INTERNATIONAL LABOUR LAW NETWORK **NEWSLETTER**

ILLN.EU

Dear Reader,

We are pleased to present the latest edition of our newsletter. In this edition, we are taking a closer look at trade unions and other forms of employee representation. Such institutions play a key role in the relationship between employees and employers. While their structure, scope of authority, and importance may vary across countries, they share a common purpose: to represent the interests of employees vis-à-vis the employer, both in individual and collective matters.

In many European countries, such bodies have a long-standing tradition, are deeply rooted in the culture of social dialogue, and play a significant role in shaping working conditions, labour law, and employment policy more broadly.

The purpose of this newsletter is to provide a crosssectional overview of the functioning of trade unions and employee representatives in selected European jurisdictions. We will examine issues such as the legal basis for their activities, the mandatory or voluntary nature of their presence in the workplace, their role in both individual and collective labour relations, as well as the level of protection afforded to their members.

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Top ILLN News

Trade unions and other employee representatives in selected European countries

We will also address the issue of how widespread these institutions are in practice—for example, by looking at the percentage of employers or employees covered by trade union representation or similar bodies in each country.

This comparative perspective helps to better understand the diversity of social dialogue models across Europe.

We hope you will enjoy reading this newsletter.



New Members of ILLN Welcome on board!

BELGIUM

Belgium has one of the highest rates of union membership in Europe (although this rate is decreasing, 50% of workers are still unionised). This translates into a strong presence of trade unions in our social dialogue system, which is enshrined in law.

A three-level social dialogue

In essence, the Belgian system is based on a social dialogue that exists on three levels: on national level, on the level of the industry and on the level of the companies. At each of these levels, trade unions are represented. The following considerations apply to the private sector.

1. Social dialogue on national level

Within the National Labour Council (NLC) ("Conseil National du Travail"/"Nationale Arbeidsraad"), the social partners negotiate collective agreements applicable to the entire private sector. These collective agreements cover a wide range of topics such as teleworking, career interruption schemes, temporary work, etc. The NLC also issues opinions on social issues, essentially upon request of the Belgian government and parliament.

2. Social dialogue on the level of the industry

Each private company falls under the competence of a joint committee (JC) ("commission paritaire"/"paritair comité"). The relevant JC is determined on the basis of the company's activity. Within the JC, the social partners negotiate

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collective agreements that apply to the sectors, covering topics such as working time, minimum wages, end-of-year bonuses, supplementary pensions, etc.

3. Social dialogue on the level of the company

At company level, certain consultation bodies must be set up by the employer once a certain level of employment is reached.

A works council must be set up when the employer has an average of 100 employees, and a committee for prevention and protection at work must be established when the employer has an average of 50 employees. The employee representatives on these bodies are elected by the company's employees every four years during "social elections".

A trade union delegation may be set up, on the initiative of the trade unions, when the company

BELGIUM



EMMANUEL WAUTERS MVVP emmanuel.wauters@mvvp.be employs a minimum number of workers (this minimum is determined at sector level generally between 25 and 50 workers). Trade union representatives are appointed by these organisations.

Protection against dismissal

Worker representatives within the bodies at the level of the company are protected against dismissal.

Worker representatives withing the works council and the healt and safety committee (including non-elected candidates) may only be dismissed for serious cause (previously recognised by the labour court) or for economic or technical reasons (previously recognised by the joint committee).

Workers within the trade union delegation may only be dismissed for reasons unrelated to their status as trade union representatives (previously recognised by the trade union) or for serious cause.

Failure to comply with these procedures will result in heavy financial penalties for the employer.

A democratic system?

Only so-called 'recognised' trade unions (social, Christian and liberal unions) may, in principle, delegate representatives to the different consultative bodies.

This means that other trade unions are not, in principle, represented within these bodies.

Furthermore, although workers do not have to be union members in order to participate in social elections, they can only vote for candidates put forward by one of the three recognised trade unions.

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Based on these considerations, it can therefore be said that our system has a democratic deficit.

The public sector

Trade unions are also strongly represented in the public sector. However, specific consultation bodies are provided there and special rules apply regarding their composition and powers.

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FRANCE

Legal basis

French law recognises two main forms of employee representation: **trade unions** and **elected representatives**.

