INDUSTRIAL ACTION: WHAT EMPLOYERS NEED TO KNOW

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In this industrial action podcast, Martin Chitty, partner in the Employment team and Caron Gosling, director in the team discuss Trade Unions, trade disputes and strikes with a focus on what steps employers can take to respond to these issues.

During the podcast our experts consider the following questions:

1. What should an employer do when it first hears about potential industrial action? (00:26)
2. If the employer wants to challenge the industrial action, what can it do? (01:31)
3. What is the difference between official and unofficial action? (02:46)
4. What steps can the employer take if employees go on strike? (04:55)
5. Why is the law so complicated in this area? (09:35)
Siobhan Bishop: Welcome to our Podcast on Industrial Action. Today I am going to be talking with Martin Chitty, Partner in the Employment team and Caron Gosling, Director in our team about Trade Unions, trade disputes and strikes and particularly what steps employers can take to respond to these issues. We are going to focus on some of the most important practical issues and I would first like to ask Caron for her input.

Firstly Caron, when the employer first hears about a potential industrial action, what should they do?

Caron Gosling: Well the first thing is they should not panic. Because of the process, the complexity of the process, it means that it is going to be at least a month before the Unions can call their numbers out on industrial action so that gives the employer some time to consider the implications of what the Union is proposing, how it will affect their business and put in place some contingency planning around strategic operational communications and get appropriate legal advice.

An employer will know about it not least because relationships with the Trade Unions are likely to be a bit fraught but also because the Trade Union has to give at least seven days' notice in
writing of the proposed ballot to the employer, including notification of any person entitled to vote, telling the employer when the ballot will be, giving a list of the categories of employees to be balloted and where they work and the total numbers involved, broken down by category. The month process gives both parties time to cool off and gives both parties time to perhaps negotiate with a view to settling the trade dispute and maybe coming to some compromise between them.

**Siobhan:** If the negotiations are not going well or if the employer wants to challenge the industrial action, what can they do about that?

**Caron:** Ok, well firstly they need to consider this in the wider context of employee relations as a whole so resisting industrial action can be a bit of a nuclear option and may not actually help the underlying issue. An employer can challenge the process on the basis, for example, that there is no trade dispute as defined because the action has to come within the definition of a trade dispute. For the Union to get their immunity from the economic tort of inducing breach of contract on the part of the employees, the employer could also challenge, for example, because the process followed by the Union is not compliant. There are a lot of boxes that the Union needs to tick in order for it to get that immunity from the economic torts. So the employer needs to consider how best to deal with this in the context of the wider issues and not just the process per se, so one option might be to challenge the Union directly rather than institute legal action. Of course, Court action for an interim injunction can be lengthy and very expensive and so it may not be the right option, it all depends on the facts of the dispute in question.

Challenges to the process may be in fact be counter-productive because all the employer can do really is delay the process, rather than bar it completely, so this could inflame the situation rather than resolve it.

**Siobhan:** Thanks Caron. Martin, I would like to ask if you are able to explain to us the difference between official action and unofficial action.

**Martin Chitty:** Official action simply means that it has been called by, is endorsed by, is organised by the Union. Now, that has some important consequences. For the Union, it means that they have got to be seen to go through the procedure that we have been talking about, the ballot process, all of the necessary notifications and that protects them but by doing that and by making it endorsed action, so official.

It means that the individuals, their members, have greater protection because although an employer could choose to dismiss, it is actually very dangerous for the employer to do that and they are very limited in what they can do, so official action is more protective for all of those.