s, the last few years have seen a rising number of high-profile industrial disputes involving service industries and in particular the transport sector which have had a significant effect on other businesses. The British Airways strike is the most obvious example; a strike by Royal Mail workers caused widespread disruption in 2009, and in 2010 a national strike by Network Rail staff was narrowly avoided.

There is no right to strike in UK law. A worker who strikes will be in breach of contract and a trade union will also therefore commit the tort of inducing breach of contract if it organises a strike. Trade unions are granted limited immunity from liability for organising strike action in certain circumstances, provided that the industrial action is taken “in contemplation or furtherance of a trade dispute” and is supported by a properly conducted ballot. The ballot and notification procedures are complex and, increasingly, employers are resorting to legal action to restrain industrial action focusing on technical breaches by the union of the complex procedures. Even the larger and more sophisticated unions have been caught out by the complexity of the process and the level of detailed information required.

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The role of trade unions in employee relations

Under US law, a union becomes the exclusive bargaining representative of employees at a particular employer either when a majority of the employees in the bargaining unit vote in favour of the union, or where the employer voluntarily recognises the union as the bargaining representative of the employees. A union only represents a select group of employees. The group may either be agreed to by the employer and the union, or may be determined by the National Labour Relations Board, the federal agency charged with administering the federal labour law, the National Labor Relations Act (which applies to almost all private employers excluding certain very small employers and the employers in the airline and railroad industries, which are governed by the Railway Labor Act).

Trade union membership

According to the US Bureau of Labor Statistics, union membership fell by 771,000 to 15.3 million in 2009, reflecting the sharp increase in unemployment due to the recession. In 2009, 7.9 million public sector employees belonged to a union, compared with 7.4 million union workers in the private sector. The union membership rate for public sector workers (37.4%) was substantially higher than the rate for private industry workers (7.2%).

With 3.2 million members, the National Education Association remained the largest US union in 2009. Four other unions also reported more than a million members on financial disclosure reports filed with the US Department of Labor. They included the Service Employees International Union (SEIU) (1.8 million), American Federation of State, County and Municipal Employees (1.5 million), International Brotherhood of Teamsters (1.4 million), and the United Food and Commercial Workers International Union (1.3 million).

The majority of national and international unions in the US are affiliated with the American Federation of Labor - Congress of Industrial Organizations, known as the AFL-CIO. The AFL-CIO serves as labour’s lobbying representative before the US Congress and state legislatures, supplementing the lobbying activities of individual unions. According to an AFL-CIO report, unions affiliated with the AFL-CIO had a combined average membership of 8.4 million members over a two-year period ending 30 June 2009. Change to Win is a coalition of five former AFL-CIO unions representing about 4.9 million workers. Two unions have dropped out of the organisation since Change to Win’s formation – UNITE HERE, which rejoined the AFL-CIO, and the United Brotherhood of Carpenters and Joiners of America, which quit Change to Win and has not re affiliated.

In 2009, New York, with 25.2% union density, ranked number one among all states in the percentage of employed workers who belong to a union. Hawaii’s 23.5% union density was closely followed by Alaska at 22.3%. North Carolina ranked last for the tenth time in the past 12 years with a union density of 3.1%, followed by Arkansas at 4.2%. South Carolina ranked third to last with 4.5% of its wage and salary workers belonging to a union.

Industrial action and the employee relations climate

Public policy and sentiment has been moving slightly more in favour of unions – however, the vast majority of the economy is not organised. In 2009, there were five major strikes and lockouts involving 1,000 or more workers. The prior low for major work stoppages was 14 in 2003. The five major work stoppages in 2009 idled 13,000 workers for 124,000 lost workdays, both record lows, and a large decrease compared with 2008 with 15 stoppages idling 72,000 workers for 1.95 million lost workdays.

Since 2007, the number of major work stoppages and the number of employees involved in major work stoppages have fallen sharply. From 2000-2009, there were approximately 20 major work stoppages on average per year, compared with 35 per year from 1990-1999 and 83 from 1980-1989. The largest work stoppage in 2009 in terms of number of days and total workdays idle was between Bell Helicopter Textron and the United Auto Workers Union Local 234 with 5,500 workers involved in the work stoppage.
METHODOLOGY

The study was completed by 507 senior business decision makers who were drawn from a database including clients and contacts held by DLA Piper. Fieldwork was undertaken online between 9 September and 8 October 2010.

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ABOUT DLA

DLA Piper’s Employment, Pensions and Benefits group is a market leading global practice with a strong reputation for delivering solutions-based advice and supporting clients in the day-to-day management of their people legal issues and risks. It includes over 250 specialist lawyers working globally on a strategic and operational level on both contentious and non-contentious matters across the private and public sectors. The group advises on all areas of employment, trade union and employee relations, discrimination and diversity management, pensions, employee benefits and reward legal issues.

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