- **Trade unions** are constitutionally protected and regulated under Articles L.2111-1 to L.2152-19 of the Labour Code, represent employees through union delegates in companies with at least 50 employees (article L.2143-3 of the Labour Code).
- Elected representatives: The Social and Economic Committee (CSE) is the unified elected body for employee representation and regulated under Articles L.2311-1 to L.2317-2 of the Labour Code.

Are those institutions mandatory or voluntary for employer or employee

Trade union membership is voluntary: neither employers nor employees are required to join or form one. Union delegates are appointed only under specific conditions (representative union + 50+ employees).

The CSE is mandatory in companies with 11 or more employees (measured over 12 months). Elections must be organised regardless of trade unions presence.

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What is their role within the employer in individual matters

Employee representatives **assist and protect employees** in individual matters, for example:

- Supporting employees during disciplinary meetings and dismissals.
- Being informed and consulted about working conditions, health, safety, etc.

The CSE cannot represent an employee in a legal proceeding, instead of the trade unions which may **support or represent employees in legal disputes**, including non-members in some cases.

What is their role within the employer in collective matters

• <u>Trade unions</u> **negotiate collective agreements** on pay, working time, equality, etc., and lead annual mandatory negotiations in companies with 50+ employees.

FRANCE



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• <u>The CSE</u> is **consulted on major changes affecting the workforce** (e.g. TUPE, see our previous newsletter of may 2025, restructurings, working time, health & safety) and manages social/cultural activities funded by the employer.

Are members or function members protected against termination or does enjoy some other rights?

CSE members and trade union delegates benefit from specific protection for those are known as "**protected employees**":

- Dismissal requires **prior authorisation from the labour inspector.**
- Entitlement to paid hours for union and representative duties, training, and access to facilities.
- Protection against retaliation or discrimination.

What is the popularity of a given institution in you country eg. % of employer covered with trade union?

Although **union membership is low (approx. 10% in the private sector)**, unions **retain strong influence** due to their legal role. This low rate is linked to:

- The **multiplicity of unions**, which may reduce employee engagement.
- Changes in the nature of work and employment relations.
- A very low rate of trade union membership in small companies and very small companies.
- A lack of attractiveness from trade unions.

By contrast, **the CSE is widespread**, 35.8% of companies with 10 or more employees (in the private sector), covering over 75% of employees in this field, have at least one elected employee representative (https://dares.travail-emploi.gouv.fr/publication/lesinstances-de-representation-du-personnel-en-2023).



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LUXEMBOURG

At national level, employees may be represented either by the staff delegation within the undertaking or through employee participation at the board of directors or supervisory board. At European level, they may be represented in a European works council. Specific rules apply in a European Company and a company resulting from a cross-border merger, conversion, or division.

The above-mentioned employees' representatives benefit from specific protection against dismissal.

Employees may also decide to join a trade union.

Staff delegation (délégation du personnel)

Any employer with at least 15 employees over a continuous period of one year before the official call for social elections must have a staff delegation.

Social elections are usually organised within all companies in Luxembourg every five years, the last national social elections having occurred in March 2024.

Employees' representatives are elected by the employees of the undertaking from among the employees of the undertaking. The number of members to elect depends on the number of employees occupied by the undertaking.

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The general mission of the staff delegation is to safeguard and defend the interests of the employees with regard to working conditions, employment security and social statute. Their attributions may vary depending on the size of the undertaking. They usually have information and consultation rights and, under certain circumstances co-decision rights. They further prevent or settle any individual or collective claim between the employer and the employees and may refer any complaint to the Labour and Miness Inspectorate.

Employee participation at the board of directors or supervisory board

Any company having its seat in the territory of Luxembourg which is incorporated as a société anonyme and occupying at least 1,000 employees in the last three years must have staff representation on its board of directors or supervisory board.

LUXEMBOURG



ELISE DYSLI ELVINGER HOSS PRUSSEN EliseDYSLI@elvingerhoss.lu Within these undertakings, one third of the directors are employees' representatives who are elected by the staff delegation among the employees of the undertaking. The duration of their mandate and their attributions are in principle the same as for the other directors.

European Works Council

Any community-scale undertaking or any community-scale group of undertakings must have a European works council.

