

Access and accountability: the next phase of trade union reform

Employment Briefing

Trade union reforms are at the heart of the Employment Rights Act 2025 (“ERA 25”). The first substantive round of changes in February 2026 focused on industrial action, with recognition reforms following in April 2026, and electronic and workplace balloting in August 2026 (see [here](#) for further details).

On 30 October 2026, a new raft of significant reforms will come into effect, increasing the visibility of unions and shifting the balance of power further away from employers. Employers will need new processes and strategies for union engagement. This briefing provides a run-down of what to expect.

1. Access agreements

ERA 25 greatly expands unions’ ability to access workplaces. A new process for access agreements between employers and unions will provide an opportunity for even unions with no members in that workplace to access it.

The right for independent unions to access the workplace will extend to a broad range of “access purposes”: meeting, supporting, representing, recruiting or organising workers (crucially, including those who are not members of the relevant union), and facilitating collective bargaining. However, organising strike action is expressly excluded.

The new process applies to employers who have at least 21 workers. The agreements can cover both electronic communication with, and physical access to, workers. Employers have 15 days to respond to a union’s request (using a standard template), followed by a 25-day negotiation period to settle the access agreement. If the negotiations prove inconclusive, either party can then turn to the Central Arbitration Committee (“CAC”), which will have the power to impose a solution. The maximum length of an access agreement is two years, unless it is renewed by agreement of both parties.

The Government’s revised [draft Code of Practice](#) gives some insight into the process. The negotiations are intended to be constructive: both parties “should approach negotiations in good faith”. In any case, it will generally be in an employer’s interests to negotiate constructively,

given the alternative is losing control of the process to the CAC.

The CAC’s own decision-making will be geared in favour of access. The guiding “access principles” envisage that trade union officials should be able to gain access “for any of the access purposes in any manner that does not unreasonably interfere with the employer’s business”. This suggests that some interference with the employer’s business is to be expected and will not necessarily prevent access. The principles also mandate that:

- employers should take reasonable steps to facilitate union access;
- communications with workers should not cancel out the possibility of physical access and vice versa; and
- access should be refused entirely only where it is reasonable in all the circumstances to do so.

This approach is also reflected in the few model terms included in the draft Code, which may become a baseline expectation of the CAC. Most significantly, weekly access will be considered the default option, unless the union prefers (or the employer can justify) something less frequent. Once an agreement is in place, non-compliance will come at a heavy cost, with the CAC empowered to impose maximum fines escalating from £75,000 on the first breach to £150,000 on the second and £500,000 for repeated failures (assessed on an ongoing weekly basis).

Employer action points:

- Adopt processes for identifying access requests and ensuring they are directed to the appropriate person without delay.
- Think about the access (both physical and digital) that your business is willing to offer. Employers who are not willing to provide certain types of access will need to consider what case they have to say no.
- Consider how digital access may be accommodated without breaching data protection principles; are your usual communication methods appropriate?

- The new access right is specifically designed to help unions build membership and gain wider recognition by employers. Consider now how you would respond to a recognition application.
- Consider also the implications of greater trade union membership in your workplace. According to the Certification Officer's annual report for 2024-25, trade union membership has increased by 21% to 6.7million, even before this measure comes into force.

2. Protection from detrimental treatment

New regulations will ban all detriments against individual workers by their employers for the sole or main purpose of penalising, preventing or deterring them from taking industrial action.

ERA 25 plugs a gap in the existing statutory framework, which only protected workers from detrimental treatment on the grounds of trade union activities excluding industrial action. The Government's decision to outlaw all such detriments (rather than a list of specific types) does not change the existing common law position that an employer can deduct pay from striking workers.

The government has also acknowledged that prohibiting all detriments will not eliminate all options available to employers to manage industrial action, for example, proactive negotiation prior to industrial action commencing, contingency planning to mitigate impacts and workforce management. Nonetheless, other actions (such as suspending workers for prior strike action, as occurred in *Mercer v Secretary of State for Business and Trade*) will now be caught by the new provisions. Similar concerns may arise where benefits are offered to workers covering strike action but not to those taking part in the strike. Causation arguments are likely to be important in these circumstances.

Employer action point:

- Consider your current contingency plans for industrial action, and whether any responses could cause issues under the new regime.

3. Time off for union representatives

ERA 25 will make it easier for trade union representatives to take time off for their duties.

A new right will be introduced for trade union equality representatives to take reasonable time off to perform their duties. Additionally, ERA 25 will reverse the burden of proof so that, where trade union officials or learning/equality representatives claim that they were denied reasonable time off for union duties, the employer will have to prove that the time requested was

unreasonable. Finally, employers will be expected to provide reasonable accommodation and other facilities for those employees or learning representatives.

A new [Draft Acas Code of Practice on time off for trade union duties and activities](#) has been produced to support these changes, and is also due to come into force on 30 October 2026.

Employer action points:

- Review any policies on time off for union activities and consider what is "reasonable" in the circumstances of the business. Employers should be prepared for unions to take a bolder stance on what counts as reasonable for these purposes.
- Be prepared for greater scrutiny of equality issues, and to comply with information requests from equality representatives.

4. Recognition and derecognition: unfair practices

New restrictions on unfair practices will strengthen unions' positions in both recognition and derecognition procedures.

Stricter access rights will apply once the CAC has accepted a statutory recognition or derecognition application. The union will have five working days to request access, and the parties then have 20 working days to negotiate terms. If agreement cannot be reached, the CAC must determine access arrangements within ten working days. The expectation is that access should take place weekly and meetings should last for at least 45 minutes.

There are also stricter provisions to prevent "unfair practices" during the recognition or de-recognition process. The proposed bargaining unit will be frozen at the point the CAC receives the recognition application; workers who join after that point will not be counted and cannot be used by the employer to dilute support for the union. The prohibition on unfair practices will be extended to apply from the date the CAC receives the recognition or derecognition application (not just from the ballot under the current regime).

There will be more time to raise an allegation of unfair practice (increasing from one to five working days). The CAC will no longer need to consider the effect of an unfair practice on the ballot, only needing to be satisfied that it occurred. Additionally, an existing recognition agreement with a non-independent or 'sweetheart' union will no longer provide a bar to a new recognition process.

A revised [Code of Practice on Access and Unfair Practice during the Recognition and Derecognition Process](#) provides further detail on the changes and will come into effect on 30 October 2026.

ERA 25 also allows for further changes to the recognition procedure – specifically, by reducing the requirement to show at the application stage that at least 10% of workers in the bargaining unit are members of the union. This could be reduced to as low as 2%. The power to make regulations setting the percentage anywhere between 2% and 10% has been in force since April 2026. The government's implementation timeline states that "all remaining trade union recognition measures" will come into force on 30 October, although the regulations to enact this particular measure have not yet been published. It had previously been suggested that there would be some further consultation before that power was exercised. As mentioned above, it may be that the new right of access results in an increase in union membership, and the government could be intending to monitor this before deciding whether and how to change the required percentage.

Employer action points:

- Consider potential bargaining units and how they may be drawn, and what this would mean for industrial relations.
- Manager training will be key. Take care with communications to workers that nothing could be seen to be influencing or undermining the recognition or derecognition process.
- Consider voluntary recognition arrangements which would allow you to retain greater control of the process than would be possible if it is referred to the CAC.

Industrial relations are undergoing a transformation not seen in a generation. If this is not already on the board's agenda, it should be.

Contacts

If you would like to discuss any of these developments in more detail please speak to your usual Slaughter and May contact or another member of our Employment team.

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