A community-scale undertaking means any undertaking with at least 1,000 employees within the member states of the EU and at least 150 employees in each of at least two member states. A community-scale group of undertakings means a group of undertakings having at least 1,000 employees within the member states and at least two group undertakings in different member states with at least one group undertaking with 150 employees in one member state and at least one other group undertaking with 150 employees in another member state.

Within such a body, the representatives of the employees occupied in Luxembourg are elected by the staff delegation of the concerned undertaking.

The rights of the European works council will be determined in the agreement to be concluded in this respect. In principle, it will be limited to transnational economic and social questions concerning the entire community-scale undertaking or group of undertakings.

European Company – cross-border merger, conversion, or division

Specific rules apply to information, consultation and participation of employees in the event of the establishment of a European Company having its seat in Luxembourg or, in the event of a crossborder merger, conversion or division if the company resulting thereof has its seat in Luxembourg.

In such cases, negotiations may have to be started with the representatives of the employees of the companies participating in the European Company or in the cross-border merger, conversion or division.

Trade unions

Employees may choose to be affiliated with a trade union, which is in charge of defending the professional interests and the collective representation of its members as well as improving their life and working conditions.

While union density has seen a modest decline over time, Luxembourg continues to maintain relatively strong engagement in both workplacelevel representation and trade union membership. Roughly 40% of workers are unionized, and collective agreement apply to over half the labour force.

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THE NETHERLANDS

In the Netherlands, the works council and trade unions operate alongside each other, each with their own legal basis and responsibilities. A works council is mandatory for companies with 50 or more employees and is involved in internal decision-making. It holds **advisory rights** on major financial and organizational decisions, **approval rights** on social policies, and **access to information** needed to perform its duties.

Trade unions, on the other hand, negotiate collective labour agreements (CLAs) and social plans during reorganizations, based on the Collective Labour Agreement Act. They focus on **primary employment conditions** such as **wages and vacation days.**

Although Article 27(3) of the Dutch Works Councils Act (WCA) reserves primary employment conditions for trade unions, in practice, **works councils are often involved in shaping employment terms**, even though this may fall outside their formal powers. For instance, topics like bonus systems or car lease arrangements are sometimes considered within the works council's approval rights.

CLAs increasingly contain **delegation clauses**, allowing works councils to make detailed agreements on certain provisions at company level, within a set framework. It also becomes more common for a works council to participate in drafting a social plan when no union is active

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in the company. While not a formal legal negotiating party, the works council may still serve as a de facto employee representative.

However, works councils face **limitations compared to trade unions**. Works council members are usually not professional negotiators, may lack deep knowledge of labour law, and are not entirely independent from the employer. Unlike trade unions, works councils also **cannot call collective action** or organize strikes, nor do they have a strike fund. Still, they can engage external experts, such as legal advisors.

Another key difference is the **legal enforceability** of agreements. CLAs or social plans negotiated with a trade union automatically apply to individual employment contracts. Agreements made with the works council—such as a company-level employment conditions arrangement (ECA)—

THE NETHERLANDS



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do **not** automatically bind employees, making them less robust from a legal standpoint.

Finally, employers should be aware that involving a works council as a substitute for a trade union carries risks. If the works council focuses too much on negotiating employment terms, it may **undermine its advisory role**, potentially weakening employee participation in strategic decision-making. Such a situation may lead to the situation that trade unions may legally enforce its own position, at the expense of both the works council and the employer.

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POLAND

Popularity of trade unions

Trade unions play quite an important role in Poland, however, they cover less than 20% of employees, as they are present mainly in some sectors of industry (heavy industry, state-owned organizations) that enjoy a high percentage of unionization. The establishment, organization, and powers of trade unions in Poland are regulated by the Constitution of the Republic of Poland, and detailed rules are set out in the Trade Unions Act of May 23, 1991. In addition, the Labor Code and other acts regulate certain rights of trade unions and their members.

Establishment of a trade union

Establishing a trade union is free of charge and voluntary. It is relatively easy to set up a trade union, as it can be established by a resolution adopted by at least 10 authorized persons who have passed a relevant resolution. The trade union is then registered in the National Court Register. Once registered, the trade union begins to exist as a legal entity. In practice, there are three large national trade union confederations in Poland (OPZZ, Solidarność and Forum), bringing together most of the trade unions at national level.

Independence, self-governance and voluntariness

A trade union is an organization of employees of a particular company, a group of companies or

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a particular industry. It can be a company or inter-company organization that brings together employees from different companies. A hallmark of a trade union, like membership, is voluntariness - that is, it is up to the employees to decide whether to form one. Furthermore, no employer, public or private, is required to establish a union in their company. Nevertheless, if a trade union is established within a company, the employer must allow it to operate. Trade unions in the workplace exist to represent workers, to uphold their rights and professional and social interests, and to negotiate on their behalf for better working conditions.

Role of trade unions

Trade unions play a key role in individual labor relations, defending the rights and interests of their members and are able to provide support to

POLAND



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non-unionized workers. They have the right to intervene in labor matters, to monitor compliance with labor and health and safety laws, as well as to cooperate with the employer in drafting and negotiating internal labour acts and to negotiate working conditions and wages with the employer. Trade unions are one of the parties to social dialogue, alongside employers' organizations and the government. They represent the interests of employees and participate in dialogue at various levels: central, regional, and sectoral.

Different trade union rights

There are various rights and powers of trade unions that bind employers in both individual and collective labor law. In principle, trade unions in Poland have the right to information and consultation, and only in certain areas is their position binding on the employer (e.g. termination of employment with trade union functionaries, introduction of company remuneration regulations).

Example of a trade union consultation right

According to Article 38 of the Labor Code, before terminating an employment contract, the employer shall notify in writing the company trade union organization representing the employee of its intention to terminate an employee's employment contract for a fixed term or employment contract for an indefinite term, stating the reason justifying the termination. After considering the position of the trade union organization, and if it does not take a position within the established time limit the employer shall decide on the termination of the contract independently. However, the position of the trade union is not binding on the employer.



Example of a trade union co-decision right

Pursuant to Article 32 of the Trade Unions Act, an employer may not terminate the legal relationship with a member appointed by a resolution of the management board of a company trade union or with another person who is a member of a given company trade union and is authorized to represent that organization vis-à-vis the employer or a body or person performing activities on behalf of the employer in matters relating to labor law.

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SPAIN

Legal basis

The right of the employees to have representatives is set forth in Article 129.2 of Spanish Constitution and developed in the Worker's Statute.

In addition, Spanish law foresees the possibility of Unions to also have representatives (on top of the works' councils) in those companies with 250 employees or more, as long as the unions are represented in the works council of the company. This right is regulated under Article 28.1 of the Spanish Constitution and in the Trade-union freedom Organic Law (LOLS).

All those companies/work centers with at least 6 employees are subject to have employees' representatives. The existence of employees' representatives within a company depends on whether the employees want to have them or not.

Employees' representatives role in individual labor law

Employees' representatives have the right to review that the company follows the law with regards to the employees' conditions.

Even in some company decisions affecting individual employees, employees' representatives shall be informed. For instance:

• They are informed of all dismissals/sanctions or substantial modification of the working

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conditions of the employees.

- If required by the concerned employee, employees' representatives shall be present when delivering a termination letter.
- Employees shall be informed of any employment contract signed by the company.

Therefore, even if they do not have consultation rights on matters affecting individual employees, employees' representatives shall be informed on several decisions affecting individual employees.

Employees' representatives role in collective labor law

With regards to collective labour law, companies have the obligation to proceed with a consultation proceeding with the employees' representatives in the following topics (among others):

SPAIN



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- Any decision that could substantially change employment conditions (salary, schedule, change of the work center in a substantial distance...)
- In the case of temporary layoffs or collective dismissals.

Notwithstanding the above, it is not mandatory to reach an agreement to implement the company's decisions but, in that case, the legal representatives can challenge de company's decision.

In addition, article 64 of the Workers' Statute states other obligations of information. Among others, companies must inform employees' representative on the following matters:

- The company's application of the right to equal treatment and opportunities between women and men.
- General evolution of the economic sector
- The company's economic situation and the recent and probable evolution of its activities, including environmental actions that have a direct impact on employment, as well as on production and sales, including the production schedule.
- Employer's plans for entering into new contracts, indicating their number and the types and modalities that will be used, including part-time contracts, the performance of additional hours by part-time workers, and the cases of subcontracting.
- Statistics on absenteeism rates and their causes, occupational accidents and illnesses and their consequences, accident rates, periodic or special studies of the work environment, and the prevention mechanisms used.
- The employment situation and structure in the company or workplace, as well as its likely evolution.

- Annual accounts.
- Transfer of undertakings

Special protection for the employee's representatives

In case of a sanction or dismissal, it is presumed, unless proven otherwise, that the dismissal is due to the representatives' duties, and therefore it is considered null and void, with the company's obligation to withdraw the sanction/dismissal and pay the corresponding damages.

If the dismissal is not considered fair, that is, unfair (there is cause for the sanction or dismissal but it is considered unproportional), the employees' representatives have the option, at their discretion, to choose to (i) be reinstated with the payment of lost wages or (ii) to receive the severance payment for unfair dismissal in addition to the lost wages.

It must be noted that ordinary employees, in case of unfair dismissal, cannot choose between the dismissal or the reinstatement. Instead, the decision corresponds to the company.

Popularity of Unions

In Spain there are two main unions, so called, Comisiones Obreras and Unión General de Trabajadores. These two unions are usually present in almost all works' council of manufacturer companies.

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SWEDEN

Sweden is a highly unionized country, with approx. 70% of its workforce belonging to a trade union and 90% covered by a collective bargaining agreement (CBA). Trade unions play a significant role in the labour market and welfare system. There are approx. 650 CBA in force regulating working conditions and employment benefits. The Swedish unions are organized in three main confederations: LO (for blue-collar workers), TCO (for white-collar workers), and SACO (for university graduates). There are also several employers' associations organizing employers in different industries. Many of them in the private sector are part of the Confederation of Swedish Enterprise, which brings together approx. 60,000 companies in 49 industries

What is the legal basis

The legal basis for trade unions and employee representatives is primarily built upon the Co-Determination in the Workplace Act (MBL) and CBA. MBL establishes the framework for trade union influence and participation in workplace decisions, industrial actions and conclusion of CBA.

Are those institutions mandatory or voluntary for employer or employee

It is voluntary for employees and employers to join trade unions or employers' associations. However, employers bound by CBA is obligated to apply the CBA also in relation to non-unionized employees.

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What is their role within the employer in collective labour law

Trade unions have significant power on the labour market based on MBL and through CBA, which establish terms and conditions of employment for groups of workers. Through CBA it is possible to deviate from otherwise mandatory law. Employers must also consult with trade unions in several matters, e.g. before deciding on material changes in its business (e.g. reorganizations, down-sizing etc.) or in employment terms or conditions.

Are members or function members protected against termination or do they enjoy some other rights

Trade union representatives have a right to perform certain union duties during working hours and have an increased protection against termination under law.

What is the popularity of being unionized

Sweden is highly unionized and approx. 70% of the workforce belongs to a trade union.

SWEDEN



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SWITZERLAND

Legal Basis

In Switzerland, the right to form and join trade unions is enshrined in Article 28 of the Federal Constitution.

The Federal Act on Information and Consultation of Employees in Enterprises ("Participation Act") governs employee representative bodies, such as works councils.

Voluntary or Mandatory Nature

Both trade unions and employee representative bodies operate on a voluntary basis for both employers and employees. Trade union membership is not compulsory, and employees are free to organize or refrain from organizing. Under the Participation Act, employees of a company with a headcount of 50 or more are entitled to constitute a works council. At the request of 20% of the employees (or if demanded by 100 employees in a company with a headcount of more than 500), a vote must be held in order to determine whether the majority of those employees casting a vote are in favour of the suggested constitution of a works council.

Role in Individual Labour Law

In individual employment relationships, trade unions have limited direct involvement. However, where a collective bargaining agreement ("CBA")

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applies, its normative provisions become part of individual employment contracts, often improving working conditions, pay, and leave entitlements. When a CBA applies, trade unions may gain specific rights in individual labor law, such as: representing employees in disputes with the employer, supporting employees during disciplinary or dismissal procedures, assisting in negotiations of individual contracts based on the CBA, etc.

Role in Collective Labour Law

Trade unions play a central role in collective labour law by negotiating CBAs with employers or employer associations. These agreements regulate key working conditions and often bind not only union members but also non-union employees, particularly when a CBA is declared generally binding by the competent authority.

SWITZERLAND



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As of 1 May 2025, 82 CBAs had been granted such status (45 federal, 37 cantonal).

Works councils are not party to CBAs but act as a communication bridge between workforce and management within companies. Works councils have information, consultation or even codecision rights in matters such as occupational safety, change of pension fund, transfers of undertakings, and collective redundancies.

Protection of Members and Representatives

Trade union members and officials, as well as members of employee representative bodies, enjoy enhanced legal protection. Dismissals are abusive if issued because the employee is or is not a member of a trade union or because he/she carries out trade union activities in a lawful manner. A dismissal is also abusive if issued while the employee is an elected employee representative and the employer cannot prove just cause to terminate his/her employment. Abusiveness of termination entitles the employee to compensation of up to six months' salary, though reinstatement is not available under Swiss law.

Popularity and Coverage

Trade union influence varies significantly by sector. In industries such as construction, hospitality, and public transport, union presence is strong and CBAs are widespread. In contrast, sectors like IT and finance see limited union involvement. Nationally, union density is relatively modest, with around 13% of employees unionised. However, the coverage of CBAs is considerably higher, due to the general binding declarations – around 45% of employees benefit from CBAs, even if not union members.



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THE UNITED KINGDOM

In England and Wales, the framework governing trade union and employee representation is primarily set out in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA). This legislation outlines the statutory rights and responsibilities of trade unions, employers and employees, and is complemented by various other regulations and codes of practice.

A trade union can be recognised either voluntarily by an employer, or compulsorily through a statutory process. To be recognised voluntarily, the union can simply make a request to the employer for recognition by proposing a collective bargaining agreement. Where an employer refuses voluntary recognition, the union may apply to the Central Arbitration Committee (CAC) for statutory recognition, provided the correct statutory process is followed and certain voting thresholds are met.

There is no general requirement for employers to elect employee representatives where there is no recognised trade union. However, they can be required under specific legal frameworks, such as collective redundancy, TUPE transfers, and statutory information and consultation agreements. Employers may also establish non-statutory employee representative bodies such as staff councils or employee forums.

Recognised trade unions engage in collective bargaining (including in relation to pay and conditions) and must be consulted on major

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changes like redundancies or business transfers, ensuring employee interests are represented during significant organisational changes. Nonunion representatives may also be consulted in these scenarios, especially where no union is present. Under the Information and Consultation of Employees Regulations 2004, employee representatives can be involved in broader discussions about business direction and workforce planning.

In individual employment matters, trade union or employee representatives can support workers by accompanying them to disciplinary or grievance hearings, offering advice, and negotiating on their behalf. While they do not have decision-making powers, their presence often ensures fairness and procedural compliance.

Union representatives are protected under TULRCA from detriment or dismissal due to union activities.

THE UNITED KINGDOM



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They are entitled to reasonable paid time off for trade union duties and unpaid time off for union activities. Similarly, non-union representatives have statutory rights to time off for training and undertaking consultation duties and must not be penalised for carrying out their representative functions.

Trade union membership has declined over recent years and is significantly more common within public sector employers. Official statistics for 2024 show that only 22% of employees in the UK are a member of a trade union. Non-union employee representation is increasingly used, especially in private sector organisations without union presence. However, under the proposed Employment Rights Bill, the Labour government intends to make significant changes to the current statutory provisions relating to trade unions, which demonstrates a trend towards providing trade unions with more influence and control. The Bill, once enacted, will repeals most of the anti-trade union and anti-strike action legislation put in place by the previous government. Most notably, the amendments will simplify the process and thresholds for compulsory trade union recognition.

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ILLN is delighted to welcome Portuguese law firm Sérvulo & Associados as one of its new members

With over 120 lawyers, Sérvulo is one of Portugal's leading law firms.

The employment law practice comprises eight lawyers and is led by Rita Canas da Silva. The lawyers assist their clients with legal advice and proceedings in matters relating to individual and collective employment law, negotiations with trade unions, pension law and social security law.

Sérvulo also has a large network of law firms in Portuguese-speaking countries such as Brazil, Angola, Mozambique, Guinea-Bissau, Cape Verde, São Tomé and Príncipe, Macao, East Timor, and in the Autonomous Regions of Madeira and the Azores.

Mrs. Rita Canas da Silva:

"We are delighted to join ILLN and look forward to collaborating with such a respected network. Being part of ILLN will enhance our ability to provide high-quality employment law advice and support to our clients through this valuable international connection."

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